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STATEMENT OF

ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS

HOUSE COMMITTEE ON THE JUDICIARY

ON

DOMESTIC INTELLIGENCE OPERATIONS OF THE
FEDERAL BUREAU OF INVESTIGATION

HSED 2502

Mr. Chairman and Members of the Subcommittee:

Our testimony today deals with our review of the FBI's domestic intelligence operations. This review, undertaken last year at the request of the Chairman of the House Judiciary Committee, is still underway but far enough along to be helpful in carrying out your oversight functions.

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The purpose of our review is to determine how the FBI is carrying out its domestic intelligence responsibilities.

Our statement is in two parts. First we will discuss (1) how we did our review, (2) the problems encountered, (3) the nature of the FBI's domestic intelligence operation and resources applied, and (4) the legal basis for the FBI's domestic intelligence operation. Second we will discuss

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(1) FBI domestic intelligence policies, (2) how those policies were implemented in specific cases, (3) what information was disseminated and to whom, and (4) the results of FBI investigations. Subsequently, we will issue a written report covering our review.

I

DOMESTIC INTELLIGENCE: A DEFINITION

The FBI has not specifically defined the term "domestic intelligence." In the past the Bureau has used the terms "internal security" and "domestic intelligence" interchangeably.

In testimony before the House and Senate Appropriations Committees and in annual reports prepared over the last 5 years, no concise definition of these terms is available.

For purposes of our review we have interpreted the term "domestic intelligence" to apply generally to the FBI's efforts to detect and gather information on individuals within the United States who allegedly attempt to overthrow the Government or deprive others of civil liberties or rights.

With this definition as a guide, we have concluded, that FBI investigations of the following matters relate to domestic intelligence:

- subversion,
- extremist matters,
- sedition,
- treason,
- sabotage,
- certain bombing matters,
- violations of antiriot laws, and
- protection of foreign officials.

The FBI Manual of Instructions defines subversive activities as "Activities which are aimed at overthrowing, destroying or undermining the Government of the United States

or any of its political subdivisions by illegal means prohibited by statutes" and extremist activities as "Activities aimed at overthrowing, destroying, or undermining the Government of the United States or any of its political subdivisions by illegal means or denying the rights of individuals under the Constitution prohibited by statutes."

The pertinent statutes cited by the manual are: Rebellion or insurrection (18 U.S.C. 2383), Seditious conspiracy (18 U.S.C. 2384), Advocating the overthrow of the Government (18 U.S.C. 2385), Internal Security Act of 1950 (50 U.S.C. 783a), and Civil Rights Act of 1968 (18 U.S.C. 241).

Our review of randomly sampled cases showed that there were relatively few, nationwide, dealing with sedition and treason. Investigations of sabotage, bombing matters, antiriot law violations or protection of foreign officials, although handled as part of the FBI's domestic intelligence operations, usually involved criminal acts committed before the investigations were initiated. We did not consider these to be intelligence-type cases. Consequently, we focused our effort on FBI investigations of matters classified as subversive or extremist.

APPROACH TO REVIEW

Since our objective was to present a current analysis of how the FBI currently conducts domestic intelligence operations, we decided to randomly sample domestic intelligence cases acted on in calendar year 1974 at selected FBI field offices.

We selected the FBI field offices by analyzing the volume of subversive and extremist cases handled by them for which they had responsibility. After ranking each of the 59 field offices we selected 10. Four--Chicago, Los Angeles, N w York, and San Francisco--had very high volumes of domestic intelligence investigations. The other six -- Atlanta; Buffalo; Columbia, S.C.; Sacramento; San Diego; and Springfield, Ill. -- had medium domestic intelligence caseloads during 1974.

The total number of acted-on subversive and extremist investigative matters for which the 10 offices were primarily responsible during 1974 was about 19,700. From this universe, we randomly selected between 79 and 100 cases to review in each field office, divided approximately equally between subversive and extremist cases. Overall, we selected for review 899 cases in the 10 FBI field offices.

