

INTELLIGENCE ACTIVITIES—FEDERAL BUREAU OF INVESTIGATION

TUESDAY, NOVEMBER 18, 1975

U.S. SENATE,
SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m. in room 318, Russell Senate Office Building, Senator Frank Church (chairman) presiding.

Present: Senators Church, Hart (Michigan), Mondale, Huddleston, Morgan, Hart (Colorado), Goldwater, Mathias, and Schweiker.

Also present: William G. Miller, staff director; Barbara Banoff, John Eliff, Michael Epstein, Mark Gitenstein, professional staff members.

The CHAIRMAN. The hearing will please come to order.

The subject of the hearing this morning is the domestic intelligence activities of the Federal Bureau of Investigation. The committee has adopted a different procedure for this hearing. We have directed committee counsel, Mr. Schwarz and Mr. Smothers, to present a report on our investigation of FBI domestic intelligence operations. Representatives of the FBI will appear tomorrow for a discussion of these matters.

These public hearings on the FBI concentrate on its domestic surveillance programs. The committee has also undertaken an inquiry into FBI intelligence activities relating to foreign espionage and national defense. However, the committee is conducting this latter part of its investigation in executive session, so that vital FBI operations necessary for the national defense will not be impaired. Our final report and recommendations will address both the domestic and foreign sides of FBI intelligence.

For 50 years, the Federal Bureau of Investigation has been an outstanding law enforcement agency. The Supreme Court in the landmark *Miranda* case praised the FBI for its exemplary record of effective law enforcement and respect for the rights of suspects in criminal cases. But the FBI is not only a criminal law enforcement agency. It has a domestic intelligence role which is separate from its criminal investigations.

The very nature of our democracy demands that these activities undergo periodic public scrutiny. Yet there has never been a full public accounting of FBI domestic intelligence operations. Therefore, this committee has undertaken such an investigation. Its purpose is not to impair the FBI's legitimate law enforcement and counter-

espionage functions, but rather to evaluate domestic intelligence according to the standards of the Constitution and the statutes of our land. If fault is to be found, it does not rest in the Bureau alone. It is to be found also in the long line of Attorneys General, Presidents, and Congresses who have given power and responsibility to the FBI, but have failed to give it adequate guidance, direction, and control.

Information is a powerful resource. One of the FBI's most significant features is its system for efficiently processing, filing, and retrieving the data it gathers. The potential dangers in this system are obvious. The late Francis Biddle, Attorney General in the 1940's, warned the Nation about, and I quote his words, "The future use of this great machine of detection, with its 10 million personal files, its reputation grown sacrosanct, its obvious possibilities of misusing the power it has won." Attorney General Biddle did not believe the FBI could safely continue with what he called "the virtual freedom from control." As our technological sophistication increases, the warning of Francis Biddle grows ever more urgent.

Over 4 years ago, the Senate Subcommittee on Constitutional Rights exposed the massive surveillance of Americans by the U.S. Army intelligence system. Earlier this year we learned of extensive domestic intelligence gathering by the Central Intelligence Agency. Now, we look at the FBI, the most important domestic intelligence agency of all. The Bureau's reports provided much of the raw material for both Army intelligence and CIA domestic intelligence operations. Our own hearings in September showed that FBI intelligence officers helped develop the 1970 Huston plan, with an eye toward an even greater expansion of surveillance programs directed against American citizens.

Today we are here to review the major findings of our full investigation of FBI domestic intelligence, including the COINTELPRO and other programs aimed at domestic targets, FBI surveillance of law-abiding citizens and groups, political abuses of FBI intelligence, and several specific cases of unjustified intelligence operations.

These hearings have one overriding objective: The development of sufficient information for Congress to legislate appropriate standards for the FBI. Attorney General Levi has undertaken a similar task within the Justice Department, and we intend to work with him in framing proper FBI guidelines. The Attorney General and Director Kelley of the FBI will be invited to appear before the committee in December to discuss recommendations for the future.

Now, before I turn to Senator Tower for his opening comments, there is one other important point that I would like to stress and ask members of the committee as well as the staff to give this point special attention as we proceed this morning. Investigations such as these which are designed to determine whether Government agencies are infringing on the rights of citizens run the risk themselves of injuring private citizens' rights unless great care is taken. The disclosure of the contents of raw FBI files or characterizations or other derogatory information in the course of this investigation should be avoided at all costs by this committee, its staff, and its witnesses.

For that reason, I want to instruct the staff to refrain from mentioning the names of private citizens as being the subject of FBI surveillance unless permission has been given in advance by that person or unless the information is already in the public domain. The docu-

ments the committee is releasing have already been excised, and I hope that committee members in their questions will exercise the same due care.

Now I would like to turn to the vice chairman of the committee, Senator Tower.

Senator TOWER. Thank you, Mr. Chairman.

First, at his request, I would like to explain the absence of Senator Baker. He is the ranking Republican on the Public Works Committee which is at this moment considering some very vital and critical environmental legislation, and therefore he cannot attend the hearing.

Today, in a sense, the select committee comes home. For today, the select committee begins hearings designed to shed light upon the Nation's domestic intelligence activities. Our purpose, however, is not to conduct a legislative trial. In conducting these hearings, we do not seek either to assign fault or to apportion blame. Rather, our aim is to illuminate the policies and the practices of our domestic intelligence agencies. Our hope in so doing is that a complete record and an informed public will assist the select committee in its difficult task of evaluating the important intelligence work being done by the FBI.

These matters, of course, must be seen in perspective, and we must always guard against magnifying at hearings what has been in practice only a very small segment of the undeniably valuable work done by the FBI in the vital areas of crime detection and crime prevention. While the select committee has been fully informed of those allegations which have charged the Bureau with mistakes and excesses, we are no less vividly aware of the great difficulties and the complex problems which the Bureau's intelligence arm has confronted over the years.

As the chairman's remarks have indicated, today's hearing will focus on the FBI, the most recent subject of our ongoing examination of domestic intelligence functions. As with other governmental agencies, our concern today is with the issues of authorization for domestic intelligence activities and the privacy and other civil rights considerations raised by Government intervention in the lives of citizens. It is not our contention that all invasions are unwarranted. However, our charter is to reassess current activities. To this end, the staff's presentation will touch upon such controversial topics as confidential sources, informants, indexes, general warrants, disruptive techniques, "black bag" jobs, COINTELPRO, and subversive activities. In an attempt at full disclosure, reference will be made to such widely divergent concerns as the Communist Party, Black Hate, the Ku Klux Klan, Women's Liberation, the New Left, and radical terrorism.

These next sessions will provide a full and forthright look at the domestic intelligence mission of the Bureau. By so doing, by establishing a complete and open record of Bureau activity, the select committee hopes fully to discharge its responsibilities under Senate Resolution 21, by adding to our nearly completed review of intelligence action abroad, the critical and perhaps overriding element of what happens to our citizens at home.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tower.

Now, I have two further recommendations to make. I note by the schedule that there will be a series of Senate votes this morning, and that means that we need to come to some kind of understanding before we commence.

There is an old story told about a justice of the peace in Idaho who was a farmer, and he used to, so the story goes, get his trial going and both sides giving their testimony, and then he would say, "Now, you fellows just go ahead with your testimony while I go out and irrigate the north 40." And today we—

Senator TOWER. That is a Texas story, by the way.

The CHAIRMAN. It cannot be because you do not have water enough to irrigate 40 acres.

We may be faced with that problem with the votes today, so I would suggest that as the votes come on, Senators leave individually and return so that the hearing itself is not constantly interrupted. That way Senators will always be present. We will do that rotating, and the hearing can go forward.

The only other recommendation I have is that to the extent possible, and of course, this will not apply to the chairman and the vice chairman, but to the extent possible, other members of the committee are requested not to ask questions that will interfere too much with the continuity of the presentation, and then the questions can follow the presentation. If Senators can restrain themselves, that would be appreciated.

Now, I think that covers all of the announcements I have to make, and I believe, in accordance with the custom of the committee, Mr. Smothers and Mr. Schwarz should stand and be sworn.

Do you, the counsel of this committee, solemnly swear that all the testimony you are about to give in these proceedings will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SCHWARZ. I do.

Mr. SMOTHERS. I do.

**TESTIMONY OF FREDERICK A. O. SCHWARZ, JR., CHIEF COUNSEL,
AND CURTIS R. SMOTHERS, COUNSEL TO THE MINORITY, SENATE
SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES**

The CHAIRMAN. Mr. Schwarz, would you please proceed?

Mr. SCHWARZ. Mr. Chairman, Mr. Vice Chairman, may I first state that Mr. Smothers and I have divided this presentation. We are entirely at one in our view as to the facts and our view as to what should be presented. It has been an entirely cooperative and helpful venture between the minority and majority staffs here.

I am going to start by outlining the subjects we are going to cover. Before I do that I want to pick up on a comment that both the chairman and the vice chairman made about the objective of this set of hearings being to develop the facts upon which decisions can be made as to what should be done, and go back to 1938 when this whole program of domestic surveillance started, for the second time in this country, and put into the record what Director Hoover, the Attorney General, and the President of the United States said to each other at that time about the necessity to keep secret from the American people the facts as to domestic surveillance by the FBI. This was written in 1938 and it reads as follows:

In considering the steps to be taken for the expansion which then occurred "of the present structure of intelligence work, it is believed imperative that it be proceeded 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 special legislation which would draw attention to the fact of what is being done."

And as you know, no legislation, no special legislation relating to the subject of the FBI and its domestic surveillance, has been sought or enacted since that time.

Now, we intend this morning to cover six broad subjects. Mr. Smothers will follow and deal with the size and the scope of FBI's domestic intelligence activity. In essence, the proof will establish that the targeted investigations directed specifically at American citizens and groups have numbered in the hundreds of thousands, that general intelligence, that is, the simple collection of information about Americans and what they are doing and what they are thinking, is infinitely bigger than that, and that the requests, the annual requests to the FBI for intelligence data on Americans, number in the millions.

Mr. Smothers will also briefly cover the history of the FBI intelligence program and demonstrate how there have been periodic changes since the 1920's, periods when people have believed this kind of activity is improper, and other periods where people have believed this kind of activity is essential, albeit kept secret.

We will then briefly discuss what the FBI collects and what the grist is for the mill of the Intelligence Division. There we will make points about the extraordinary breadth of the desire for data and the vagueness of the requirements by which the agents are instructed to collect this extraordinary mass of data: for example, all information on racial matters, whatever that may be.

We will put before you the fact that there have been repeated examples of the actual collection of personal data about the private lives of American citizens, that that has not only been done, but that has been done pursuant to instructions, and that there have been instructions to use that material to specifically injure particular American citizens or groups.

Now, we will also put before you the fact that there have been instructions to collect the views of people on issues, the views of groups on issues. This part of the hearing will also demonstrate that the intelligence investigation, once started, may just go on and on like a river without stop, and without regard to whether or not information has been collected which is of any use whatsoever to a purpose of looking for a criminal violation, or for dealing with any purpose concerning which one would have thought the Federal Government ought to be collecting information.

For example, we will cite the case of Women's Liberation and will read to you from a document in which the agent, based on several informants, collects information about the Women's Liberation movement, concludes women are interested in liberating themselves and improving their lives and wish to be freed from the humdrum existence of being only a wife and mother, and what conclusion is reached after that valuable information is delivered to the Bureau? "Continue to investigate."

We will demonstrate that in the case of a particular person, in this case Martin Luther King, the Bureau continued for 7 years to have

the most intensive possible investigation into him and his organization. We will have another example of a religious group, not the Southern Christian Leadership Conference, but another religious group, where for 20 years the Bureau continued to collect information on the group, hoping and hoping that it might find at some time that it was genuinely a danger, and finding that it was not. The Justice Department also instructed the Bureau to keep collecting information in this case, so that it just never stops.

We will put before you information on an attitude which is prevalent in the intelligence field, that in effect indicates that a subject for surveillance is to be regarded as guilty until proven innocent. For example, I will read a quote relating to a civil rights leader in New York where the New York office reported to the Bureau that the man was not sympathetic to Communist causes, and the response from the Bureau was as follows:

The Bureau does not agree with the expressed belief of the New York Office that Mr. X is not sympathetic to the Party cause. While there may not be any direct evidence that Mr. X is a Communist, neither is there any direct substantial evidence that he is anti-Communist.

Therefore, the instruction is keep going, keep going, and hope to find it.

That gentleman was subjected in the months surrounding that document to three COINTELPRO actions designed to discredit and destroy him on the basis of a record where they said they could not say he was a Communist, but the instructions were to keep going, you might find that he is, and it has not been proven that he is not.

We will then turn to the subject of how the Bureau collects information. We will tick off some of the particularly invasive techniques that have been used, and pay special attention to the subject of informants, which turns out to be by far the greatest source of information. We will identify some of the key problems in the informants area for which there is a whole day's hearing scheduled after Thanksgiving.

We will then turn, Mr. Chairman, to the question of dissemination and use, talk about official dissemination to agencies ranging from local law enforcement to Presidents, and then we will talk about unofficial dissemination, whereby the Bureau uses what they call friendly or cooperative news media to put out stories from their files based upon information which they regard as harmful to the individuals whom they wish to injure.

We will then turn to certain examples of particularly troublesome programs and incidents, programs to disrupt, discredit and destroy groups and individuals, examples of the use of what is called misinformation to prevent dissenters from meeting or engaging in protest activity, examples of efforts to neutralize people by breaking up their marriages or ruining their jobs, examples of where decisions have been made to risk the death of suspect individuals by intentionally exacerbating tensions between groups known to be violence prone and known to have a desire to injure each other, where there were intentional acts taken by the Bureau, with full authority, to exacerbate that tension. We will give you some examples of the Bureau's electing to, in effect, enter into the political arena—I mean political with a small "p" and not party politics, but political arena in the sense of the

great social issues of this country. For example, in the instance of the civil rights area, the Bureau at one point had a plan to select a leader who they thought ought to lead the blacks in this country, and at the same time to depose Martin Luther King, against whom they ran their most sustained and toughest program of any that we have seen.

As another example of choosing sides on issues of importance to society, we will show you that after the 1968 Democratic Convention, the instructions went out to Bureau officials to collect evidence to disprove any allegations that police had mistreated demonstrators.

Finally, in the area of troublesome problems, we will identify for you instances where the Bureau had been misused politically by higher authority, selecting some examples of the Bureau's having been asked to intercede and to spy on people for directly political reasons, and where higher authority has used the Bureau's information-gathering resources to collect material on newsmen.

If we have time, Mr. Chairman, after that litany of facts, we will discuss serious problems with respect to oversight and serious problems with respect to control, that are illustrated by such matters as the plan to lock up dissenters. For 20 years there was a plan to lock up dissenters, for 15 years perhaps, and it was a different plan than the plan that Congress had approved. And the Justice Department and the Bureau agreed to go ahead with their plan, a broader plan to lock people up beyond that time which the Congress had approved in the Internal Security Act of 1950.

That is a broad outline of the subjects we are going to cover. Mr. Smothers is going to discuss the history and the size and the scope of these operations.

Mr. SMOTHERS. Thank you, Fritz.

Mr. Chairman, our discussion of domestic intelligence has been and will be very largely limited to the FBI and those executive agencies charged with its supervision, largely because these agencies, the Attorney General, and the White House, together with the FBI, have the primary responsibility for the domestic intelligence in this country.

Now, there are some activities undertaken by other agencies. Our own investigation indicates that those raise identical issues, or are rather minimal, conducted in cooperation with the Bureau.

Now, the issues that we will not cover in detail in this presentation are really those that have been previously examined in our look at the Huston plan, CIA domestic operations, and of course, the use of the IRS for nontax purposes.

I think that it might be helpful, before a detailed examination of some of the points Fritz has mentioned, for us to present a very brief overview of how the FBI is organized—the nature, if you will, of the animal which we are discussing here today. The functional organization chart, which is exhibit 1,¹ indicates that the headquarters of the Bureau is organized primarily in three divisions. As with many governmental entities, you will see it is heavily weighted in the area of administration; the second division engages planning, evaluation, and inspection; and the third division is the one with which we will be primarily concerned today, the so-called investigation division. Actually our concern will be with a small component of the Intelligence Division.

¹ See p. 347.

The general Intelligence Division is really organized into two basic elements. You will see to the right of the chart which is exhibit 2¹ the denomination "Counterintelligence." Now, we will not be discussing the counterintelligence method today. This involves primarily the FBI's efforts to deal with the activities of unfriendly foreign governments in the United States, largely counterespionage.

In looking to the internal security functions, the remainder of the Intelligence Division outlined on the chart, we see that the FBI has taken the approach that there are really two primary areas of concern, in addition to an item appearing as IS-3, which is largely the research effort in the intelligence organization.

The first organization you see as IS-1 concerns itself with the so-called extremists, and we see here the so-called black nationalist groups, the white hate groups, the other groups promoting civil disorder.

And then we turn to IS-2, the unit concerned with another kind of extremist activity, largely the so-called subversive activity, the pre-occupation with the Communists, the Trotskyites, and other people believed to be motivated primarily by foreign nationals.

It should be pointed out that the Intelligence Division really represents a small share of the investigative effort of the FBI. The General Investigative Division that we saw on the larger chart deals with many of the traditional law enforcement issues. We're talking here about bank robbery, kidnapping, civil rights violations, mail frauds. The minority of issues dealt with by the Intelligence Division really does not amount to an even near majority of the allocation of the FBI's resources. In fiscal 1975, approximately 18 percent of the \$440 million budget, approximately \$82 million, was devoted to the entire intelligence effort.

Now, any breakdown between counterespionage and domestic intelligence becomes extremely difficult for two reasons.

First, the manner of the FBI's recordkeeping in terms of costs has not been very defined or precise; and second, the FBI has indicated to us, and we are impressed by the fact, that a further breakdown would really result in a significant revelation of how much is going into counterintelligence, and we feel that revelation of that would serve no useful purpose and indeed might do a significant harm.

In looking at the headquarters operation, I think it is important that we not lose sight of the assets, the capabilities employed by the Agency in the total organization, the resources it brings to bear in the carrying out of any policies developed at headquarters level. The Bureau, with its 59 field offices staffed by more than 9,500 special agents, maintains a data bank on citizens which includes criminal information, and this investigative data bank contains more than 50 million cards. The resource of the bank grows daily, as the FBI conducts more than 2 million of the name-check kind of investigations that we will talk about later, more than 2 million name checks annually.

Since 1939 the Bureau has compiled more than 500,000 dossiers on American citizens, adding 65,000 to this total in 1972 alone. This bank of information is constantly fueled by arrest records, fingerprint files, taps, information of informants, and a myriad of other sources we will discuss a little later. And I think when we talk about the tremen-

¹ See p. 348.

dous capability, we ought to have some concern for the fact that we are not raising what is essentially new business. The debate on the propriety of this effort has really gone on for some time. In fact, it might be helpful to take just a brief look at the evolution of the intelligence function.

In 1919 the then-Director J. W. Flynn decided that the Bureau, and I quote, "required a vigorous and comprehensive investigation of anarchists and Bolsheviks, along with kindred agitations advocating change in the present form of government."

He took the position at that time that the FBI's effort should not be limited to investigations of violations of existing law, but indeed, could extend to investigations of legislation that may be enacted in the future.

This is an important determination, because in 1919 the general intelligence effort was then vested in the office of the Attorney General. Mr. Hoover was then in charge of that effort and it was the Flynn endorsement that led to the development, or the first development, of an indexing system for information retrieval on the activities of these radicals and activists and other persons of a revolutionary character.

It was after objection to this kind of collection by such legal scholars as Roscoe Pound, Felix Frankfurter, and Charles Evans Hughes, that we begin to see the first debate on the question. The debate, of course, was speeded by actions that the FBI was involved in such as the famous Palmer Red raids.

In 1924, Harlan Fiske Stone became Attorney General of the United States and took the position that the Bureau's activities in this regard should become more circumspect. He raised the danger of a police state and indicated that the business of inquiring into political or other opinions was to be avoided by the agency.

At this time Mr. Hoover readily agreed with Mr. Stone and indicated that except for investigations of matters concerning penal statutes or the violation of penal statutes, such investigations would not cease, and our records and investigation indicate that they probably did cease until we become concerned later in the developing political atmosphere, raising the specter of Fascism and Communism.

In 1936, coincidentally, the then-Attorney General was away from Washington. Mr. Roosevelt became very concerned about what we were doing about the Fascists and Communists in this country and invited Mr. Hoover to come over and discuss the matter with him. Mr. Hoover did, and indicated that indeed we could be concerned about the business of domestic intelligence. There was some problem with authorization, but it was resolved that it would not be difficult to seize upon a little-noticed provision in the FBI's appropriation allowing the FBI to conduct domestic intelligence when requested to do so by the Department of State. Our research does not indicate that this was a budgetary problem, but largely one of finding some authorization for the agency to hang its hat on.

We get a second authorization of this in 1939 when we involve the military, again pursuant to an F. D. R. direction, in the business of assisting the FBI on matters of espionage, counterespionage, and sabotage.

The next significant development of the process comes in 1962 when we recognize that the function has not only becomes somewhat bifurcated, but maybe difficult to be controlled centrally. The then-President Kennedy transfers the oversight authority with respect to this function to the Attorney General.

While some specific programs that we will talk about later have been discontinued, the Intelligence Division remains essentially intact and the intelligence effort does go on.

In a general sense, it is important that we have some feeling for the nature and form of this effort. Basically, intelligence conducted by the Bureau breaks down into two forms: so-called general intelligence, which is a collection of information regarding groups, movements, or categories of individuals, which is basically trend and development-kind of reporting; the second category is the so-called targeted investigation or targeted intelligence, which is designed to determine whether an individual or a group is in fact subversive, extremist, or otherwise objectionable.

Now to get a feeling for what general intelligence has meant to the Bureau, it is useful to note some of the matters that have been looked into under the mandate to conduct general intelligence. In a memo of November 1970 the FBI noted that it was conducting general intelligence investigations of all black student unions and similar campus groups. In 1968, the same kind of standard was applied to any demonstrations by persons opposing intervention in Vietnam. A 1972 memo points to the need to identify and report back to headquarters on the identities of organizations and speakers, together with any leading activists involved in any protest demonstrations, without further defining protest demonstrations. They seem to conduct the general intelligence with a fairly even hand.

In 1968, the issue of busing was already alive and the FBI determined that there was a need to investigate neighborhood groups known to sponsor demonstrations against integration or busing.

New Left organizations entered the general investigation spectrum in 1970, when all individuals belonging to whatever was to be defined as "New Left" were to be investigated as a part of the general intelligence effort.

Now, the problem with the distinction offered here is that when one tends to look at the effect of this investigative effort, it is virtually impossible to assess the impact of general intelligence. We have some data on the business of targeted investigations. The targeted figures, though, also are of fairly limited value because they only tell us what has been targeted by the headquarters of the Bureau. We do not know, for example, the targets identified in the field. We are unable to determine in terms of any cause-effect analysis, any first amendment impact, any chilling effect that may simply result from knowledge of the target. Keeping this in mind, it may be helpful, though, to look at the process of targeting investigation, as we have been able to find it.

We will begin with the investigation of the so-called subversive investigations. You will note that on the investigation of subversives, and we will talk a little further about the question of definitions here, largely we are talking about Communists, Communist-infiltrated organizations, organizations or persons involved in the overthrow or perceived overthrow efforts against the Government. As we see from ex-

hibit 3,¹ we go through a series of ups and downs after the late fifties, a period of relative dormancy through the sixties, until we get to the 1971-72 time frame where we see a new emergence of interest.

Now the labels here are exceedingly dangerous because, as we will develop later on, the labeling of subversive activities was often used as a basis to investigate organizations which did not, at least publicly, advocate a subversive purpose. The subversives are largely a forerunner effort.

About 1959 we introduced a new category of dangerous persons to be investigated, the so-called extremists.

Exhibit 4² is a chart depicting investigations of extremists. Until the termination of some of these significant programs about 1973 and 1974, we see a fairly steady climb in the investigation of extremist activities. We are in, and moving relatively rapidly through, a period of the development of the so-called New Left, of the emergence of the so-called Black Nationalists, and the Bureau decision to concentrate on the so-called White Hate groups, the Klan and kindred kinds of organizations.

An interesting observation from a look at both the subversive and the extremists charts, though, is a coming together in the 1971-72 time frame, the highlight of this aggressive investigation technique.

Now again, in any attempt to say "what did it all add up to?" or "was it really worth the effort?"—I think even a mild view of the situation would reflect that we are really trying to analyze what amounted to a kind of vacuum-cleaner approach to the area of investigation. We see here a move into the views on politics and personal life. When we add that kind of complicating data to the raw information of whether an individual belongs to a certain group or espouses certain views, it becomes difficult to make any significant kind of cost-benefit analysis.

As we will see later on, this matter is further skewed by the Bureau's own meddling in the areas that it was investigating, the so-called COINTELPRO efforts, which may have indeed changed the results of some of the facts found as a result of the investigations.

But one attempt that has been made with respect to the issue of assessment was attempted by the General Accounting Office earlier this year after a review of FBI efforts. Taking the approach of looking at the prosecution's or law enforcement initiatives resulting from the FBI efforts, GAO, in looking at 675 cases studied, identified 16 of them that had been referred for prosecution, less than 3 percent, 7 prosecutions actually initiated, and a total of 4 convictions.

If we look at it as a purely intelligence effort, the results are not significantly more impressive. In fact, one could argue that they are less impressive. In only 12 instances of the cases looked at did the FBI gain any advance knowledge of planned activities, and 51 percent of those cases revealed no association with objectionable organizations or no illegal objectionable activities.

I guess the bottom line comes very close to raising questions of why we should do this if we are faced with, one, a paucity of prosecutions and, two, no indication of a preventive effectiveness, no indication that this effort is going to assist the FBI in stopping the commission of illegal or subversive activities.

¹ See p. 349.

² See p. 350.

With that overview of where we have been and what the result has been from it, I think it might be helpful if we could turn our attention back to a point that Fritz had mentioned earlier and look at the mentality, the theme, the approach of the Bureau with respect to what it was going to go after, and who were going to be its targets.

Senator TOWER [presiding]. Mr. Schwarz?

Mr. SCHWARZ. Mr. Chairman, before turning to that, let me make one observation about the exceeding danger of these labels that the Bureau throws into its programs: subversive, extremist, dangerous persons, violent revolutionary. Let me just give two examples.

The Southern Christian Leadership Conference is a group of ministers, nonviolent—no doubt about that in our history, and we all know that. But they were labeled by the Bureau, assigned the label of “Black Hate group,” for the purpose of an attack against them, designed to destroy and disrupt them. They were characterized as being among the groups having violent leaders. So we have to be extremely careful of these labels. A language has lost its meaning if groups like the SCLC become labeled as Black Hate groups or as violence-prone.

Second, let us remember the danger of the attitude that says the facts don’t matter, and my example of Mr. X, where the New York office of the Bureau came in and said “there’s no evidence that he supports the Communists,” and the Bureau said, “well, keep going because there is no clear evidence that he doesn’t.”

And finally, picking up on that point, Justice Jackson, when he was Attorney General, spoke of the terrific problems in the past and today that result from using these labels like “subversive” and “extremist,” saying, “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.”

I see Senator Tower there laughing, and you always have a better quote when we give one.

Senator TOWER. That suspicion may linger in some minds yet.

Mr. SCHWARZ. Before turning to the subject of overbreadth, I want to add a comment about the material made available to us by the Bureau. The Bureau, commencing in July, when we reached an agreement with the Attorney General, has been exceedingly cooperative. We had great difficulties before then, but after that point, once there was an agreement with the Attorney General, they were indeed very cooperative, and we did see the full files, absent only the names of informants.

However, this staff, in the course of the past few weeks, has made an analysis, prepared by Mark Gitenstein, which indicates very strongly that after the death of Director Hoover, substantial numbers of relevant, highly pertinent, and sensitive Bureau documents were destroyed. This came to our attention first in the spring when the Attorney General revealed that there was something called the Official and Confidential files of the Director himself.

The Attorney General, then, on his own motion, and at our request, had an investigation of another kind of file which had come to our attention called the personal file, and an extensive investigation was undertaken by the Attorney General, and the results [exhibit 5¹]

¹ See p. 351.

were furnished to us a couple of months ago.

Now, you all will remember the "black bag" job memo with the "Do Not File" procedure. In the course of examining that document very closely, it became clear to us that in a very dim handwritten indication in the upper right hand-corner—

Senator TOWER. Mr. Schwarz, would you yield at that point?

Mr. SCHWARZ. Yes.

Senator TOWER. On the matter of destruction of documents, is it correct that the responsibility for the destruction has not been pinpointed on any specific basis?

Mr. SCHWARZ. That is correct. We are not going to allege responsibility or knowing destruction. We are going to describe the facts as to what we have now discovered and deduce from the indicia on these documents. Yes, indeed, it could have happened before his death, Senator.

In handwritten form there is the notation "PF" in the upper right hand corner of the "black bag" job memorandum, and we determined that PF meant personal file. But this document [exhibit 6¹] was found in the O. & C. file. Then, pursuing the investigation, we determined that what had happened is that before his death Mr. Hoover had the opportunity to go through at least letters A through C on the so-called personal files, and transfer certain official documents into the so-called Official and Confidential files, but that that effort was not continued for the files, after letter D, and all of the personal files, the so-called personal files were destroyed after Mr. Hoover's death, and therefore, what was lost to the ability to assess what happened in the past we cannot know. We can only guess that there may well have been documents like the "black bag" job, "Do Not File" documents, which happened to be at letter B, in letters D through Z that are now lost to scrutiny. We do not know that, but that is a surmise.

The CHAIRMAN [presiding]. Now, the Department undertook its own investigation as to why the personal files of Mr. Hoover were destroyed, did it not?

Mr. SCHWARZ. Yes, it did, Senator.

The CHAIRMAN. And have you testified while I was voting that the investigation of the Department, a copy of which was furnished to this committee, turns out to be incomplete?

Mr. SCHWARZ. Well, I wouldn't want to—

The CHAIRMAN. I want to ask you about that because I wanted it to be fairly stated.

Mr. SCHWARZ. We have been able, Senator, to go further than they have because of the hint that was given by that PF initial up in the upper right-hand corner of the "black bag" job document. We have no reason to think that they intentionally failed to find that. They just did not.

The CHAIRMAN. In other words, you are not charging the FBI with having furnished the Attorney General with an incomplete report out of any intention to deceive him.

Mr. SCHWARZ. No, sir.

The CHAIRMAN. And the only reason it turned out to be incomplete was because of later information that was turned up by the committee staff.

¹ See p. 357.

Mr. SCHWARZ. Turned up by our staff people, who then analyzed the matter further.

The CHAIRMAN. It was turned up initially by our staff, then it was analyzed further by the Bureau and now it has been turned over to the Attorney General.

Mr. SCHWARZ. Well, I assume it has been turned over to the Attorney General. I do not think I have said anything he does not know, Senator. Yes; I am correct.

The CHAIRMAN. Very well, thank you.

Mr. SCHWARZ. Now, getting back to this problem of the extraordinary breadth of the investigative activity, I read a portion to you of the document concerning Mr. X, where despite the finding and the suggestion from New York that he was not a Communist, the instruction was "continue, continue until you have been proven negative." That document went forward to set forth the standard in that case, but it appears to be the generally applicable standard within the Bureau as to the kind of coverage that is necessary on any matter in which they are interested. And reading into the record what was said, "The Bureau cannot adjudge as adequate any coverage which does not positively provide to the Bureau 100 percent of the intelligence relating to the Communist influence in racial matters."

Now, in fact, the Bureau not only sought 100 percent of the evidence with respect to that matter, but simply 100 percent of the information that could be obtained with respect to racial matters generally. Every demonstration, every protest was to be reported to the Bureau.

In the area of what they characterize as the New Left, an example of the overbreadth of the requirements for information laid on the field can be found in the document that is exhibit 17¹, and in this document the Director of the FBI issued an instruction to all special agents of the Bureau as to the kind of information that he wanted them to collect and report on.

Now, the number of items in the report are in letters from A through R, and numbers under each one of those entries. I will just refer to a couple of the specific examples of what the FBI agents are required to report in from the field.

In the area of finances, it sought the so-called angels for the group. In the area of publications, describe all the publications. In the area of religion, the policy of the organization relating to its approach to religion, and any vehement statements made against religious bodies by leaders; conversely, any statements of support for the movement by religious groups or individuals. In the area of political activities, any and all political activities in which so-called New Left leaders are involved, and details relating to their position taken on political matters, including efforts to influence public opinion, the electorate and government bodies. In the area of education, all information concerning courses given, together with any educational outline, and together with what is the assigned or suggested reading. In the area of so-called social reform, all information on activities in connection with demonstrations aimed at social reform, whatever that may be. In the area of labor, all information including all activity in the labor field. With respect to the public appearance of leaders, the identity of any leader

¹ See p. 393.

who makes a public appearance on radio and television and who appears before groups; for example, labor, church and minority groups. And in connection with such appearances, the identity of the group sponsoring the speaker and a succinct summary of the subject matter discussed. In the area of mass media, influence of the New Left on mass media and any indication of support of the New Left by the mass media, a wholly comprehensive listing of everything those people thought or did on any subject you can imagine their having a concern with.

As the next example of how the FBI seeks out information scarcely relevant to subjects that we had thought the Bureau was concerned with, as in the area of Women's Liberation, there is report after report about meetings of women who got together to talk about their problems. Now, how the Bureau got this information is not entirely clear, but it is apparently by informants. So we have informants running all over the country checking up about what housewives are talking about in their efforts to decide whether women should have a different role in this society; reports on particular women who said why they had come to the meeting and how they felt oppressed sexually or otherwise; reports on such important matters as the release of white mice by women at a protest demonstration; reports on such other important matters as the interest of the Women's Liberation movement in zapping the Miss America Pageant in Atlantic City by protesting the standards and whatever else they protested in Atlantic City.

And my favorite example concerning the Baltimore Women's Liberation movement is a document, exhibit 7¹, which was sent not only to the FBI, but to three military agencies for some reason; a document in which there is a long discussion of the origins, aims and purposes of the group, its location, its pamphlets, and in concluding on the purposes of the group, it comes up with such important findings as that women that wanted a purpose, and that was to free them from the humdrum existence of being only a wife and mother. They wanted equal opportunities that men have in the working society and so forth, nothing to do with violence, nothing to do with these labels of subversion and extremism. And what is the conclusion on the document? "We will continue to follow and report the activities of the Women's Liberation movement."

The CHAIRMAN. How did they find any time to investigate crime?

Mr. SCHWARZ. I don't know, Senator. I don't know. There is a lot of effort going into this stuff. There is a lot of effort going into it. There is paper after paper. We see tracks of informants and what does it all do? What is it worth?

I have talked already about those labels, "subversive" and "extremist" and how loose they are and how they are applied. They say "violence" for nonviolent groups. Under subversive and extremist subjects, they are instructed again to look at all of the ideas, all of the associations, women's matters and groups, farmers' matters and groups, youth matters and groups, the "Negro question," legislative activities, third party movements. I am reading from the instructions to the Bureau in the manual in 1960. "Candidates for public office, veterans matters, religion and religious bodies, bookstores, education, mass organizations, industry, including labor unions," again the most

¹ See p. 360.

wide catalog that could be imagined of the affairs of American citizens. I have nothing further on the subject of the breadth of these activities, these investigations. I have made the point previously that they go on and on and on, 7 years for King, 15 years for a religious group which they couldn't prove was subversive or not, but the instruction was to keep trying.

Mr. Smothers has the subject now of the gathering techniques, the ways in which the FBI collects information.

Mr. SMOTHERS. In looking at the question of how they gather information, we begin to focus on perhaps the most serious problem before this committee and the most serious issues faced by the staff, and that is the question of control, and indeed what should be controlled.

The easier questions, although they have been the subject of some of the more extensive invasions, center around control of the machines: the wiretaps, the bugs. We have had an example of Attorney General approval of wiretapping. We have, indeed, court procedures for the approval of such efforts. The situations with the bugs has become a more refined problem and one that has gone with much less regulation, indeed, for a very long time with the belief that the Bureau could do it when appropriate, particularly in cases that would be labeled counterespionage efforts.