Our testimony today is based on our review of 676, or 75 percent, of the 899 cases. We are still waiting for the FBI to provide us certain information on the remaining cases. Thus, our conclusions and observations presented during the testimony are preliminary, although we do not anticipate any significant changes, once we receive information on the remaining cases from the FBI.

Our sample included some cases that were initially opened or closed during 1974 and others that had been open and under

investigation for years. Thus, we believe the results provide a good overall picture of what the FBI is doing in the domestic intelligence area. In addition, because some of our sampled cases had been open for several years, there were instances where counterintelligence-type activities (COINTELPRO) and other questionable techniques--such as surreptitious entry--were used

Throughout our review, we were concerned with the need to protect the integrity of the FBI's operations. Accordingly, while we believed it was essential that we have access to information in the FBI's investigative files, we were willing to do so in such a way that would enable certain information in those files to be protected.

For example, we advised FBI officials that they could delete the names of all informants from the files before we reviewed them. In addition, we told FBI officials that we would not disclose certain sensitive information in such files--such as the names of the persons investigated--to anyone outside GAO, and within GAO only to those who had a need to know.

The basic criteria that governed our approach was the need to assure ourselves that we could independently verify how the FBI developed and implemented domestic intelligence operations. We believe the approach we proposed to the Attorney General and FBI Director clearly protected the integrity of the FBI's domestic intelligence operations.

We stated that we would agree to having FBI special agents prepare for our use summaries of the information contained in each case we selected. The type of information to be contained in the summaries, as well as the summary format, were to be determined by our staff.

We indicated that information in the summaries should include information that led to opening the investigation; the techniques, sources of information, and methods of gathering information that were used in the case; the dates, type of information, and recipients of all information disseminated from the case; the instructions received from FBI headquarters concerning procedures to be followed in conducting the investigation; the dates the case was opened and closed; and the total number of documents contained in the file. We also requested that the FBI special agents summarize briefly every document in the case file.

The FBI agreed to prepare these summaries, and most FBI field offices have been extremely cooperative in the time-consuming job of summarizing the case-file information.

After receiving the summaries, our staff reviewed them and held follow-up interviews with the FBI special agents associated with the cases or those who prepared the summaries to clarify points made in the summaries and to expand on certain other points. After completing these processes for each case, our staff believed we had a good understanding of what occurred in each investigation.

However, to be able to assure the Congress as to the accuracy and completeness of the FBI-prepared summaries on the basis of our own information, we believed that it was necessary for us to randomly select certain documents from the FBI case files and compare them to their summaries.

We made our verification proposal to the FBI on February 4, 1975, and our verification proposal is included as appendix I.

As you know, the Attorney General and the FBI Director rejected our verification proposal. The Attorney General rejected our proposal citing the reasons as (1) the Government's need to avoid disclosure to prospective defendants of information in their cases, to protect its informants, and to prevent release of unevaluated, unverified data, and (2) his belief that GAO's charter does not include the power to allow GAO personnel to examine investigative files. The Attorney General proposed to nominate to the House Judiciary Chairman six members of the Department from which the Committee might select three to examine the FBI files from the standpoint of seeing whether the summaries were accurate.

The Chairman of the House Judiciary Committee responded to the Attorney General's points noting that GAO's proposed verification procedure presented none of the dangers expressed by him because of the way in which it would be done. The Chairman pointed out, for example, that the information

GAO's staff used for verification would not go any further than GAO and would not be provided to the Chairman or any other Member of Congress. The Chairman pointed out that section 1154(b) of Title 31 U.S. Code requires the Comptroller General, upon request, to assist committees to develop statements of legislative objectives and goals and methods to assess and report actual program performance in relation to such objectives and goals. He stated that under this section GAO had both need for and authority to independently verify information in FBI files. The Chairman also noted that the essence of legislative oversight is lost if the agency being investigated performs its own investigation to the exclusion of and without verification by an independent body.