We do not have a lot of data on the machines. We know that with regard to the electronic surveillance conducted without a warrant, the number probably never exceeded 100 in any given year and that this kind of invasion was for all practical purposes stopped in 1972.

While we were focusing, though, on the machines in much of the legal discussion, the investigative effort, the intelligence effort of the Bureau was gradually stepping up the use of the so-called human resources. Of course the primary example of human resources is the so-called informant.

We are going to talk a little bit about the kinds of informants later, but we should be particularly aware of the fact that unlike the activities conducted with machines, no warrant was required to use an informant as the basis for invasion into an individual's privacy.

If you would look to the chart which is exhibit 8,¹ we see a survey conducted by the GAO to try to trace for us the sources of the information gathered by the Bureau. Up in the No. 1 position we have the use of informants, the warrantless invasion in one person's affairs by another, ranking 83 percent; police confidential sources account for 74 percent of techniques employed by the Bureau to gather intelligence. We get a little bit away now from law enforcement and we get into things like motor vehicle departments of the various States, the utilities companies. They are great for locating people for determining matters such as the expenditures of individuals or organizations. Educational records and State employment agencies also help to locate individuals.

Fifty percent of the time this kind of source was utilized, according to GAO. I must say "according to," as we are now under oath, and relying upon somebody else's research with respect to these areas. In fact, when we get to electronic surveillance here, we find that it accounts for only 5 percent, and that other kinds of human efforts, like

¹ See p. 367.

surreptitious entry and mail openings, which we discussed earlier, account for a mere 1 percent of what is gained in the way of information. And this chart tells a part of the story and gives us some idea of where the Bureau might reach for information .

What it leaves out and what I think we must spend just a moment on here is how we define some of these categories. Let us take our informants, for example. In examining the FBI's approach to the question of informants we found that we were looking at a fairly structured program in terms of gaining information from individuals who may have had contact with subjects. Perhaps one of the largest programs was the so-called ghetto informant program. The FBI pointed out that it was necessary in situations of potential violence to gain information from laborers, clerks, housewives, businessmen, anybody.

In August 1968, we had 3,248 racial ghetto-type informants, as they were called, in this country. The number goes to 4,500 in March of 1970. By October we were at 6,000. It reached its peak in 1972 with 7,500 ghetto informants spread across the country, the FBI sort of encouraging, and even some indication of enforcing, a kind of quota program with respect to the development of ghetto informants.

This rather terse definition here as to why the ghetto informant was necessary and what he was supposed to do, is merely a reflection of the fact that we could use persons outside of the groups in question to provide the kind of general intelligence information that was necessary for the FBI to gather.

In addition to the ghetto informants, we found that there was a separate and rather structured informant program aimed directly at extremists. This was kind of a successor effort after we abandoned the ghetto informants in 1973 and the target now is to get information on extremists.

By an FBI memorandum of March 1973, we find the development of a new category—actually three new categories of informants—and here the rigidity of bureaucracy helps us explain to the field the purpose of our efforts. The first category is the potential extremist informant, a person who might be in a position to know something. They weren't terribly sure about him. He was to be taken on a 1-year trial. After 6 months the potential extremist informant would be evaluated. If he was not producing anything, they would consider whether or not to get rid of him. If he did not get elevated to the level of extremist informant within a period of 1 year, then he was to be eliminated.

Extremist informants have obtained a new status, a special kind of qualification under the Bureau's guidance. It took at least 6 months to move from potential extremist informant to full blown extremist informant. Then to be sure they had covered the neighborhood, the confidential sources extremist informant was developed, and he is defined by the Bureau as "an individual who is willing to cooperate with the Bureau by furnishing extremist information brought to his attention by virtue of his position in the community, his employment, or in view of his background in extremist activities."

I guess the shorthand for that would be the turncoats. We discovered still another source of human information or human source information with the Bureau's development of what we have loosely labeled "notionals" and what I call fake or quasi-fake organizations.

One such effort is noted in a letter from an internal FBI memorandum, calling the Director's attention in 1967 to the fact that the Bureau had set up an entire klavern of the Klan composed of Bureau informants, and that they paid the expenses of setting up the organization. And apparently at its height, this group of informants was designed to attract membership from one of the main Klan groups.

Now in paying the expenses of the new person, if you will, the purpose was to develop here a separate source of information. The idea with respect to the Klan did not involve an entire group of Klansmen. This was a core group developed and based on informants and expanded later to 250 members. The entire group development was done with respect to the W.E.B. Dubois clubs, which had in its rolls an entire group of Bureau informants and fictitious individuals. The purpose of this chapter was to really frustrate the efforts of the American Communist Party by causing the Party the additional expense of sending organizers into an area and funding the organization's effort, mediums, and literature.

Another effort that has become a product of the human sources and which was used as a kind of spur to spark the surfacing of additional information was the use of fake correspondence or fake newsletter-kind of information, which by virtue of the articles presented therein would cause other persons to come forth and either challenge or supplement material.

Now we have talked a bit about the use of State agencies and other police agencies that would provide the FBI with information.

I think we have talked previously to the fact that the FBI also relied upon the efforts and assistance of the Internal Revenue Service from time to time as a source of information gathering.

We will talk a little more on this later on when we come to the COINTELPRO but we must be aware of the fact that this information gathering was closely allied to the use of this very same information as a basis for spurring agencies to create problems for the individual or to conduct investigations, or in the case of IRS, to conduct audits or other efforts that would detract from the person's organizational activity or protest efforts.

In addition to IRS, our investigation reveals that other sources were indeed, the Postal Service, the Passport Agency, Immigration and Naturalization, the CIA, of course, and to some limited extent, the Customs officials.

After the Bureau gathered this tremendous reservoir of information utilizing the various techniques, one of the things we found important to track was what happened to the information. We know that on these 15 million data cards and the tremendous files we have up there, there is information as to what the Bureau is doing, who gets the intelligence data, and under what circumstances.

Fritz will start with a review of the official dissemination of that information.

Mr. SCHWARZ. I want to add one further example of another kind of problem.

In 1965 and running for at least 3 years, the Bureau created a fictional organization called the Committee for Expansion of Socialist Thought in America, which was set up to publish a newspaper purporting to be from genuine persons and which newspaper was designed to attack

the Communist Party, U.S.A. from the so-called Marxist right. This was a wholly fictional organization which was presented to the American public as if it were a real publication by real people, instead of being a pseudopublication by members of the FBI.

Mr. SMOTHERS. Fritz, we might add, too, to that information on sources that during much of the period, we looked at the FBI's access to banking records which appeared to be fairly extensive, particularly when the investigation was initiated by the indication that it had to do with the investigation of subversives, as opposed to extremists.

Mr. SCHWARZ. Now the gamut of official distribution runs, as we said earlier, from the local police to the President of the United States.

I call your attention to a memorandum which is exhibit 9,¹ which deals with the so-called FBI intelligence letter for the President, a program that commenced in 1969. The document sets out the kind of information which the Bureau instructed its agents to collect and send in to headquarters for transmission by the Bureau to the President of the United States. It was initially sent only to the President and the Attorney General. At some point the name of the Vice President was added to the list of persons who received this special letter, known as the "Inlet" letter. The kind of information which is called for is set forth. I call your attention to item 6, in which the agents were instructed to collect and the Bureau intended to disseminate to the President "items with an unusual twist or concerning prominent personalities which may be of special interest to the President or the Attorney General."

The Inlet program was stopped as a particular program in December of 1972. The document which suspended the particular program, however, instructed the field to continue to collect the information and noted that changes in communications capability, including the ability to afford immediate teletype disseminations of such data to the White House, made the special letter on that necessary.

In connection with other examples of official dissemination, we have called to your attention previously a case prior to the Democratic Convention in 1968 in which the FBI obtained information which they believe to be used to neutralize a professor who sought to go to the Democratic Convention, and the FBI field office proposed, and the Director approved, that that information be sent to the IRS for the express purpose of seeking to induce an investigation of this professor's tax matters for the express purpose of making it harder for him to go to the Democratic 1968 convention.

Curt Smothers is going to deal now with the general subject of unofficial dissemination.

Mr. SMOTHERS. A use or a dissemination of information which has often been referred to as an illegal use of the Bureau—at the 1964 Democratic Convention—showed how information which may have indeed been relevant to law enforcement or had a basis in law enforcement was used as a start and then simply expanded. There was an indication in the 1964 Democratic Convention that violence may erupt and the Bureau was called upon to supply information regarding the potential for violence—I am assuming both on a Federal level and to assist local law enforcement officials.

¹ See p. 368.

In addition to that, after infiltration of various groups, the challenged plan to the Mississippi convention, the plans of those who challenged the official delegation, were developed by the FBI and submitted to the White House through the White House staff. The plans of Dr. King, the plans of CORE, the plans of SNCC with respect to activities at the convention were also communicated both as they related to efforts to disrupt, as well as general political strategy at the convention.

This was accomplished really through a complete infiltration of these groups, and when it became apparent, as in the case of the Mississippi challenge, that it might be politically expedient to have some information to discredit the group, the FBI provided that also by providing some bookkeeping data on the organization and its funding sources.

We see this same kind of unofficial dissemination occur after the critics of the Warren Commission began to surface, and the White House was a bit concerned about these persons who were criticizing the Warren Commission. The FBI is directed here to gather information on those persons, information which extended to their personal lives, indeed, down to their sex activities.

The name-check process was often used as a basis of getting a clearer fix on people who had begun to criticize the administration.

In several cases we have identified news correspondents of major networks who apparently at one point or another earned the White House's ire and were the subject of name checks. The names of a number of reporters from major newspapers pop up immediately after revelations or accusations about misconduct or activities of the White House.

We even got to the point where the name-check process was used as a basis to gather the views or information on private citizens that objected to Vietnam policy, and this information was subsequently distributed to persons who may be in a position to point up adverse information in the individual's background.

This took the form, for example, of going to political figures and saying to those figures, "If you have an occasion to comment on so and so, you might want to have this information."

We will talk a little more about that when we come to COINTEL PRO activities. The use, though, in the political arena virtually covered the spectrum. In one case we adduced information regarding the FBI's reporting efforts to influence the Speaker of the House regarding a prominent civil rights figure using information that had been gained through various investigative techniques and accomplishing this unofficial over-lunch kind of dissemination.

Another kind of dissemination that was particularly troublesome was the dissemination of information gained to the enemies of individuals or organizations. Again, when we come to COINTELPRO, we will see examples of this use and how it was used as a means of promoting factionalization and in some cases, even promoting violence.

Some of the information communicated was true. Other information was purely false. One of the favorite tactics was to communicate or disseminate information that so and so was a Bureau informant, immediately calling his existence or role in an organization into suspicion and creating internal dissension in the organization. The dissemi-

nation of information was also used as a basis to attack family situations, to which Mr. Schwarz alluded earlier.

When we talk about dissemination, we come very close to the so-called COINTELPRO, or the COINTEL Program, because it is the active use of the product of investigative technique together with false information and other investigative tactics. The use of this in a manner which goes beyond collection, beyond law enforcement, and into an active attempt by the FBI to right perceived wrongs begins to create a program that has been of particular concern to many in this area.

Fritz, do you want to cover the aims of the COINTEL Program?

Mr. SCHWARZ. I thought of two things, Curt, before doing that, that I would like to put on the record.¹ This all-pervasive desire for information concerning political matters—Mr. Smothers mentioned the 1964 Democratic Convention and the information that was gathered there. The same thing was done at the Republican Convention in 1964 and again, Dr. King was one of the targets of the Bureau and the Bureau put both the tap and the bug on Dr. King's phone when he was out at the Republican Convention, having stated prior to that that

it would be desirable to reflect as much technical coverage that could be safely done to cover King's activities on the West Coast. He undoubtedly will attempt to inject himself into the convention proceedings.

And then they instruct people not only to find out information about the convention, but about the current Mississippi situation, the current St. Augustine, Fla. situation, where there were demonstrations going on at that time, and in general, they said to get all of the information you can on the man because he is out in Los Angeles on a political convention. They did it, they put on a tap, and they put on a bug.

Second, a footnote on the 1964 Democratic Convention: a technique which was used there was the furnishing to the FBI of false press credentials by one of the major networks, which the FBI then used in order to insert an agent as a bogus newsman into legitimate discussions of political persons and protest groups and acquire information concerning their plans, pretending to be a reporter and in fact acquiring it for the purposes of the Bureau and transmission to higher authority.

Now turning to COINTELPRO, CONTELPRO is an abbreviation of the words "counterintelligence program." COINTELPRO is the name for the effort by the Bureau to destroy people and to destroy organizations, or as they used the words, "disrupt and neutralize."

May I call your attention to exhibits 10² and 11.³ Remember the slipperiness of these labels, which we have talked about before. But the five labels were the Communist Party, U.S.A.; the Socialist Workers Party; White Hate groups, including the Klan; persons labeled as Black Nationalists and Black Hate groups; and the so-called New Left.

The rhetoric of the Bureau—as these programs advanced from the initial program relating to the Communist Party, U.S.A. to the ultimate programs of Black Nationalist and New Left—became tougher

¹ The Select Committee decided not to publish documents concerning the FBI and Dr. Martin Luther King with these hearings out of consideration for the privacy of Dr. King's family. Pertinent materials will be included in the Select Committee's report to the Senate.

² See p. 370.

³ See p. 371.

and tougher, and what began as efforts to disrupt—the word used for the Communist Party, and in the case of the Klan some indication that they genuinely were looking after violence and not simply to destroy the groups—became in the case of Black Nationalists and New Left, as we will illustrate copiously, the most extreme rhetoric of a plan to destroy political protest groups that you could imagine.

For example, from the Black Nationalist-initiated document in 1967, agents of the FBI were instructed to “expose, disrupt, misdirect, discredit, or otherwise neutralize.” Then when they got along to the New Left they added “misinform,” and we are going to come to a series of actual instances where efforts were made to misinform and thereby prevent protest activities from taking place.

The CHAIRMAN. Does that category “New Left” mainly refer to the protest groups that opposed the war?

Mr. SCHWARZ. One of the Bureau witnesses was asked what the term “New Left” meant. It has never been defined. It was defined in practice as being largely students and people opposing the war. You will notice in the New Left chart on the kind of activity undertaken, that there is by far the largest amount there, percentagewise, of No. 1-type activity.

No. 1-type activity is the effort to prevent people from teaching and meeting and speaking, and a large number of the New Left targets were professors and instructors at universities.

What we are going to try to do now is to just briefly touch on each of the programs and then concentrate on certain of the techniques.

Mr. SCHWARZ. Yes. The only point about exhibit 11¹ is that its techniques kind of vary. The black nationalists get hit in the family and sectionalization, where the New Left gets hit more in the campuses, as far as meetings go. But this shows the aggregate of the COINTELPRO activities.

Now, we are going to briefly, as I say, go through what the programs were, and then we are going to come back to particular techniques.

Mr. SMOTHERS. The first effort, or the forerunner for the so-called COINTELPRO effort, began with the decision to initiate an effort against the Communist Party, U.S.A. The decision grew largely out of frustrations with the lack of success in attempts to enforce the Smith Act, and the FBI’s determination that law enforcement in a traditional sense was simply not enough to neutralize or discredit the Communist Party.

So, in 1956 the Bureau directs a counterintelligence program against the Communist Party, U.S.A., designed to—

capitalize on incidents involving the party and its leaders in order to foster factionalization, bring the Communist Party and its leaders into disrepute before the American public, and cause confusion and dissatisfaction among rank and file members.

[Exhibit 12.²]

Now, they indicate that prior to this time their action had really constituted more harassment than disruption, but that it was time to move on a positive initiative on the broader scale, “a program that not only will harass from the outside but will work from within, ‘by feeding and fostering from within the internal fight currently raging.’”

¹ See p. 371.

² See p. 372.

There we can see an active effort not only to infiltrate or misinform, but the idea coming to fruition that the way to deal with the Communist Party is to aggressively get about the business of its downfall, get about the business of its downfall outside the court structure, outside the various administrative actions proceeding against the party and its members.

Mr. SCHWARZ. Turning to the Socialist Workers Party, it is a relatively small program in scale and milder in its rhetoric. What I found interesting in the initiating document of October 1961 is what the Bureau thought was important to tell its agents this party, which now they were instructing their agents to disrupt, had been doing. This is exhibit 13¹ and it is a very simple quotation. The Bureau told its agents, here's the problem: "The Socialist Workers Party (SWP) has, over the past several years, been openly espousing its line on a local and national basis through running candidates for public office and strongly directing and/or supporting such causes as Castro's Cuba and integration problems arising in the South."

After that introduction it said, in effect, "Let us go get them." And a program was started against the Socialist Workers Party. It is smaller in scale, only some 57 instances, but the key thing appears to be that here was the first situation where an organization, which beyond any doubt is a domestic organization, was to be targeted because of the nature of its public positions and the way in which it ran candidates for office and the positions which it was supporting.

The next target is the so-called White Hate group. [Exhibit 14.²]

Mr. SMOTHERS. The White Hate and the Klan. It is never really clear, but they are apparently used interchangeably here. The focus does not really change an awful lot in terms of how we view it, except that the memorandums now start relying upon the experience gained by the Bureau in prior COINTELPRO actions, and the memorandums begin to speak of calling upon one's experience in the initiatives against the Communist Party, calling upon one's experience in the initiatives against Socialist Workers, as the basis for the how to do this.

This is expanded a bit more when we get requests for specific recommendations from the field as to what would be a good disruptive program, what would be a good COINTELPRO effort, and some of the things recommended show the enthusiasm that the Director had urged with respect to how we are going to attack this effort, ideas like anonymous correspondence, either from existing or nonexistent klaverns or leaders, one accusing the other of improper conduct, ideas about getting involved in disputes regarding tactics between the two groups, and indeed, ideas about how we might infiltrate a particular Klan, change or direct its policy in such a manner that it would become embarrassing and promote factionalism.

Mr. SCHWARZ. Turning to that. Mr. Sullivan, who was the Assistant Director for the FBI in charge of intelligence for much of this period, was questioned on a weekend about 2 weeks ago about the COINTELPRO and about what they really stood for and what the Bureau had done. Here is the man who had been behind much of this activity, and how he now views it, looking back upon the activity, speaking about techniques designed to destroy a person's family life.

¹ See p. 377.

² See p. 378.

He said, "This is a common practice, rough, tough, dirty business, Whether or not we should be in it or not, that is for you folks to decide. We are in it. To repeat, it is a rough, tough, dirty business, and dangerous. It was dangerous at times"—that is, dangerous to the persons who are being affected, not to the Bureau persons—when you are trying to disrupt someone's family life. "It was dangerous at times, no holds were barred. We have used that technique against foreign espionage agents, and they have used it against us."

"Question: The same methods were brought home?"

And then he answered, "Yes; brought home against any organization against which we were targeting. We did not differentiate. This is a rough, tough business."

And then the Senator who was presiding on that occasion said this: "Would it be safe to say that the techniques we learned in fighting Bundists and Silver Shirts, true espionage in World War II, came to be used, the techniques came to be used against some of our own American citizens?"

And Mr. Sullivan answered, "That would be a correct deduction." So the war was brought home, and the techniques of destruction that had become involved in the fight against Communist intelligence services or Nazi intelligence services overseas were, by the admission of the man who was in charge of these programs, brought home and used against the American citizens, and there is no better example of that than the language and the activity used against the so-called Black Nationalist Hate groups, which I remind you again included such non-violent and gentle movements as the Southern Christian Leadership Conference and the New Left.

The program against the so-called Black Nationalist Hate group was started in August of 1967 [exhibit 15].¹ And now there was not, as with the Klan, merely an effort to go after the group that were most violent, or the persons who had the greatest propensity for violence, but the instruction was to go after the leadership, the spokesmen, the membership, and the supporters of these groups. The instruction again—now concentrating hard on the vulnerability of individuals as far as their personal lives are concerned—the instruction was that the agents were to collect personal information concerning so-called Black Nationalist Hate groups and then use it against them.

In a document dated February 1968 [exhibit 16],² where the Black Nationalist program was expanded, instead of it being directed against some, it was expanded to greater groups and more groups and more FBI offices, and again let me concentrate on the attitude expressed in this document. I have already pointed out that they label groups like the SCLC as violence prone, and in the objectives, what the Bureau trying to do as it attacked these black groups, here is what they were instructed to do: "Prevent the rise of the 'messiah' who could unify, and electrify, the militant black nationalist group."

Here is what they said about Martin Luther King in that connection: "Martin Luther King * * * aspires to this position * * * King could be a very real pretender for this position should he abandon his supposed 'obedience' to 'white, liberal doctrines', (non-violence) and embrace black nationalism." So the theory as expressed

¹ See p. 383.

² See p. 386.

in this document [see footnote page 21] was that a man recognized in the document as being someone who supported nonviolence ought to be destroyed because someday he might abandon nonviolence and become thereby what they regarded as a greater threat as a messiah.

In this same document the Bureau praises activities which have already taken place under COINTELPRO, giving as an example of an apparently highly desirable activity the fact that the Washington field office had furnished information about a Nation of Islam, as the Black Muslim movement grade school, to appropriate authorities in the District of Columbia who were induced to investigate the school to determine if it conformed to the District regulations for private schools. And again, praising that effort, it was noted that in the process the Washington field office obtained background information on the parents of every single pupil in that school. What possible bearing does that activity have upon the activities which the FBI seeks legitimately to do? Is that within the legitimate sphere?

They said that our job in the Bureau is to prevent the long-range growth of these movements, especially among youth, so they should be targeted—they should be destroyed so they no longer appeal to young people in this country.

Now, we are going to cover similar attitudes as displayed in the New Left initiating documents, and then turn to certain of the techniques.

Mr. SMOTHERS. Perhaps the most dangerous aspect of the New Left initiative involved the failure really to define what New Left was, and the kind of no-holds-barred approach in terms of techniques that the Bureau authorized.

In 1968, we see the initiating document, and it is interesting to note some of the reasons why the New Left is identified as a problem. Quoting from the document, exhibit 17,¹ dated May 1968, "Some of these activists urge revolution in America and call for defeat of the United States in Vietnam. They continually and falsely allege police brutality and do not hesitate to utilize unlawful acts to further their so-called causes. The New Left has on many occasions viciously and scurrilously attacked the Director and the Bureau in an attempt to hamper our investigation of it and to drive us off the college campuses." "Trying to drive us off college campuses," refers to the Bureau.

With this initiation came some subsequent requests for ideas and the development of guidance kind of memoranda. One such appears in your books as exhibit 18² and we see in the catalog of things which are permitted or should be attempted against the New Left perhaps the most open or wholesale authorization for attacks under the COINTELPRO label. The field is advised that they should do such things as prepare leaflets designed to dispel the impression that Students for a Democratic Society and other groups speak for a majority of the students, and the leaflet campaign is to try to include "the most obnoxious pictures" one can find with respect to the activities of the membership of these groups.

The use of pictures was also to be a ploy in the anonymous sending of letters or other information to the parents and employers of New Left people, again to try to depict them in the most obnoxious light.

¹ See p. 393.

² See p. 395.

That was the direction. Whenever you can, bolster your assertion with a picture.

Another technique adopted was to try to create the impression that any of the New Left leaders were in fact informants and wherever one could, the field was directed to implant that impression. The direction included taking advantage of any personal conflicts known to exist among New Left personalities. They were told to plant newspaper articles. They identified specific hostilities, such as the one between the SDS and the Socialist Workers Party, and they were told to promote that hostility, and of course, were told that whenever—and this is the first time this one appears—whenever the Bureau received information of a disruptive or immoral activity, the first action to be taken was to notify the media, not the law enforcement officials but the media, and hope that they could promote some coverage, and indeed, if pictures came out of this effort, to get some of those to use for further dissemination.

It is perhaps the most broad-ranging attack, and really reflects a kind of cataloging of the various techniques that had been gained, and the view in the Bureau at least that a certain level of expertise in the business of discrediting, disrupting, and neutralizing was being achieved.

In talking about many of the techniques—we have alluded to many of them as we have gone—we have talked about the business of misinformation. One of the other techniques utilized was to destroy the job or family life, and family life was a particularly opportune target in the Bureau's view, and played on some fairly tender sensitivities.

Without mention of the name reflected therein, if you look at exhibit 19¹ you will see the Bureau's report on a COINTELPRO effort against a white female who was involved as an officer in what was resolved as a local black activist group. The way to discredit or neutralize this leader was to take attention away from activities of the group by creating another kind of distraction. The distraction read as follows: "Dear Mr. [deleted] Look man I guess your old lady doesn't get enough at home or she wouldn't be shucking and jiving with our black man in ACTION, you dig? Like all she wants to integrate is the bedroom, and us black sisters ain't gonna take no second best from our men. So lay it on her, man—or get her the hell out of [deleted]." It is signed "a Soul Sister."

A particularly effective technique as reflected by the memorandum. It did succeed in distracting her.

Mr. SCHWARZ. The same techniques were used against members of the Klan. You will see in your books [exhibit 20]² the instructions from the headquarters of the Bureau about how to prepare letters with spelling mistakes and so forth so that they would look credible.

On the New Left, I mentioned in my opening statement what was done by the Bureau immediately following the Democratic Convention in Chicago in 1968, and you will all remember that there were great incidents between the local police and demonstrators, and charges made of excessive action by the police.

¹ See pp. 398 through 402.

² See pp. 403 through 405.

Now, what did the Bureau do after those charges were made? We have been given documents which have the curious heading, COIN TELPRO—New Left, dealing with the subject of how to investigate the charges of police brutality in the Chicago 1968 Democratic Convention, and here is the instruction by telegram from the Director to all agents in all major Bureau cities:

“In view of recent accusations against Chicago authorities relating to their handling of demonstrations at the Democratic National Convention, the Bureau desires to collect all possible information regarding provocations of the police by the demonstrators.”

And then it goes on to indicate that what the Bureau desired its agents to collect in that telegram and in the preceding memo of August 20, 1968, was the following: “The Bureau should be alert to this situation and be in a position to refute the allegations. Along these same lines, you should also consider measures by which so-called cooperative news media may be used to counteract these allegations.”

Now, turning to the technique of misinformation or disinformation, which at paragraph 12 of the instructions on the New Left from which Mr. Smothers was reading, Bureau agents were told to attack the New Left by disinformation and misinformation, and I will give you six quick examples of what was done pursuant to that program.

There was a body called the National Mobilization Committee To End the War in Vietnam. At the time of the Democratic National Convention in 1968, that body attempted to obtain housing in Chicago for demonstrators who had come to the convention. The FBI local office in Chicago obtained 217 of those forms and filled them out with fictitious names and addresses of persons who purported falsely to have houses in which the demonstrators could stay. The tactic had its designed effect because, according to FBI documents, the persons who went out to look for these houses made “long and useless journeys to locate the addresses and the efforts to find housing were canceled.”

What effect that had upon the attitude of the persons who were there in Chicago, and what contribution that made to what happened thereafter, I suppose we will never know.

Precisely the same tactic and program was carried out by the Bureau with respect to the 1969 Presidential Inauguration where they again filled out false housing forms to confuse and disrupt efforts by persons coming to Washington to find places to stay.

During those 1969 inauguration ceremonies, the Washington field offices of the FBI discovered persons who were attempting to coordinate and control the demonstrations, or marshals. And this committee has examined in executive session Mr. Egil Krogh, who was responsible for coordinating law enforcement at that demonstration, and he has told us that the marshals of the demonstrations were a very useful and very helpful group of persons in order to keep the demonstration orderly.

Now, what did the FBI do? They found out what citizen band was being used for walkie-talkies, and they used that citizen band to supply the marshals with misinformation, and, pretending to be a unit of the National Mobilization To End the War in Vietnam, recoun-termanded the orders issued by the movement.

In 1967 there was a rally in Washington protesting the Vietnam war. A newspaper in New York City indicated that its contribution to this rally was to be the symbolic act of dropping flowers on the meeting, and the newspaper put an ad in the newspaper asking for a pilot who could help them do that. The Federal Bureau of Investigation answered the ad, and it kept up the pretense that it was a genuine pilot up to the point when the publisher of the newspaper showed up with 200 pounds of flowers and there was no one there to fly the plane.

In these two examples I am now going to give, the files that have been produced demonstrate a field suggestion and demonstrate no disapproval from headquarters when the proposal was made to headquarters. However, the Bureau has been unable to determine whether the next two activities took place actually as compared to the ones I have already given you.

The New York office of the FBI proposed that it sabotage a printing press which was being imported to be used by the Communist Party of the United States. The documents we have indicate that this request was handled by telephone. There is no indication of disapproval. The Bureau, however, is unable to tell us whether it actually occurred.

Similarly, with another publishing organization in Detroit, called the Radical Education Project, which published pamphlets and papers, the Detroit office of the FBI asked the headquarters lab to prepare a quart of a solution "capable of duplicating a scent of the most foul-smelling feces available." The Bureau is unable to tell us whether that was done, but the paper record indicates clearly that that was not disapproved.

Now, Mr. Smothers, I guess, is going to deal with violence and factionalism.

Mr. SMOTHERS. We talked a little bit about factionalism earlier and a little bit about the increasing development, or honing, of various techniques. Perhaps the culmination of the ability to apply certain kinds of techniques that have been learned in the early efforts against the Communists and the Socialist Workers took place when the Bureau looked at the competing efforts of groups they defined as Black Nationalists and thought of ways to neutralize or destroy those groups.

Exhibit 21¹ is a correspondence from 1968, a Bureau document indicating just how far the Bureau had departed from its law enforcement mission. It is shown on the chart at your left.

Reading from that document, the Bureau pointed out that a serious struggle was taking place between the Black Panther Party and another west coast organization known as US: "The struggle has reached such proportions that it is taking on the aura of gang warfare with attendant threats of murder and reprisals."

Recognizing these threats of murder and reprisals and the clear threat of violence, the FBI does not talk about law enforcement, but talks about initiating COINTELPRO activities designed "to fully capitalize upon Black Panther Party and US differences as well as to exploit all avenues of creating further dissention in the ranks of the BPP, recipient offices are instructed to submit imaginative and hard-hitting counterintelligence measures aimed at crippling the BPP (Black Panther Party)."

¹ See p. 406.

What we see here is the Bureau deciding that not only is law enforcement an adequate tool, but indeed, that violence now, or the promotion of violence, becomes an acceptable technique as a basis for doing away with objectionable groups and organizations.

A chart [exhibit 22]¹ that may help us some if we like bright colors represents our attempt, and the attempt of our staff here, to translate our rather vague directions and do a composite picture of COINTELPRO activity.

I think the chart is particularly helpful because what it does is indicate to us what was happening in terms of frequency from the period of 1956 up through about 1966.

We see very intensive activity against the Communist Party. With the involvement of the Socialist Workers who are viewed by the documents as a minor element, we see really a kind of trickling curve that hovers along the bottom of the graph, as shown there in black.

As the social issues began to change, the Bureau's efforts and intensity changed. The first is the effort here against the Klan, which reaches its peak in 1966. They are immediately followed by a literal preoccupation with the activities of the New Left and blacks.

In 1968 that activity is at its peak. The initiatives against the New Left began to drop off, as we see some change in the war sentiment in this country. However, either there was no perceived sentiment or the FBI did not get the message in terms of Black Nationalists because the intensity of that effort is shown to continue right through the last showing of the chart in the 1971 time frame.

Now one of the questions that emerges when we examine all of this activity is certainly the obvious one of who told them they could do it. And with respect to who told them they could do it, the answer is largely one of the Bureau deciding that it was a good idea.

However, this should not be taken to mean that there was no communication and no attempt to advise important officials of at least some of the Bureau's efforts. It is pretty clear from our look at this area that with respect to efforts against the Communist Party and efforts against the Klan, Mr. Hoover sent letters to Attorneys General, including Rogers, Kennedy, Katzenbach, Clark, and Mitchell, which he believed constituted a notification of the existence of these efforts against the Communist Party and the so-called White Hate organizations.

There is some indication that the Cabinet was briefed in 1958 regarding the Communist Party COINTELPRO efforts and that a House Appropriations Subcommittee was given information on both the Communist Party and White Hate COINTELPRO.

What we have been unable to find are disclosures relating to the Bureau's efforts against the New Left, against Black Nationalists.

The issue of authorization then seems to be one of the FBI assuming the authority and the need to take on certain actions, and then a subsequent communication of what had been done to the Attorney General and to officials in the White House—one can only assume relying upon the do-not-do-it-again, or the failure of a do-not-do-it-again directive as the basis for continuing the action.

Now in discussing whether many of these efforts are continuing today, I believe Fritz has looked at the terminating documents with

¹ See p. 408.

respect to COINTELPRO and has some observations in that regard, before we turn our attention to what we have found in our estimation to be probably the best example of COINTELPRO in action, the effort against Martin Luther King.

Mr. SCHWARZ. First, let me observe that whatever effort there was to turn off COINTELPRO occurred only after it had been exposed, exposed by the theft of documents from the Media, Pennsylvania, office of the FBI, and exposed in the press, pursuant to a Freedom of Information Act lawsuit.

In April of 1971, a notice was sent out that the extant COINTELPROs, naming five domestic COINTELPROs there—since that it has been discovered that there were more, but that apparently headquarters had forgotten about—that those COINTELPRO operations should be discontinued. However, the document goes on to indicate: “In exceptional instances where it is considered counterintelligence action is warranted, recommendation should be submitted to the Bureau under the individual case caption.”

We have determined through testimony, moreover, that the line between so-called COINTELPRO operations and intensive investigation—another term used within the Bureau—is one which is exceedingly fuzzy and that the same kind of activity which was carried in some cases under COINTELPRO has been carried in other cases under the label of intensive investigation.

Senator MONDALE [presiding]. In fact, the evidence we are about to hear on the Martin Luther King case occurred under a title other than COINTELPRO, did it not?

Mr. SCHWARZ. Yes, the most vicious kinds of acts that we have discovered occurred under a label which was not even called counter-intelligence.

Now finally, the current leadership of the FBI has declined in its testimony before Congress in situations where the evidence that we have was not available to Congress. Indeed, until we got this evidence, not even the Justice Department, in their review of the so-called COINTELPRO, saw what actually existed in the documents. But the current leadership of the FBI has taken the position in defense of COINTELPRO that “for the FBI to have done less under the circumstances would have been an abdication of its responsibilities to the American people,” and has declined to condemn the programs or, to date, the kind of activity which we have been discussing.

Of course the Bureau witnesses are going to be coming in beginning tomorrow and we shall see what their position is in light of the evidence as to the actual activity which has been put forward to this committee.

Now on King, Mr. Smothers is going to start with respect to the aims as they appear from the documents.

Mr. SMOTHERS. It appears that the Bureau's effort against Dr. King starts with a response to the perceived dissatisfaction or complaints raised by Dr. King against the Bureau. There is the early suggestion that they should look at him because SCLC or the movement had been infiltrated by Communists. [See footnote page 21.]

A total examination of the record, though, indicates a very limited kind of almost nonexistent concern of the Communist issue except as it related to trying to get information on this point regarding people with whom King spoke.

But in the period from 1956 when King begins his emergence, we begin to see developing, if not a dispute, certainly no love lost between Dr. King and Mr. Hoover. In fact, by January of 1962, Mr. Hoover has already typed Dr. King as "no good." Hoover is particularly disturbed after 1963 when it became clear that the concept of nonviolence was gaining adherence, adherence to be made even more clear by the time the march on Washington came around.

This development of a concept of nonviolent confrontation or non-violent protest was seen as a threat to law enforcement, and something the Bureau was indeed unhappy about. This was aided apparently by what the Bureau regarded as Dr. King's direct attacks on Mr. Hoover and the Bureau and the public controversy was pretty much full blown at the time in 1963 when Mr. Sullivan, who should be able to give us some assistance on this matter, communicates to Mr. Hoover a plan for dealing with Dr. Martin Luther King.