In addition, the Attorney General took the position that 31 U.S.C. 54 gives GAO access to and the right to examine books, documents, papers, or records of departments and establishments only in conjunction with 31 U.S.C. 53, and is therefore, he says, limited to access for the purpose of conducting financial audits.

We strongly disagree with the Attorney General's position.

Title 31 U.S.C. 53, section 312 of the Budget and Accounting Act, 1921, provides that the Comptroller General shall investigate all matters relating to the receipt, disbursement, and application of public funds, and that he shall make investigations and reports as ordered by either House

of Congress or by congressional appropriation committees. And 31 U.S.C. 54, section 313 of the 1921 act, says that the Comptroller General shall have access to and the right to examine all the books, documents, papers, and records of all departments and agencies, and that they shall furnish to him the information he requires regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices.

Thus, we have had broad access and investigative authority from 1921, when our Office was created, and we made investigative audits and reports long before the Legislative Reorganization Act of 1970 was passed.

It is surprising that the Attorney General takes such a narrow view of our authority in light of the plain meaning of the Budget and Accounting Act and of the type of work we have been doing in Government agencies for many years.

Indeed, if we merely examined financial records our Office would not have undertaken reviews and issued reports to the Congress on such important matters as the Federal Government's overall efforts to solve the juvenile delinquency problem, problems with Agriculture's commodity forecasting and reporting procedures, how the Government could save millions by consolidating military support functions in the Pacific, and how fundamental changes need to be made

by Congress and the executive branch in Federal assistance programs for State and local governments. 1/

In his response to the Attorney General, Chairman Rodino quoted section 204(b) of the 1970 act, 31 U.S.C. 1154(b). Section 204(a) of that act, 31 U.S.C. 1154(a), also places on us a responsibility that requires the Comptroller General to review and analyze results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House or the Senate having jurisdiction over such programs and activities. We point out that this authority is supplementary to that which our Office already possessed under the Budget and Accounting Act, 1921, as provided in section 206 of the 1970 act, 31 U.S.C. 1156.

Clearly GAO has the authority to investigate the administration and operation of the FBI. Equally clear is GAO's right of access to the FBI's investigative files.

1/"How Federal Efforts to Coordinate Juvenile Delinquency Programs Proved Ineffective," GGD-75-76, April 21, 1975.

"What the Department of Agriculture Has Done and Needs to Do to Improve Agricultural Commodity Forecasting and Reports," RED-76-6, August 27, 1975.

"Millions Could Be Saved Annually and Productivity Increased If Military Support Functions in the Pacific Were Consolidated," LCD-75-217, August 26, 1975.

"Fundamental Changes Are Needed In Federal Assistance to State and Local Governments," GGD-75-75, August 19, 1975.

We must, as a matter of fundamental policy, insist upon access to those basic files that are necessary for us to do our work. Otherwise we cannot independently verify our findings and the Congress cannot have adequate assurance as to the completeness of our work.

Three letters between the Chairman of the House Judiciary Committee and the Attorney General relating to the Attorney General's reasons for rejection of our proposal are included as appendix II.

We proposed the verification procedure not because we had any evidence that the FBI special agents preparing the summaries were distorting these summaries but to provide full assurance to the Congress of a completely independent review by the GAO. Basic to our operations is that we are able to verify to source documents the accuracy and completeness of summary information that the FBI provided us on its investigative cases.

The matter of access to intelligence-type information by the Congress or its agents, such as GAO, is a complicated one. Executive agencies must be concerned with protecting such sensitive information. However, I would suggest that executive agencies such as Justice and the FBI must be more forthcoming with information if congressional committees are to properly carry out their oversight function.

The conflict between the need to know and the need to protect exists. What is needed is an arrangement that

accommodates both. Certainly, the GAO could assist the Congress to exercise its oversight, but unless our right of access to necessary information is settled, we cannot adequately do this.

FBI's DOMESTIC INTELLIGENCE OPERATIONS--
A PERSPECTIVE

Appendix III to my statement presents detailed information regarding how the FBI's Domestic Intelligence Division fits into the FBI's efforts and the extent to which FBI resources have been applied to such efforts.