Quoting from a memorandum, the plan here is to completely discredit Dr. King by "taking him off his pedestal and to reduce him completely in influence."

In its effort to reduce Dr. King's influence, to take him off his pedestal and to change, if you will, his image before the masses, we begin to get some insight into the thought process of the FBI at this time. The thinking was that this would not be a terribly difficult task. The memo indicated, for example, that this can be done and will be done:

"Obviously, confusion will reign, particularly among the Negro people. The Negroes will be left without a national leader of sufficiently compelling personality to steer them in the proper direction."

So the FBI decided that if they were going to take King off his pedestal, it was a part of their task to find and bring into prominence a new national Negro leader.

To this end the FBI did research and identify a personality, a person, not a civil rights leader incidentally, whom the Bureau believed would qualify and should be promoted as the new national Negro leader.

In addition to the efforts to discredit King and to knock King off his pedestal, if you will, the FBI felt that it had a need to gain as much information as possible regarding every aspect of the activities of Dr. King and of the Southern Christian Leadership Conference.

To this end, the FBI set about a path of authorizing some 16 wiretaps against Dr. King, microphone bugs, if you will, in addition to wiretaps, which were also planted. The bugs were to be used for the most complete surveillance imaginable. That is to get everything we can on Dr. King.

I think when we look at or attempt to evaluate the purpose here, what we really see is that not only are the attacks on or the dispute against King a part of the Bureau's concern at this point, but the whole concept of civil disobedience, as the Bureau thought was personified by Dr. King, is getting to be a problem. The FBI sees no alternative to doing away with the growing adherence to civil disobedience as a means of redressing grievances, no alternative other than beginning or embarking upon a rather presumptuous course of replacing Dr. King and establishing a new national Negro leader.

Fritz, I believe you have some information on some of the things that they attempted in that regard.

Mr. SCHWARZ. Yes; the extraordinary thing is to look at the timing of the effort the Bureau made to discredit and destroy Dr. King. They come to crescendos at every single point where Dr. King touched the issues in this country. After the march on Washington there was an acceleration. He was defined, because of his speech in that demonstration in Washington, as the most dangerous and effective leader in the country and there was a paper battle within the Bureau as to how best to attack him. He was attacked after Time magazine named him as the Man of the Year. Again, the Bureau finds that reprehensible, believes it must attack and destroy. When he was given the Nobel Prize, again, they seek to discredit Dr. King with the persons who welcomed him back from that award. When he began to speak out against the Vietnam War, there was a new crescendo of efforts by the Bureau to discredit and destroy Dr. King. When the Poor People's Campaign took place, once again they go after Dr. King. And their activity to go after Dr. King did not even cease when he died, because as Congress began to consider the question of whether or not Dr. King's birthday should be made a national holiday, the Bureau developed plans to call in friendly Congressmen for off-the-record briefings concerning King in the hopes that those Congressmen could keep any such bill from being reported out of committee.

The period surrounding the march on Washington and immediately following is particularly revealing. A report is written for the Director by his chief intelligence officer reporting that the Communist Party, in fact, for 40 years had been trying to control the Negro movement and that it had always failed and that its efforts in connection with the march on Washington were infinitesimal. This was not accepted by the Director of the FBI. He found that thinking wrong, unacceptable, and said that it must be changed. And it was changed and then we find paper coming in in which the lower level people in the FBI apologized for having misunderstood matters and on they go with this effort to discredit and start the bugs on Dr. King.

The efforts to discredit him range from political people to foundations to universities. A particular university was selected as a target because it was thought unseemly that, since it had once granted an honorary degree to the Director of the FBI, for it to grant one to Dr. Martin Luther King. The FBI sought to prevent the Pope from meeting with Dr. King. It intervened with a Cardinal.

The CHAIRMAN. To prevent the Pope from meeting with Dr. King?

Mr. SCHWARZ. Yes; the Pope. And when the Pope, despite that effort, did meet with Dr. King, the FBI documents record the adverb "astounding."

The CHAIRMAN. It must have been Pope John, was it?

Mr. SCHWARZ. It was in 1964. Someone has got to help me on that. Who was the Pope? Pope Paul.

But in any event, that effort did not work. The paranoia, the belief that American citizens could not deal, themselves, with Dr. King is indicated by this story. At one point Governor Rockefeller was planning a trip to Latin America and the Bureau felt that it had to approach Governor Rockefeller so he could be—he was planning to see Dr. King before going—so that he could be warned of what a great

danger Dr. King was. This effort went on and on and on. Each time he was doing something important there was an effort to discredit him. Each person he met who the Bureau felt could give further credit, further recognition to Dr. King, an effort was made to stop that from happening. The Bureau went so far as to mail an anonymous letter to Dr. King and his wife shortly before he was awarded the Nobel Peace Prize, and it finishes with this suggestion: [See footnote page 21.] "King, there is only one thing left for you to do. You know what it is. You have just 34 days in which to do it. This exact number has been selected for a specific reason. It has definite practical significance." It was 34 days before the award. "You are done."

Senator MONDALE. That was taken by Dr. King to mean a suggestion for suicide, was it not?

Mr. SCHWARZ. That is our understanding, Senator.

The CHAIRMAN. Who wrote the letter?

Mr. SCHWARZ. That is a matter of dispute. It was found in the files of Mr. Sullivan who was the Assistant Director of the FBI and was heavily involved in these programs. He claims that it is a plant in his files and that someone else in the Bureau, in fact, wrote the document. The document which was found is a draft of the letter, the anonymous letter which was actually sent.

The CHAIRMAN. Is there any dispute that the letter did in fact come from the FBI?

Mr. SCHWARZ. We have heard no dispute of that.

Mr. SMOTHERS. One thing that is very clear as we examine the King information is that the FBI is not only presumed to know an awful lot about the movement which Dr. King headed, but that many of its fumbling efforts, many of its failures to convince people that Dr. King should be discredited, were born out of the ignorance and, if you will, the very clear racism at large then in the Bureau.

A particularly revealing aspect of the Bureau's approach to the question, even at a time when they were examining the so-called Negro question, is evidenced by the response to a memorandum which then Attorney General Kennedy wrote to Mr. Hoover. Mr. Kennedy wrote a memorandum asking Mr. Hoover how many Negro special agents he had. Mr. Hoover wrote back, "We do not catalog people by race, creed, or color," and now, reading from Mr. Sullivan's transcript on the point, "It was assumed by Mr. Hoover that this would take care of Mr. Kennedy. Mr. Kennedy came back with another very nice letter, that's a laudatory attitude, you are commended to have it, but I still want to know how many Negro special agents do you have." So we were in trouble.

"It so happened that during the war he had five Negro chauffeurs, so he automatically made them special agents. It did not matter whether they finished college or high school or grammar school or had a law degree. So now we wrote back and said we had five. Then Mr. Kennedy came back and said this was atrocious." At the time, according to Mr. Sullivan, the FBI had 5,500 special agents. "Out of that number 5,500, and you only have five Negro agents."

Mr. Sullivan again. "Of course, we did not say in that memorandum that none of them conducted investigations; they were just drivers."

This is 1961. Is it any wonder that the FBI was later presumptuous enough to feel that it could determine the next new national Negro leader? A part of their problem is that they attempted to translate the tactics first used against the Communist Party against virtually every perceived enemy; as they looked across the landscape and decided who should be neutralized, discredited, or destroyed.

The CHAIRMAN. I think this is a time when the committee might consider breaking. We have a cloture vote coming up now. We will be coming back this afternoon as we examine by what legal authority the FBI presumed to conduct operations directed toward discrediting, even endangering American citizens, and that hearing will commence at 2 o'clock this afternoon.

Immediately following the conclusion of the staff presentations, members of the committee will then address questions to the staff. So we are adjourned until 2 o'clock this afternoon.

[Whereupon, at 12:28 p.m., the committee recessed, to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will please come back to order.

Mr. Schwarz, you and Mr. Smothers had not yet completed your presentation to the committee when we had to break for votes and for lunch. I suggest that you proceed now to complete that presentation before we go to questions.

Mr. SCHWARZ. Mr. Smothers has a historical note he wants to make first, and then I'm going to return to the subject.

Mr. SMOTHERS. I have a historical note because you told me you were going to talk about indexing.

Mr. SCHWARZ. You're right.

Mr. SMOTHERS. And I think it is worth noting that at the time we talked about the very beginnings, when Mr. Hoover was then in charge of the Intelligence Division of the FBI, we see the starting of the first indexing system, the system being established there as the basis to insure the ability for retrieval of information against the anarchists and Communists and other kinds of revolutionaries, if you will, that Mr. Hoover identified. And he considered the indexing system to be a valuable aid in the efforts to link radicals to the steel and coal strikes in 1919 and 1920 and the railroad strikes.

The CHAIRMAN. In other words, you are talking about the origins of this indexing system going back to 1918, 1919, 1920, right?

Mr. SMOTHERS. I think, Mr. Chairman, it would be fair to say that in terms of the techniques we have talked about, what we have really seen as we have looked at the development of this thing is that not very much is terribly new. It changes in intensity, it changes in targets, but the origins have been with us a long time.

Mr. SCHWARZ. The issue of indices and how they came to be used as devices to plan to lock up American citizens in a kind of emergency evolved from the initial start that Mr. Smothers referred to, to a plan that lasted from at least 1939 until the 1970's—if it is indeed gone now—to prepare lists of American citizens who would be locked up, in effect, on the order of the President or the Attorney General and without the intervention of the court at a time of emergency.

I want to tell that story briefly, for the purpose of illustrating some of the problems of oversight and relationships between the FBI and on the one hand the Justice Department, and the FBI and the Congress, because in the course of telling the story, all of the types of relationships come out. We get the situation of the FBI complying with the orders of Attorneys General. We get situations where the FBI secretly defied orders of the Attorneys General. We get situations where the FBI is complying with the Congress, and we get times where the FBI, in coordination with an Attorney General, is planning to secretly defy the orders of Congress on the subject of indices for times of national emergency.

In 1939 the FBI established an index called the Security Index, which was a list of individuals, both aliens and citizens—I am now quoting from exhibit 23:¹

On whom there is information available to indicate that their presence at liberty in this country in time of war or national emergency would be dangerous to the public peace and safety of the United States Government.

The documents which notified all FBI offices of such lists and notified them to prepare names, indicated that the Bureau should make certain that the fact that it was making such investigations does not become known to individuals outside of the Bureau. Nevertheless, the Department of Justice was then informed, and in 1941, the Department of Justice commenced to work with the Bureau on classifying persons as to degree of dangerousness.

In 1943, however, the Attorney General then in office, Mr. Biddle, wrote a memorandum for J. Edgar Hoover [exhibit 24]² in which he instructed J. Edgar Hoover to get rid of the lists and to stamp on each document in which a person had been given a classification for the purpose of being locked up, the following legend: "This classification is unreliable. It is hereby canceled, and should not be used as a determination of dangerousness or of any other fact." Attorney General Biddle told J. Edgar Hoover that after full reconsideration of these individual danger classifications:

I am satisfied that they serve no useful purpose. . . . There is no statutory authorization or other present authorization for keeping a "custodial detention" list of citizens. The Department fulfills its proper functions by investigating the activities of persons who may have violated the law. It is not aimed in this work as to classifying persons as to dangerousness.

Within a few days of that very flat instruction from the Attorney General, the Director of the FBI indicated to all FBI agents that the instruction, in effect, should not be carried out. He told them that what they should do is simply to change the label on the files to "Security Matter" from "Custodial Detention" and instructed the agents of the FBI that the Bureau "will also continue to prepare and maintain security index cards" [exhibit 25.]³ This was for the same purpose of knowing who the Bureau might lock up. And he further instructed them, "The fact that the Security Index and Security Index Cards are prepared and maintained should be considered as strictly confidential, and should at no time be alluded to in investigative reports or discussed with agencies or individuals outside the Bureau" other than

¹ See p. 409.

² See p. 412.

³ See p. 414.

representatives of the military intelligence agencies who were going to be let in on the secret.

In 1948 there was a new Attorney General in office, and he, contrary to Attorney General Biddle, who instructed that this be turned off, instructed the FBI to prepare an emergency detention program following something called the Attorney General's Portfolio. This included plans to suspend the writ of habeas corpus. It ultimately included plans for a master warrant of arrests whereby, on a signature of the Attorney General, and only that signature, without reference to the courts, thousands of people could be locked up.

The CHAIRMAN. What Attorney General was this who succeeded Mr. Biddle?

Mr. SCHWARZ. In 1948 it was Attorney General Clark.

In 1950 the Congress passed the Internal Security Act. That act also provided for an emergency detention system but it was far more restrictive. It gave less power to the Government than the Attorney General's program. It did not provide for the suspension of the writ of habeas corpus. It was more restrictive in its standards as to who could be apprehended. It did not permit apprehending people on a master warrant, but rather it had to be an individual warrant based upon probable cause. It provided for hearings, and hearings in courts within 48 hours, instead of under the plan of the Justice Department no hearings in court, and no hearing at all for up to 45 days.

There then ensued, after the passage of the Internal Security Act, a lengthy exchange of correspondence.

The CHAIRMAN. The Internal Security Act was passed in 1950?

Mr. SCHWARZ. 1950.

A lengthy exchange of correspondence in which the Bureau and the Department were discussing whether they should comply with the Internal Security Act, and change the custodial detention program, to which they previously agreed, to comply with its standards, or whether they should, despite the passage by the Congress of the Internal Security Act, stick to their tougher standards that let them lock up more people and kept the courts out of it.

So the decision was made in 1952, November of 1952, and the Department, in the person of the Attorney General, decided to notify the Director of the Federal Bureau of Investigation that the Bureau should continue the plan to proceed under the Department's own portfolio instead of proceeding under the Internal Security Act. [Exhibit 26.]¹

The CHAIRMAN. Under what claim of authority?

Mr. SCHWARZ. Inherent executive power, I suppose. These authority matters are ones which it seems have been focused on more, in retrospect, in the last couple of years, as opposed to things that were thought about at the time, and the legal authority issue does not seem to have been discussed at all as far as the FBI's right to pursue any of these programs until the summer of 1973.

The list which was prepared under the stricter Justice Department's FBI program, called at one time for the locking up of 19,436 Americans. By the time of the repeal of the Internal Security Act it numbered, in 1971, approximately 12,000 persons.

¹ See pp. 416 through 427.

The CHAIRMAN. Since the repeal of the Internal Security Act, have they continued to maintain these files for lockup purposes?

Mr. SCHWARZ. Your key question is your last three words, Senator. They have continued, upon the agreement of the Department of Justice, to maintain the same files. The numbers have now been reduced to 1,200 persons. The name has been changed to something called the Administrative Index. What purpose that serves and whether it still is used as a reserve list of persons to lock up, I think we are going to ask the Bureau. I cannot give you a definitive answer.

Now, in addition to the so-called Security Index, there was, throughout this period of the fifties and sixties, also a reserve index. As to this we have not been able to discover any notification to the Department of Justice about the reserve index. The reserve index was composed of persons who did not meet the criteria of the Security Index but whom the Bureau felt should have special attention in a time of national emergency.

In 1962 there were approximately 10,000 names on the reserve index. A special section of that list was reserved for educators, labor union organizers and leaders, media personnel, lawyers, doctors, scientists, and other potentially influential people. And the point I make in connection with these lists is not only their existence, but the problems, as revealed by the different areas, of times when the Bureau appears to be acting without anybody knowing it, times when the Bureau is acting pursuant to coordination with the Department of Justice, and times when the Bureau and the Department appear to be acting beyond the authorization of the Congress.

Mr. Smothers has another case study of the problem of oversight.

Mr. SMOTHERS. Yes. I think as we have gone through the materials today, there might be some suggestion that the Bureau did not make an effort to secure guidance from the Department of Justice. While I think that may be true in some cases, we have others in which the effort was made, and which the Department is either unresponsive or merely takes a see no evil, hear no evil kind of approach, and at the same time nods to the Bureau, go ahead, or at least, go ahead if you wish to.

The case in point is the effort initiated against the Nation of Islam, the so-called Black Muslims. At least as far back as World War II, the FBI had been keeping track of the Nation of Islam, and on a number of occasions—we can only document a 20-year period—had gone to the Department of Justice seeking guidance in its efforts.

If I might, just a bit of that 20-year chronology that we have, to see that even when the Bureau attempted to gain guidance and clarification, there were some who thought that it was in the best interests of the Government to leave them unadvised.

In 1952 the Department of Justice was advised that the Nation of Islam may be "a fit group for the Attorney General's list." Here they were operating under the Federal employee loyalty program. In May of 1952 that information is communicated. In 1953 the Department of Justice says, we will not prosecute this group under the Smith Act, but "the group would under certain circumstances represent a serious threat to our national security." This is February 9, 1953.

The CHAIRMAN. Can you give us a word of description of the group?

Mr. SMOTHERS. The Nation of Islam? Well, not having had first hand experience with it, the Nation of Islam, formerly led by Elijah Muhammed, claims to be and was operated as a religious group. The thing generating concern here was apparently the group's rhetoric regarding its dislike for white persons and its belief that the war of Armageddon was near, that the time of the dominance, if you will, of the white race is about to come to an end, and in preaching this philosophy, it certainly soon came to the attention of the FBI. And I will come to what happened with the FBI's efforts, Mr. Chairman.

Senator TOWER. Mr. Smothers, hasn't that group somewhat moderated its, or at least deescalated the rhetoric?

Mr. SMOTHERS. Well, the latest information I have, Senator, is it would be true. In fact, I understand that breaking with all precedent in a recent social gathering some white persons were invited. So I think that the history of the group certainly was not different or changing during most of the time that the FBI sat in on it. And the concern was that there was some kind of very softly expressed danger to the national security, a concept expressed both by the FBI and by the Department of Justice.

For example, there was a question regarding the refusal to participate in the draft under the claim, which many of you may recall that led to a prosecution of Muhammed Ali, the claim being that every member was, in fact, a minister of the church of the religion.

In 1954 the Department of Justice advised the group would not be prosecuted for any conspiracy to violate the Selective Service Act. They continued their efforts with respect to some individual violations.

In 1955 the FBI goes to the Department of Justice and says, "review the file of the group and advise us whether the 150 most active members should continue on the Security Index," which Fritz has just mentioned. Avoiding the question, the Department, 5 months later, comes back noting only that a potentially dangerous instrumentality is represented here in the event of a national emergency.

The next entry we have is 1959. There the Department indicated that the group would not be prosecuted or designated for the Attorney General's list, and Hoover, upon receiving this communication said, in essence, "they always come up with excuses for not doing anything," and he asked or noted that they should take a constructive approach. He was asking them for advice.

In 1960 the Department gave the same advice, saying that the group was not subversive as defined by the employee security program. However, the FBI was requested to continue its investigation of the group.

Hoover noted on the bottom of that memorandum, after he received it, that Justice was "just stalling." It is interesting to take a look at that particular memo [exhibit 27],¹ that one of September 23, 1960. Walter Yeagley, then Assistant Attorney General of Internal Security Division, in a fairly clear discussion, notes that the first amendment requires something more than language of prophesy and prediction and implied threats against the Government to establish the existence of a clear and present danger. He further notes in the memorandum that the evidence is insufficient to meet the criterion of advocating the overthrow of the Government, but then he apparently comes

¹ See p. 428.

to the same bottom line that the FBI had reached. "Because of the semisecret and violent nature of this organization and the continuing tendency on the part of some of its members to use language of implied threats against the Government, it is requested that the Bureau continue its investigation of the Nation of Islam and its leaders."

In 1962, we are on the same merry-go-round. The Department repeats the advice and says, "Continue to investigate."

In 1963, the Department said there would not be a prosecution and did not request further investigation, but in 1964 the members are still on the list, the investigation is continuing. The Department is advised of that. In its response to the FBI, the Department does not even mention the fact the investigation is continuing.

For 7 years, from 1966 to 1973, there are no further instructions to the Department, and the FBI did not ask.

In 1973, the FBI comes up again and asks the Department of Justice if they should continue. It took the Department nearly a year to answer them. At that point the Department replied that the investigation should continue because the group represented "a potential threat to the public safety."

The FBI was asked to consult the Department if the group "changed its tactics and objectives." And the Department the next time advised that another reason for continuing the investigation might be the antiriot law. The employment security program comes up again.

Finally, after 20 years of exchange with the Department of Justice, late in 1974, the FBI decided that it would not bother investigating any more. In this 20 years of back and forth, reading the correspondence, the memorandums, it is virtually impossible to decipher anything that approaches the decision, guidance, firmness, or direction. So it is not all the Bureau run wild. There was some very clear advice here as to at least some of what was going on, and this is a good case in point.

Mr. SCHWARZ. The final part, Mr. Chairman, is the lack of legal authority and the ambiguity, the uncertainty. This has troubled the FBI and the Attorney General's office seriously since 1972. Prior to that time there is no evidence that consideration was given to issues of whether there is legal authority except the kind of hint you get in that 1938 memo where they say "Let us not go to Congress, because if we seek a statute, people are going to get upset about this kind of spying on Americans."

But in 1972 and 1973, the Bureau did focus on the problem. They wrote in 1973 to the then Attorney General saying, "We are very concerned about whether we have legal authority to act in these intelligence areas." They indicated then that the theory which had been used for the 30 years, which were the rather ambiguous and vague Executive orders, many of which were secret, from Presidents Roosevelt and Truman, and Eisenhower, at least. Those had been the bases on which the Bureau said they can go ahead and spy on the people. Really, those orders just said to look at subversives. They had no real content to them. They had certainly nothing about tactics and activities, no specificity.

By the summer of 1972 and 1973, the Bureau was very concerned, and concluded internally that they probably did not support its intelligence activities and asked the Attorney General to please help get a statute passed and get some Executive orders passed.

The CHAIRMAN. Which Attorney General? We had three in 19—

Mr. SCHWARZ. That was Attorney General Elliot Richardson. I think he left fairly soon after that request was made, and in any event, statutes have not been sought. The current Attorney General has been very diligently at work thinking about the issue of guidelines, at least internal guidelines. We have not seen any proposed statutes, but perhaps that is the work of this committee.

But the FBI and the Attorney General are now, it appears, genuinely concerned about the issue of legal authority.

Mr. SMOTHERS. Mr. Chairman, it is not clear in terms of the chain of that motivation. I do not think there is doubt that some of it is being actively considered now, but unless we focus it on an isolated case and point out that the volume, the sheer volume of information being received by the Department of Justice from the FBI, appears to have been sufficient to put the Attorney General, the various Attorneys General on notice that an awful lot of information was coming in from somewhere.

For example, in 1967, the Internal Security Division received periodic reports on approximately 400 organizations, an annual total of about 14,000 memorandums, about 150 reports a day. And yet we see little evidence that anybody asked "Where are you getting this stuff from? What is the source of all of this?"

I think that is a question, the real legal authority's point, that is now beginning to focus.

The CHAIRMAN. How much of that enormous volume of information ever meant anything to the Government? How many man-days, how much money was spent in such a massive and continuing effort of surveillance through the years?

These are questions that occur to me as we watch the organized crime in this country, the general level of crime that keeps rising from year to year.

Is it any wonder that we are not dealing effectively with it if so much of our attention and resources are diverted into activities of this kind? That bothers me very much.

Mr. SMOTHERS. Mr. Chairman, that is a hard question to get at in terms of the complete answer. I think it might be a question we could raise with the Bureau.

You recall earlier we talked about the combination of the intelligence functions, both counterespionage and domestic intelligence. What we get is a lumped figure, fiscal 1975, of about \$82 million. That includes both our foreign and domestic effort. The Bureau does not wish to break it out further, and I think for some good reason—e.g. because it would tend to disclose the amount of the counterintelligence budget. That figure lumped together is about 18 percent of the resources. The actual resource application though, in terms of man-hours, one, records that the Bureau did not keep; and two, if you look at the memorandums, you see designations of half an agent's time, designate an agent to do this. We saw the peaks and valleys in the activity. It is anybody's guess as to how much of personnel costs has to be outlined in this.

The CHAIRMAN. Before I am going to pursue my own questions I would like to recognize after some weeks of absence that we have Senator Phil Hart back with us and we are so pleased that he is back, that he is here today participating at this hearing, and all the members of the committee feel that way.

So I thought it would be entirely appropriate, Senator Hart, to turn to you first with whatever questions you would like to ask.

Senator HART of Michigan. I do not recommend that others pursue the course I took in order to get this advantage, but thank you very much.

Having the benefit of not having heard anything until yesterday for all of these months, I would just react very generally to what you have told me today.

As I'm sure others have, I have been told for years by, among others, some of my own family, that this is exactly what the Bureau was doing all of the time, and in my great wisdom and high office, I assured them that they were—it just wasn't true. It couldn't happen. They wouldn't do it.

What you have described is a series of illegal actions intended squarely to deny first amendment rights to some Americans. That is what my children have told me was going on. Now I did not believe it.

The trick now, as I see it, Mr. Chairman, is for this committee to be able to figure out how to persuade the people of this country that indeed it did go on. And how shall we insure that it will never happen again? But it will happen repeatedly unless we can bring ourselves to understand and accept that it did go on.

And now my last note. Over the years we have been warned about the danger of subversive organizations, organizations that would threaten our liberties, subvert our system, would encourage its members to take further illegal action to advance their views, organizations that would incite and promote violence, pitting one American group against another.

And I think the story you have told us today shows us that there is an organization that does fit those descriptions and it is the organization, the leadership of which has been most constant in its warning to us to be on guard against such harm. The Bureau did all of those things.

And I say that as one who worked as a U.S. attorney with the Bureau, I have enormous respect for its capacities in the field of kidnapping, bank robbery, and a lot of other things, but am appalled to learn, if that is correct, of the intelligence side that the Bureau has been up to for so long.

I am glad I got back in time to be persuaded of what my own family had not been able to persuade me of.

Thank you.

Mr. SCHWARZ. Of course there are actually violent groups. There are people who do act violently in the country and there is a role to be played there. The problem is the process, no check, no control, no neutral person checking how they draw the line, and no apparent effort to balance with the values of the first amendment.

The CHAIRMAN. I would like to recognize Senator Mondale next.

Senator MONDALE. Thank you very much, Mr. Chairman.

I think we all on this committee join with Senator Hart in expressing our admiration for the FBI and the conduct of its criminal investigating and prosecutorial functions. I just do not think there is any professional law-enforcement organization in the world that perhaps equals the FBI in its ability and its training in that field.

As an old law-enforcement officer myself, I wanted the point made clear. What we are confronting here, however, is another matter beyond the law, which is called counterintelligence or internal security. And it is a matter which strangely has troubled the FBI in the past. In fact, the abuse of that internal security function by the old Bureau of Intelligence so led to its disgrace that a new organization, known as the FBI, was created precisely for the purpose of staying out of this dirty work in the future.

So here we are again. The case of Martin Luther King strikes me as being the central case to demonstrate precisely what was involved and the profoundly serious danger of those tactics.

I would like to ask a few questions about it which, I think, demonstrate the elements of that matter.

What was the threat that the FBI believed that Martin Luther King posed to this country?

Mr. SCHWARZ. You get different feelings on that, Senator, from the documents, but it is a threat of change. There is a flavor running in there of an assertion that he was influenced by Communists, but that does never seem to be followed through on or proven what his actions were. It was the threat of change, I would say.

Senator MONDALE. Was there any evidence at any time that they were suspicious that he was about to or had committed a crime?

Mr. SCHWARZ. None that we have seen.

Mr. SMOTHERS. I think it is easy to underestimate the impact the concept of civil disobedience had on the Bureau in general and Mr. Hoover in particular.

Senator MONDALE. I want to get into the flavor of that later.

Mr. SMOTHERS. It was a big part.

Senator MONDALE. But I'm trying to find out what it was that impelled some part of the FBI to pursue Martin Luther King with such an obsession, and what I understood that answer to be was, first of all, it was not any suspicion of the commission of a Federal crime. None of the literature showed up a single suggestion that Martin Luther King had committed or was about to commit a crime.

Is that correct?

Mr. SCHWARZ. That is correct.

Mr. SMOTHERS. Yes, sir, but at this point much of what was being done did involve challenges to local laws, and there is a very strong suggestion that King was seen as rallying the lawbreakers and would-be lawbreakers, albeit for a cause that sounded pure, looking now in terms of—if you look at what might have gotten the Bureau started, remember at the same time he is extremely critical of the Bureau's own law-enforcement efforts.

We see throughout these documents, the New Left documents, it is taboo to criticize the Bureau and particularly the Director.

Senator MONDALE. Was he ever charged with fomenting violence? Did he ever participate in violence? Was it ever alleged that he was about to be violent?

Mr. SCHWARZ. That was the very opposite of his philosophy, Senator.

Senator MONDALE. So it was neither the fear of commission of a crime nor the commission of violence?

Was there any serious charge that he himself was a Communist?

Mr. SCHWARZ. No such charge whatever.

Senator MONDALE. So that what was left was the decision on the part of some persons or person within the FBI that he should nevertheless be pursued. The basis for that decision apparently was political, the decision that he was dangerous or potentially dangerous to someone's notion of what this country should be doing and a theory that the FBI possessed the ability to enter into this field and to investigate and to intimidate and seek to neutralize, and indeed replace, a civil rights leader whom they thought to be politically unacceptable.

Is that correct?

Mr. SCHWARZ. Yes.

Mr. SMOTHERS. That is correct.

Senator MONDALE. All right. And the tactics they used apparently had no end. They did not, however, include direct physical violence. They did not include incarceration. But they included practically everything else, did they not?

Mr. SCHWARZ. Yes.

Senator MONDALE. They included wiretapping. They included microphonic surveillance of hotel rooms. They included informants. They included sponsoring of letters signed by phony names to relatives and friends and organizers. They involved even plans to replace him with someone else whom the FBI was to select as a national civil rights leader. Is that correct?

Mr. SCHWARZ. Yes; that plan did not get very far, but they had that plan.

Senator MONDALE. Yes; it was seriously considered, and Mr. Hoover pinned a note to that suggestion commending its authors, did he not?

Mr. SCHWARZ. Yes.

Senator MONDALE. It also included an indirect attempt to persuade the Pope not to see him.

Mr. SCHWARZ. And many other people.

Senator MONDALE. It directed him to persuade one of our major universities not to grant him a doctorate degree.

Mr. SCHWARZ. That is correct. I think there were two universities.

Senator MONDALE. It included an attempt to send him a letter prior to the time he received the Nobel Peace Prize, which Dr. Martin Luther King and close associates interpreted to mean a suggestion that King should attempt suicide.

Mr. SCHWARZ. That's right. Included in that were materials which the Bureau had gathered illegally or improperly through taps and bugs and so forth.

Senator MONDALE. Well, I must conclude that apart from direct physical violence and apart from illegal incarceration, there is nothing in this case that distinguishes that particular action much from what the KGB does with dissenters in that country.

I think it is a road map to the destruction of American democracy, and I would hope, as we lead to the strengthening of the FBI in the criminal field, we impose very clear and unquestioned limits, so that this kind of unrestrained, illegal, secret intimidation and harassment of the essential ability of Americans to participate freely in the American political life shall never happen again.

One final question. What is the position of the FBI now as to whether it continues to have the authority to pursue tactics such as this against someone like Dr. King?

Mr. SCHWARZ. Of course the FBI witnesses are now commencing to come, Senator. There is, on the COINTELPRO subject, which is related to the testimony of the current director in effect defending that program as appropriate for the times in which it took place.

Whether he gave that testimony after knowing the fullness of what was done or not, I don't know.

Senator MONDALE. Thank you very much, Mr. Chairman.

Senator TOWER [presiding]. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman.

First, I too would like to say that I think all of us are well aware of the outstanding work that the Federal Bureau of Investigation does in many areas and that they do have a large number of diligent and dedicated agents who are doing outstanding work in the field of crime and in protecting this country against our foreign enemies.

I think it probably is unfortunate but the fact of the matter is it is not what they are doing right and correct that is of major interest to this committee. Our major interest, first of all, is to discover and identify what is not correct, not right, and to take whatever action may seem to be necessary in order to correct those abuses.

So the fact that we dwell on incorrect actions and abuses should not in itself indicate that the entire Bureau is guilty of gross impropriety in the performance of its duty. But we are in an area here that must concern all of us and all of the citizens of this country.

It seems to me that we have moved away from concern by the Bureau for actual actions that might be violent or might be criminal toward action toward ideas that might be unpopular or may not be acceptable to some people.

But within the Bureau, within the administration, would it be accurate to say on the basis of the information you have presented at this time that, in fact, the motivating factor behind much of the FBI's concern in this area was not that there was likely to be some direct violent action taken by some individual or some crime committed, but simply that ideas were being expressed that were not acceptable to the Bureau?

Is that a correct inference from the information you have given us?

Mr. SMOTHERS. Yes, sir. I believe that is an accurate summary. I believe it is particularly true when we look at the subversive investigations.

Senator HUDDLESTON. Now where is there any mandate for the FBI, or Executive order or any other authority, to move in this particular direction?

Mr. SCHWARZ. Well, there are claims of authority. For example, title XXVIII, section 533 of the United States Code permits the Attorney General to appoint officials to detect and prosecute crimes.

Now that is read as implying the authority to pry into these matters. Whether that is a correct reading or not, I suppose other people should judge.

Senator HUDDLESTON. But in case after case, and in particular, the Martin Luther King case, there was certainly no direct evidence that there was about to be a crime committed that could be identified as a specific crime.

Is that correct?

Mr. SCHWARZ. Certainly not. You are certainly correct.

Senator HUDDLESTON. We have talked some this morning when you gave the presentation of the various targets that had been selected, and one relating to the New Left seems to be a particularly nebulous-type target.

Was there ever any written description or any kind of understanding on the part of the agents that you talked to or those who were enforcing the program that would indicate that they had a very definite, clear understanding of just what this was?

Mr. SCHWARZ. It was a loose term that started and it appears to remain a loose term in its application.

Senator HUDDLESTON. It would be very difficult then to identify very clearly just what the threat of a so-called New Left would be to the security of the United States.

Mr. SMOTHERS. That is correct, Senator. Some of the guidelines provided, and it changed from time to time, included everything from opposing the war to saying bad things about the Director of the Bureau, and it just started to be a catchall.

Senator HUDDLESTON. Did you in fact find officials or agents who indicated that they had no clear understanding as to what it meant?

Mr. SCHWARZ. Yes; we did. Of course some of them might have said, as one Supreme Court Justice said about obscenity, you can tell it when you see it but they couldn't describe it.

Senator HUDDLESTON. Now this information, the files that were built upon all of these individuals, aside from the manner in which it was disseminated, which you have reported in great detail, what was finally done with this evidence? Was it left in a file within the Bureau?

Mr. SCHWARZ. It is still there.

Senator HUDDLESTON. It's still there now?

Mr. SCHWARZ. It does not matter how it was obtained. Even the material, for example, obtained through illegal mail openings is still there and still usable. If the Government asks for a name check on somebody, they would get back information from those sources.

Senator HUDDLESTON. Does the Bureau have a clearly defined policy on how long it should stay there or what would be done with it?

Mr. SCHWARZ. I think we ought to turn to some of our staff experts on that one.

Mr. GITENSTEIN. The basic investigative files remain in the files forever, as far as we know.

Senator HUDDLESTON. No matter how the material was gained, no matter whether or not it was accurate or true or how damaging to an individual it might be, it rests there to be plucked out at someone's whim to be disseminated in whatever way they might want to disseminate it?

Mr. GITENSTEIN. In fairness to the Bureau, in recent months the Bureau has talked about a destruction program based on age.

Senator HUDDLESTON. They are talking about a destruction program but so far as you know, they have not put it into effect?

Mr. SCHWARZ. There is a great problem along that line, Senator. Even if you are willing to assume some right to collect some information, that is a very doubtful assumption, the Bureau collects all information. Let us say a wiretap was authorized in order to check if someone was likely to commit some kind of an act. They do not limit the information which is obtained to that. There are some

efforts now to say, do not listen in when lawyers are talking on the phone, for example, but by and large once you target on the individual or group, you get all of the information.

Senator HUDDLESTON. That would certainly be a broad application of the search and seizure warrant requirement that requires a specifying of, first of all, where you are going to search and what you are searching for.

Mr. SCHWARZ. Yes, and do you remember on the chart which showed that 80 percent of the information comes from informants? Of course there is no warrant procedure whatsoever for the use of informants to infiltrate groups.

Senator HUDDLESTON. Did you find any report within the FBI or any assertion by them that they were in fact able to prevent violent acts or criminal acts because of the information they had gathered?

Mr. SCHWARZ. Yes, and I'm sure it is true there have been instances. That GAO study, however, indicated they were a very small percentage. But of course they undoubtedly have managed to deal with some violent acts in the course of this work and I'm sure the witnesses that come in tomorrow will have samples where they have in fact done it.

Senator HUDDLESTON. Thank you, Mr. Chairman.

Senator TOWER. Senator Hart.

Senator HART of Colorado. Thank you, Mr. Chairman.

Gentlemen, would you discuss an incident which reportedly happened in the closing days of Dr. King's life in Memphis when he had gone to the marches in connection with the sanitation workers strike, and which related to the Bureau's involvement in the question of what hotel he may have been staying at in Memphis?

Mr. SCHWARZ. Yes, Senator, I would like to ask Mr. Epstein of our staff, who has conducted the main investigation of the Dr. King matter, to answer the question.

Mr. EPSTEIN. This is a document dated March 29, 1968. [See footnote page 21.] It is an internal Bureau memorandum. The caption on it is Counterintelligence Program, Black Nationalists, Hate Groups, Racial Intelligence, Martin Luther King.

The purpose is to publicize hypocrisy on the part of Martin Luther King. Background: Martin Luther King has urged Negroes in Memphis, Tenn., to boycott white merchants in order to force compliance with Negro demands in the sanitation workers strike in Memphis. Violence broke out during the march King led in Memphis. On March 28, 1968, King disappeared. There is a first-class Negro hotel in Memphis, the Hotel Lorraine, but King chose to hide out at the white-owned and operated Holiday Inn Motel.

Recommendation: The above facts have been included in the attached blind memorandum, and it is recommended it be furnished to a cooperative news media source by the Crimes Records Division for items showing King is a hypocrite. This will be done on a highly confidential basis.

The attachment reads as follows, and March 29, 1968, is the date at the top of it: "Martin Luther King, during the sanitation workers strike in Memphis, Tennessee"—and by the way, this is headed, "do as I say, not as I do," and this apparently is the item that was recommended to be distributed.

Martin Luther King, during the sanitation workers strike in Memphis, Tennessee, has urged Negroes to boycott downtown white merchants to achieve Negro demands.

On March 29, 1968, King led a march for the sanitation workers. Like Julius leading lambs to slaughter, King led the marchers to violence and when the violence broke out, King disappeared. The fine Hotel Lorraine in Memphis is owned and patronized exclusively by Negroes, but King did not go there from his hasty exit. Instead, King decided a plush Holiday Inn Motel, white-owned, operated, and almost exclusively white patronized, was the place to "cool it." There will be no boycott of white merchants for King, only for his followers.

Senator HART of Colorado. Mr. Epstein, do you know for a fact whether the Bureau distributed that information to members of the press?

Mr. EPSTEIN. The only notation that would shed any light on that, on this document, is as follows: There is a notation that says, "OK, H." which is the usual OK that Mr. Hoover signed on various FBI documents. And then there is a notation also on the document which says, "handled," and there is a date next to it, which has been illegible for us. We have inquired of the Bureau as to what that date is, and the Bureau maintains that it is April 3, 1968. We have not yet seen the original of the document.

The FBI also asserts that Martin Luther King, Jr. had already moved into the Lorraine Hotel prior to April 3, 1968.

Senator HART of Colorado. He did change hotels?

Mr. EPSTEIN. That is correct.

Senator HART of Colorado. Did we ask the Bureau whether or not they distributed that information?

Mr. EPSTEIN. We did not discover anything additional with respect to this incident. There apparently were newspapers at the time that stated that Dr. King was staying in the Holiday Inn motel, I think described as a "plush" Holiday Inn motel in a couple of newspaper articles. There was no indication that those particular articles were written as the result of this particular COINTELPRO recommendation. There is no proof one way or the other.

Senator HART of Colorado. Are there date coincidences between the memo dates and the dates of the stories?

Mr. EPSTEIN. Other than the same 5- or 6-day time-period, I do not have any additional facts.

Senator HART of Colorado. What day was Dr. King killed? On April the 4th?

Mr. EPSTEIN. The chain of events, as I understand it, was he was in Memphis for a period of several days, left Memphis apparently and went back to Atlanta for a weekend, or for a couple of days. And it was when he returned to Memphis that he checked into the Lorraine Hotel.

Senator HART of Colorado. And that was where he was killed?

Mr. EPSTEIN. That is correct.

Senator HART of Colorado. Thank you very much.

Mr. Schwarz. I would like to ask you about the tangible results of the entire COINTEL Programs.

Do we have specific instances where the programs "succeeded"?

Mr. SCHWARZ. Yes. Out of some 2,600 COINTELPROs—

Ms. BANOFF. Twenty-two percent of them have results.

Mr. SCHWARZ. Can I ask Ms. Banoft of our staff to deal with that question?

Senator HART of Colorado. Yes.

Ms. BANOFF. The Bureau did not define success; it defined result. The Bureau agents, field agents, were also instructed from the very beginning to resolve any doubts in their favor, and, in fact, our investigation in some instances showed the result that was claimed was not, in fact, produced by the counterintelligence action.

Senator HART of Colorado. What was the result?

Ms. BANOFF. Some concrete thing that happened supposedly as a result of the Bureau action, Bureau counterintelligence action that fulfilled the purpose of the action.

For instance, Senator, in the dissemination act, it is one of the letters to wives. In fact, to husbands. One that Mr. Smothers showed, shows as a result in the status letter, and this is how it was shown to reporters, that the husband and wife separated. This was claimed as a tangible result.

Senator HART of Colorado. You have all indicated that the Bureau began concentration on COINTELPRO as a result of the Smith Act convictions being overturned and the Bureau's feelings that it was impossible to use ordinary law enforcement techniques against Communist Party members.

What indications are there in the records or your interviews with Bureau personnel that the Justice Department or the Bureau itself ever addressed themselves to the legality of the techniques that were being used in the program?

Mr. SCHWARZ. No evidence that any produced, any theory under which those programs were legal.

Senator HART of Colorado. Was it discussed within the Bureau or between the Bureau and the Department?

Mr. SCHWARZ. No.

Mr. SMOTHERS. There were after the fact notifications of the activities against the Communist Party and against the Klan. The Bureau sent over a memorandum after the fact. In some cases it said, there apparently were some brief intelligence activities.

Mr. SCHWARZ. It does not make it legal.

Senator MONDALE. Would the Senator yield?

Senator HART of Colorado. I yield.

Senator MONDALE. We interrogated a very prominent high-level FBI official who had been in a top role throughout all of this period, and he was asked whether anyone had questioned the legality or constitutionality of these actions. He said no one. I never heard anyone raise the question of legality or constitutionality. Never.

Mr. SMOTHERS. And yet they were going to Justice daily with information, not COINTELPRO but information, and the product of information was coming over.

Senator HART of Colorado. Did the Bureau ever actively conceal from the Justice Department the techniques it was using in these programs?

Mr. SMOTHERS. I think so. The general prohibition on all the COINTELPRO activities was there should be no disclosure outside the Bureau.

Now the subsequent or after-the-fact notification on the Communist Party, the plan, it appears that the Bureau felt a little safer about. There is no indication that the Bureau ever believed information against the other groups would be discussed, and there is no indication that we found that they disclosed the background.

Senator HART of Colorado. With respect to COINTELPRO specifically, is it your respective or collective judgments that the Bureau was operating under the control of the Department of Justice or out of control of the Department of Justice?

Mr. SMOTHERS. I do not see how one can charge the Department with control at least outside the Communist Party plan area. I think there may have been sufficient evidence, some evidence of a pattern where they could have at least said don't do it again. But no advance notice. And with respect to the other activities, I think the record is very clear that they did not with Justice, or anyone else.

Senator HART of Colorado. So I take it your answer is that there was not sufficient control of the COINTELPRO?

Mr. SMOTHERS. No question.

Senator HART of Colorado. Mr. Schwarz, do you agree with that?

Mr. SCHWARZ. Yes, I do.

Senator HART of Colorado. Thank you very much, Mr. Chairman.

Senator TOWER. Senator Hart?

Senator HART of Michigan. No; I have no questions.

Senator TOWER. No questions.

Senator Mondale?

Senator MONDALE. Would it be fair to say that the tactics used against Dr. King had been borrowed from tactics used against foreign risks, spies, agents, and the rest, who could and did pose a threat?

Mr. SCHWARZ. Mr. Mondale, your own examination of Mr. Sullivan seems to me brought home that point as clear as it could be.

Senator MONDALE. So that the techniques which were used were techniques that we knew about through experience against foreign enemies. So that for all practical purposes, Dr. King was treated as though he were one of them?

Mr. SCHWARZ. I do not think he was the only person, but that is certainly accurate.

Senator MONDALE. I raised the Dr. King example because I think that is the classic example which shows all of the elements and the dangers involved in this tactic.

When did counterintelligence programs stop?

Mr. SCHWARZ. Well, that is in question.

In 1971, after they had been exposed through the media, there was an instruction that they should stop. The instruction says, however, "If anything like this is really important, please advise headquarters." And as I think some of the witnesses indicated, the line between counterintelligence and intensive investigation is one that really cannot be drawn and has not been drawn.

Senator MONDALE. So are you saying we cannot be sure that COINTELPRO, in all of its elements, has been terminated?

Mr. SCHWARZ. I would not want to use that label, Senator, and I think that is a matter better directed to the FBI witnesses. But it is a problem when you have a Director of the FBI who declines to say that the activities were improper, as he did when he testified in 1973.

Senator MONDALE. To provide some of the flavor of the kind of concentration that was directed against Dr. King, do you have available an agenda that was prepared for a meeting of FBI officials to decide how to deal with Dr. King?

Mr. SCHWARZ. I think Mr. Epstein, who has 2 feet of documents, Senator, ought to be able to pull that one out.

Senator MONDALE. Maybe Mike Epstein could testify directly on this, because I think he went through this with us.

Could you tell us about this meeting? Who came? What was the purpose of the meeting? What was discussed there?

Mr. EPSTEIN. Senator, apparently there was a meeting convened at FBI headquarters in December 1963. The memorandum recommending the meeting recommended that it be convened in order to explore fully the Communist influence in racial matters as it pertained to Martin Luther King, Jr.

The summary memo with respect to the meeting itself was written afterward.

Senator MONDALE. As I recall, there was an agenda or a memo written about tactics that could be used against him.

Mr. EPSTEIN. That's right.

Senator MONDALE. Can you list some of the tactics that were discussed?

Mr. EPSTEIN. "Can colored agents be of any assistance to us in the Atlanta area, and if so, how many would be needed? Possibilities of contacting anonymous sources at the home of King and/or SCLC" is a tactic that was also discussed. "Would tesur's or misur's on King's associates help to set up a counterintelligence move?"

Senator MONDALE. What does that mean?

Mr. EPSTEIN. Tesur's means telephone surveillance and misur's means microphone surveillance.

What are the possibilities of using Mrs. King? Are there any disgruntled employees at SCLC and/or former employees who may be disgruntled or disgruntled acquaintances? Does the office have any contacts among ministers, both colored and white, who are in a position to be of assistance, and if so, in what manner could we use them?

Do we have any information concerning any shady financial dealings of King which could be explored to our advantage? Has this point ever been explored before? And what are the possibilities of placing a good-looking female plant in King's office?

Senator MONDALE. So, this meeting was called to bring together FBI agents to explore every possibility of spying upon and intimidating Dr. Martin Luther King.

Is that right?

Mr. EPSTEIN. There are a total of 21 different ideas that are on this document, which is headed: "Questions To Be Explored at Conference." [See footnote, page 21.]

Senator MONDALE. Thank you, Mr. Chairman.

The CHAIRMAN [presiding]. Senator Schweiker, I believe, has not questioned yet.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Smothers, earlier in your presentation, when talking about activities of the FBI against people and targets, you mentioned that Warren Commission critics were singled out for some kind of special treatment. I wonder if you would just elaborate a little bit more on what kind of special attention people who criticized the Warren Commission Report got?

Mr. SMOTHERS. Special attention started with a request for information on them and the information requests were made by the then Special Assistant to the President, and we must assume that the requests were at the President's direction, or maybe at the initiative of

the Special Assistant. We do not know, but our evidence tends to show that it reflects a Presidential concern. What came back were a series of monographs or biographical statements.

Senator SCHWEIKER. Would this be raw file material, probably?

Mr. SMOTHERS. Yes, it appears to reflect all of what the FBI had on that individual. Some of them are very brief. One person in question is described as "a person who thrives on dissension and causes much local dissension and arguments in his community." They talk about his educational background, the marital status, and that is a one-pager. The next one is a one-pager. We have not contacted these people, Senator.

Senator SCHWEIKER. I understand there were some derogatory material also included in some of this. Without getting into specifics—

Mr. SMOTHERS. Yes, there is one that reflects a morals arrest. It appears again to be a vacuum cleaner situation though, because in the same discussion of the alleged morals violation, in two preceding paragraphs, they note traffic fines imposed by a municipality.

Senator SCHWEIKER. And this was an attempt then on the part of the White House in this case, a request to the FBI, so we set the record straight, to discredit people who disagreed with the findings of the Warren Commission or to use material against them in some way or to be knowledgeable about the material in the raw files, any derogatory information on critics of the Warren Commission.

Mr. SMOTHERS. To be fair, Senator, I do not think they were asked to make use of it. It was certainly asked to provide it, and every indication that we have is that the FBI merely provided it. They took no further steps to disseminate it. Now what the White House did with it, we do not know.

Senator SCHWEIKER. So that the request initiated from the White House. It was not an internal FBI request.

Mr. SMOTHERS. That is correct.

Senator SCHWEIKER. I think that is very interesting because it indicates that to some extent you became an intelligence target of somebody's, or interest certainly, if you disagreed strongly with the Warren Commission.

I think we do have to ascertain, if the material was used in some way. There certainly had been some allegations that this material was in fact used in some way. Whether it was in fact used by the White House or by somebody else, I do not know. But I think this is the first time we have an indication that the White House requested such derogatory or personal material.

Mr. Smothers, what in your judgment could have been the purpose of fermenting antagonism between the Black Panther Party and the Black Nationalist group, United Slaves?

Mr. SMOTHERS. Well, it appears to me at this point what we see with the Black Panther Party-United Slaves (US) dispute is the FBI's taking the concept of neutralization, the concept they have used earlier with the Communists and the Socialist Worker Party one step further.

It is really an indication, I believe, and we see some from the other documents not insensitivity, but outright racism on the part of the Bureau. I think they view it as another neutralization effort, except when it came to blacks, the most violent kinds of techniques were accepted.

I think they proceeded with the assumption that we would sure like to be rid of both of them. They appear to have a little bit more antagonism against the Black Panthers. But if they were going to have gang fights, if they were going to kill each other, then it appeared to be a wonderful opportunity for the Bureau to promote.

Senator SCHWEIKER. So in this case, instead of acting to calm the violence and to actually have it subside, they really were inciting it and encouraging it and confronting it and causing it. Is that a fair summation?

Mr. SMOTHERS. I think that would be a fair statement, Senator. The memo urges the aggressive kinds of efforts, the coming up with creative ideas as to how one might fuel the fires, if you will.

This is not the only incident where I think the FBI got in the middle of a situation when they saw that violence was apparent. The Blackstone Ranger-Panther conflict in Chicago had shades of the same problem. The resolution therefore, when they couldn't find a rival group, as the experience was with the revolutionary action movement in Philadelphia, they simply worked on the local police as a means of taking them out of existence.

On one occasion a series of memos and communications reflected that any charge whatsoever was to be utilized by the Philadelphia police to get these people off the streets prior to a planned activity. And they then commend the Philadelphia operation for being successful in defeating this demonstration by putting them all in jail on one charge or another.

Senator SCHWEIKER. Mr. Schwarz, you described one of the purposes of the Inlet letter, which is exhibit 9¹, as reporting items with an unusual twist or concerning prominent personalities. The letter was discontinued. Do we have any knowledge or information as to whether that kind of reporting was discontinued?

Mr. SCHWARZ. Well, the discontinuing letter says in effect it is not necessary any longer to have the Inlet letter because we now have better means of communicating, and it instructs the agents to continue to refer to headquarters the same kind of information. What has in fact been furnished I cannot answer for you, Senator.

Senator SCHWEIKER. Does this particular situation indicate that it would vary on the particular personalities of the issuing, of the authoritative people, as to what kind of material would be of interest, or what kind of material would particularly be looked for that would sort of win their fancy of whoever was requesting it?

Mr. SCHWARZ. There were no standards, Senator.

Senator SCHWEIKER. And how, Mr. Schwarz, do we prevent this kind of thing from happening? In other words, I think it is interesting to note that it happened, but the question in my mind is how do we stop this abuse of power where a person may get a kick out of reading about somebody else's human failures, and may or may not pass these human failures on to other people? What is your surmise as to how we might proceed to stop this in the future?

Mr. SCHWARZ. Less secrecy and tougher laws, Senator, which I am sure are going to come.

Mr. Elliff, do you have a comment on the Inlet letter?

¹ See p. 368.

Mr. ELLIFF. Senator Schweiker, I did have an opportunity at the Bureau to review the Inlet letters. I did not have an opportunity to review everything that has gone on since that program was discontinued by teletype to the White House. The definition of items with an unusual twist appears, from my review of these documents, to be information that otherwise came to the Bureau in the course of its intelligence activities. The Bureau did not go out and look for items to put in the Inlet letter but if they did happen to, in the course of their ordinary activities, come across such items on prominent persons, in one instance I recall an actress, the Bureau did learn through its intelligence coverage of an extremist organization of something as to the personal life of that actress, and that was indeed disseminated to the White House in the Inlet letter.

Senator SCHWEIKER. And once again, in fairness to the Bureau, this was originated in the White House in terms of the use and procedure. It was collected and gathered in the normal course of their activities, but the focusing and whatever use was or was not made, or the receipt of it was initiated by the White House?

Mr. ELLIFF. That is not clear. The Bureau memoranda indicate that this had gone on for several administrations, and indeed, we have letters from J. Edgar Hoover to President Truman and Presidents since then in which he volunteers similar information saying, we thought this might be of interest to the President.

Senator SCHWEIKER. That is one of the prerogatives of the Presidency?

In fiscal year 1974 the FBI received requests for name checks on more than 2 million cases. Over the years the Bureau has maintained actual intelligence files for more than 500,000 U.S. citizens and organizations. I think my question here is, obviously a lot of the material is pure raw file material, some of it uncorroborated, some of it allegations, some of it sources of questionable reliability, and I am sure some of it is quite accurate.

My question is, has the FBI taken any steps to destroy files of persons who never should have been subjected to surveillance at all, and what procedure for cleaning out past errors of judgment exists, or do these files just go on in perpetuity when you have situations of this kind? Can anyone shed any light on that?

Mr. SMOTHERS. As to what the Bureau is doing now, Senator?

The best information we have is that a system for cleaning out the files or a system for retiring information or determining what should be held is at this time being worked on between the Department of Justice and the Bureau. I do not know of any prior efforts to purge or update the files.

Mr. SCHWARZ. Senator, in your question about name checks, I think the record should be supplemented with this fact, that in 1967 name check information was sent to the White House on seven Senators who I am not going to name because we have not spoken to them, but I can see from looking at them that they are all antiwar Senators.

Senator SCHWEIKER. In the area of inspection I would like to ask, in the military they have an Inspector General system whose job is to ferret out allegations of improper actions on the part of people within that particular unit or that particular function.

I wonder what you can tell us in terms of how the Inspection Division operates, and what we might learn from comparing that, say, to an Inspector General system.

Mr. SCHWARZ. I think Mr. Gitenstein is our expert on that.

Mr. GITENSTEIN. There is a separate division within the FBI called the Inspection Division. It conducts annual inspections of all of the other divisions of the FBI as well as all of the field offices. It also responds to allegations of abuse within the FBI, but the inspections are all conducted internally by FBI agents and rarely, if ever, are there inspections or investigations by other personnel within the Department of Justice of what the FBI does, although in recent months there have been investigations of allegations of illegality by the Criminal Division of the Justice Department concerning mail opening and other allegations.

Senator SCHWEIKER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Schweiker.

Senator Tower, do you have any questions?

Senator Huddleston, did you have some further questions?

Senator HUDDLESTON. Just one quick question or two on the matter of oversight. Was the Congress, or were Members of Congress or appropriate committees, informed by the Bureau of the COINTEL program?

Mr. SCHWARZ. The evidence on that as provided to us by the Bureau is that the House Appropriations Committee—I've got to be very careful how I put this—there are documents which indicate remarks were prepared for off-the-record comments to the House Appropriations Committee. Whether in fact those comments were delivered is not revealed by any record. Moreover, it is perfectly clear that those comments concerned only the CPUSA and the Klan COIN TELPRO's, and did not concern the others.

Senator HUDDLESTON. The other three were not mentioned at all?

Mr. SCHWARZ. And they were scanty on the details with which the individual techniques were disclosed.

Mr. SMOTHERS. To supplement that, I think it should be pointed out that the Bureau claims that this kind of briefing occurred on six separate occasions.

Senator HUDDLESTON. There were briefings on six separate occasions?

Mr. SMOTHERS. Yes; beginning, apparently in 1958, and ending apparently in 1966.

Senator HUDDLESTON. No indication that they touched on any except the first two COINTELPRO targets, and no indication as to what degree of completeness was in the testimony, as to the techniques used or the objectives or what was accomplished.

Mr. SCHWARZ. Well, there was an indication that if the testimony was given, that it was not at least as detailed as what we have brought before you today, Senator.

Senator HUDDLESTON. Did the Bureau make any explanation or any assertion as to why more thorough briefings or more thorough information was not given to the proper congressional committees?

Mr. SCHWARZ. The person who gave those briefings is no longer alive.

Senator HUDDLESTON. Thank you.

The CHAIRMAN. Senator Mondale?

Senator MONDALE. I would like to put a few more questions to Mr. Epstein. Since this is the first time we have ever had a good look at this COINTEL Program and the so-called internal security program, I think it is important to review briefly how the risk of so-called Communist influence in the direction of the civil rights movement was arrived at.

And perhaps you can testify about that peculiar set of memos which began with one memo saying that Communist influence was infinitesimal and was unimportant, and within a month resulted in a final memo saying that it was terribly dangerous and threatened to subvert the civil rights movement. [See footnote, p. 21.]

What kind of steps led to that remarkable change in assessment?

Mr. EPSTEIN. Senator, shortly before the Poor People's March, which was in late August of 1963, the Domestic Intelligence Division of the Bureau prepared a detailed memorandum concerning the efforts of the Communist Party, U.S.A., to exploit the American Negro, and that included a conclusion which stated, "The Communist Party in the next few years may fail dismally with the American Negro. It has in the past. Time alone will tell." And a note was inscribed on the end of it—

Senator MONDALE. But wait. Was that the one in which they said the influence of the Communist Party is infinitesimal?

Mr. EPSTEIN. I believe that was another memorandum in which the Director noted something next to the fact that there were only 200 members of the party in attendance at the march, which had 200,000.

Senator MONDALE. All right. Proceed.

Mr. EPSTEIN. The note that the Director inscribed on this memo, which also detailed the history of the party's efforts in the past to infiltrate the Negro movement, "This memo reminds me vividly of those I received when Castro took over Cuba. You contended then that Castro and his cohorts were not Communists and not influenced by Communists. Time alone proved you wrong. I for one can't ignore memos about [various people] as having only an infinitesimal effect on the efforts to exploit the American Negro by the Communists."

Senator MONDALE. So the first memo from the Intelligence Division told the Director that the Communist influence was very speculative and minor.

Mr. EPSTEIN. That's right.

Senator MONDALE. Hoover then, in that memo, said "That is not right, this is just like you told me about Castro." Then what happened?

Mr. EPSTEIN. The context of these, of course, is the fact that the Director of the Domestic Intelligence Division expected that this was what was going to happen. His testimony to us has been that when they were asked to put this document together, informing the Director as to how substantial the Communist influence problem was, that they were concerned that the facts were not going to add up to what the Director expected to hear.

Senator MONDALE. All right.

So he got this memo he did not like, and he sent it back. So then what happened?

Mr. EPSTEIN. That's right.

Now, there was a response to that several days later which, by then, was after the march which referenced that note from the Director which had said "this memo reminds me vividly of those I received when Castro took over Cuba", and then said "the Director is correct. When investigating and writing about communism and the American Negro, we had better remember this and profit by the lessons that it should teach us," meaning Cuba. He concluded with comments such as, "It may be unrealistic to limit ourselves, as we have been doing, to legalistic proof, or definitely conclusive evidence that would stand up in testimony in court or before congressional committees that the Communist Party, U.S.A., does wield substantial influence over Negroes which one day could become decisive."

"The memorandum which the Director questioned while showing the details of the Communist impact on Negroes, did safer from such limitations," and at the end he wrote, "We regret greatly that the memorandum did not measure up to what the Director has a right to expect from our analysis."

Senator MONDALE. What did he say about that?

Mr. EPSTEIN. There was no response at all, and what the Director of the Domestic Intelligence Division apparently interpreted by the silence was that action was desired, because that was the next thing that happened.

Senator MONDALE. Did Hoover write another memo saying I cannot understand you, you just said the Communist Party wasn't influential, and now I get another memo saying it is influential. Have you got that memo?

Mr. EPSTEIN. Following that apologetic memo, which is my characterization of it, a recommendation went in—

The CHAIRMAN. That's not apologetic. It is simply a recognition that intuition is one of those sources for investigative information that ought not be ignored.

Senator MONDALE. I think it is a source of survival. I think this is very interesting because this led to the official determination by all hands that the Communists were a very serious influence in the civil rights movement. In fact, the department which was in charge of inspecting it did not think so at all.

Mr. EPSTEIN. The memo I am about to read [see footnote, p. 21], which was in mid-September of 1963, the Director of Domestic Intelligence Division informed us he wrote because he believed that he, at that point, had to give the Director words he believed the Director wanted to hear, and he wrote a memorandum recommending "increased coverage of Communist influence on the Negro":

The field is being instructed to intensify our coverage. We are stressing the urgent need for imaginative and aggressive tactics to be utilized through our counterintelligence program,

and recommending that such instructions be sent out to the field.

This is the memorandum on which the Director inscribed the following note.

Senator MONDALE. What did Hoover say? In other words, this is the memo in which the Department said yes, you're right, Mr. Director, let us get going.

What did he say?

Mr. EPSTEIN [reading]:

No. I cannot understand how you can so agilely switch your thinking and evaluation. Just a few weeks ago you contended that the Communist influence in the racial movement was ineffective and infinitesimal. This notwithstanding many memos of specific instances of infiltration. Now you want to load the field down with more coverage, in spite of your recent memo deprecating CP influence in racial movement. I do not intend to waste time and money until you can make up your mind what the situation really is.

Senator MONDALE. All right. What then happened?

Mr. EPSTEIN. Ten days later this memorandum, again from Mr. Sullivan—

Senator MONDALE. To the Director?

Mr. EPSTEIN. To the No. 3 man in the Bureau, Mr. Belmont, stated—it is prepared not on an official office memorandum but rather on plain bond—"believing that this discussion need not be a matter of official record":

On returning from a few days leave I have been advised of the Director's continued dissatisfaction with the manner in which we prepared a brief on the above-captioned subject, and subsequent memoranda on the same subject matter. In this memorandum, I seriously and sincerely try to clarify a most regrettable situation.

The essence of the situation seems to be this. We presented what facts there are in our files in the Brief in question and I know the Director certainly would not want us to do other than this. It is obvious to us now that we did not put the proper interpretation upon the facts which we gave to the Director.

And then again he reiterates, the recommendation that was made to intensify coverage and states again, which in his testimony he has informed us that this is what he believed the Director wanted to hear, as we stated before in a memorandum: [see footnote, p. 21.]

We regard Martin Luther King to be the most dangerous and effective Negro leader in the country. May I repeat that our failure to measure up to what the Director expected of us in the area of Communist-Negro relations is a subject of very deep concern to us. We are disturbed by this and ought to be. I want him to know that we will do everything that is humanly possible to develop all of the facts.

It was 3 months after this memorandum that the December conference was convened, and it was 1 month after that, in January of 1964, that the first microphone was installed.

Senator MONDALE. In other words, the first factual summary of the risk of Communist influence and control over Dr. King and the civil rights movement reported that there was a very small risk indeed. Didn't the Assistant Director also testify that the role of the Communists in the civil rights rally of 1963 was practically nil?

Mr. EPSTEIN. That's right.

Senator MONDALE. That there were about 250,000 people and only about 190, as best they could count, Communists around, and they had no role to play at that rally.

Mr. EPSTEIN. I think he added that his recollection was that there was some leader from the Party that they had to get on a fishing boat.

Senator MONDALE. They had to plead with him to leave a fishing trip, and he stayed an hour and left. Then this memo went to the Director saying that it's not much of a risk. The Director got mad

and responded that he rejected that advice, and then they began to try to change their position in accord with the Director's expectations.

Is that right? And it took two memos of that kind in which they disregarded the facts, pumped up the fear, before they finally persuaded the Director that they accepted his point of view. Is that right? And didn't testimony suggest that the person who wrote that memo, those memos, did not believe them, but in fact was only doing what he thought he had to do in order to keep his job?

Mr. EPSTEIN. That's right.

Senator MONDALE. Then it was on the basis of this pressured assessment of the threat of Communist control of the civil rights movement that they then proceeded to pursue these COINTEL Programs of harassment, neutralization, spying and intimidation against Dr. Martin Luther King. Is that correct?

Mr. EPSTEIN. That appears to be the period of time when it began. And it was at that time the recommendation went to the Attorney General requesting his authorization for wiretap, and then 3 months later was the December conference, and in January the microphones were put in use.

Senator MONDALE. Do you have the quotation from that testimony about the fear that the agents had toward the protection of their jobs?

Mr. EPSTEIN. I do not have it tabbed, Senator, but if you like I will find it and when I locate it I will read it in.

Senator MONDALE. You do not have that?

Perhaps you could summarize, based on your recollection of what we were told about why they reacted as they did.

Mr. EPSTEIN. I think he said if they didn't they would be transferred.

Senator MONDALE. And that they knew what they were doing, which was, namely, just writing a memorandum to please the Director, is that right?

If I may ask one other question, did this same Assistant Director also testify about the FBI official estimates on the number of Communist members in the United States?

Mr. EPSTEIN. Yes; he did.

Senator MONDALE. What did he say?

Mr. EPSTEIN. It was my recollection that he said that for years they submitted the total number of members of the Communist Party who were in the United States—I do not remember the exact totals—

Senator MONDALE. Something like 80,000.

Mr. EPSTEIN. When it started, in the first report, but that fact was reported each year to the Department, and that when the numbers began to diminish, as the years went along, and when it reached some level, very, very few in the thousands, very few thousand, the Director instructed at that point that the figures should no longer be revealed to the Department, and the Bureau should hereafter take the position that that information was classified.

Senator MONDALE. So that what happened for years, when the public would write in and say how many Communist Party members are there, the answer would come back, about 80,000 members in the United

States. But slowly the number of members in the United States dropped down to half of that, or less than that. Then, according to this Director, a teacher wrote in and said, what is this about the membership of the CPUSA? It stays 80,000 every year. It does not go up, it does not go down. Why does it stay so constant? They did not know how to answer that teacher because membership was then about 30,000, so they finally decided it was a matter of such high classification that they should not talk to the public about it. Is that correct?

Mr. EPSTEIN. That is right.

Senator MONDALE. So the public was left with the impression then, uncorrected, that there were about 80,000 members in the country.

Mr. EPSTEIN. And, in addition, refused thereafter to provide the figures to the Department of Justice.

Senator MONDALE. Refused to provide to the public the revised figures indicating a much lesser Communist Party membership in this country.

Is that correct?

Mr. EPSTEIN. That is right.

Senator MONDALE. Thank you, Mr. Chairman.

Mr. EPSTEIN. I might add, Mr. Chairman, I do not have the document in front of me, but the document that recommended the discrediting of Dr. King and the appointing of a new leader which was in January of 1964, which was the recommendation from Mr. Sullivan, and he was soliciting in that memorandum the Director's authorization to pursue that possibility further, a recommendation that approval be given for him to explore this whole matter in greater detail as set forth above, and underneath it is "OK, H." And then there is the note from the Director which says, "I am glad to see that light has finally, though dismally delayed, come to the Domestic Intelligence Division. I struggled for months to get over the fact that the Communists were taking over the racial movement, but our experts here couldn't or wouldn't see it, H."

Senator MONDALE. That was the memo in which it was proposed that King be destroyed as a civil rights leader, and that the FBI ought to sponsor his replacement by another person not in the civil rights movement.

Mr. EPSTEIN. That is correct.

Senator MONDALE. And Hoover personally appreciated that suggestion: is that correct?

Mr. EPSTEIN. He OK'd it.

Senator MONDALE. Thank you, Mr. Chairman.

The CHAIRMAN. Any questions, Senator Tower?

Senator TOWER. No questions.

The CHAIRMAN. I think I might point out in concluding the hearing that staff has reviewed the question of legal authority of what we have been discussing today and has concluded that there is not and never has been specific statutory authority for the FBI's internal security intelligence program. The only statute which the Bureau cites as authority is section 533 of title XXVIII of the United States Code, which reads as follows:

"The Attorney General may appoint officials to detect and prosecute crimes against the United States."

Now, we have had in the course of the hearings today a long recital of crimes that have in fact been undertaken by the FBI itself. That is a very sad proposition, as the distinguished Senator from Michigan, Phil Hart, pointed out, when it comes from a Bureau that has received as much applause, that has been held in as much esteem, that has rightly been regarded as a prestigious law enforcement agency for the many things that it has done in its efforts to track down major criminals throughout what has often been an illustrious past.

But the FBI has never had any statute clearly defining its authority and after all of these many years, this is the first serious congressional investigation of its activities, and we have seen today the dark side of those activities, where many Americans who were not even suspected of crime were not only spied upon but they were harassed, they were discredited, and at times endangered through the covert operations of the Federal Bureau of Investigation.

Such revelations place serious responsibility upon this committee to see to it that that cannot happen again. I think there are many lessons to be drawn from the testimony today, but chief among them is the necessity to draw the lines much more carefully in the statutes that this committee should recommend, and to subject the counter-intelligence activities and other internal security activities of the FBI to the same kind of congressional oversight to which others have suggested that the CIA and the NSA and other foreign intelligence agencies of this country should be subject to.

And I hope that the committee, in the light of these revelations, will give very serious consideration to that whole problem area.

I want to thank the members of the staff for the excellent presentation that you have made today, and tomorrow the FBI, of course, will be here to reply to these disclosures, and respond to questions of the committee.

Senator MONDALE. Mr. Chairman, I would just like to join with you in commending the staff for, I would say, an almost historic presentation. These materials are new; they were hard to find; and I think we have now got a record that will help us move toward reform, and I want to thank the staff.

The CHAIRMAN. Senator Tower?

Senator TOWER. Mr. Chairman, I would like to join with you and others in commending the staff for I think an excellent job, done in a cooperative and bipartisan spirit, one that is characterized by energy and objectivity and by the most comprehensive work of this kind that has been done I suppose in this body, especially to Mr. Schwarz, Mr. Smothers, but not to overlook the excellent work done by the people back in the trenches who I suspect might have even done more work than they have done.

Mr. SMOTHERS. Your suspicion is correct.

The CHAIRMAN. Thank you very much, gentlemen.

This hearing is adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 3:55 p.m., the committee recessed to reconvene at 10 a.m., Wednesday, November 19, 1975.]