The Intelligence Division is one of 13 operating FBI divisions and is divided into two branches--Counterintelligence and Internal Security. The Internal Security Branch coordinates all investigations of subversive and extremist matters relating to the internal security of the United States and does research for the entire division.

Overall, during fiscal years 1965 through 1975, security investigations averaged about 19 percent of all investigative matters initiated by the FBI. A further breakdown of the above-mentioned figure is classified because it includes counterespionage as well as internal security matters. However, an analysis of percentage increases and decreases in internal security investigative matters shows generally that the effort increased in the late sixties and early seventies, but in the last year dropped to a level near that of 1965.

We will be glad to discuss this information in more detail after we complete our prepared testimony.

LEGAL BASIS FOR DOMESTIC
INTELLIGENCE OPERATIONS

I would now like to summarize our views as to the adequacy of the FBI's legal basis for undertaking domestic intelligence investigations. A detailed legal memorandum on the issue is included as appendix IV.

Essentially, the FBI appears to have carried out its domestic intelligence operations during the past 40 years within the broad framework of Presidential statements and directives, statutes, Executive orders, and Attorney General directives. Some authority exists for the FBI to conduct such operations. The problem is that most of the authorities cited by the FBI do not explicitly authorize intelligence investigations of domestic groups and individuals. Some are ambiguous and almost all are subject to interpretation.

In August 1936, President Roosevelt had several meetings with FBI Director Hoover to discuss the President's concern about subversive activities. As reflected in Mr. Hoover's memoranda of those meetings, the President showed a desire for intelligence information. But it is unclear as to the President's exact concerns. "Subversive activities" are mentioned, but the overall contents of Mr. Hoover's memoranda show concern with Communism and, to a lesser degree, fascism--subversive groups connected in some way with a foreign power.

However, Mr. Hoover's subsequent September 1936 correspondence to FBI field offices and the memorandum of his September 10, 1936, conversation with the Attorney General show an intent on the FBI's part to investigate or obtain information about all groups engaged in subversive activities-- regardless of foreign influence.

In June and September 1939, President Roosevelt issued directives which indicated his desire for the FBI and certain military intelligence agencies to investigate espionage, counterespionage, and sabotage matters. Intelligence investigations are not explicitly mentioned. It is not clear as to whether authorizing espionage, counterespionage, and sabotage investigations by the FBI and the military intelligence agencies implies a delegation of authority to conduct intelligence investigations.

What is clear, however, is that, pursuant to those directives, the Directors of the FBI and two military intelligence agencies formed a committee and delineated their respective investigative responsibilities in the above-mentioned areas and also in the subversive activities area. It is also clear that this understanding, formally recorded in a Delimitations Agreement, has existed, in a somewhat revised form, for 35 years and has been recognized by both the National Security Council and the Attorney General.

Subsequent directives by Presidents Truman and Eisenhower referred to the 1939 directives, but they made no

delegation of investigative authority to the FBI. None of the Presidential statements or directives are clear as to what acts comprise subversive activities. Moreover, neither individually nor collectively do the statements or directives explicitly authorize the FBI to conduct investigations of all types of domestic groups and individuals for intelligence purposes.

The FBI states that a second source of authority for such investigations is derived from the "detect and prosecute crimes" language of 28 U.S.C. 533. As we understand the FBI's position, this language authorizes it to investigate violations of substantive Federal criminal statutes as well as "the gathering of material pertinent to a determination whether or not the subject * * * is engaged in activities which may result in a violation * * *."

Whether the gathering of information prior to and in anticipation of a criminal act is legally comprehended by the phrase "to detect and prosecute crimes against the United States" depends on the meaning given to "detect" either by definition or a determination of congressional intent. A review of the legislative history of this phrase has produced neither a definition nor an indication of congressional intent. Without such a standard, we cannot conclude that the Bureau's interpretation of the statute's language is erroneous.

A third source of authority is Executive Order 10450, as amended, which established Federal Government employee security programs. The Bureau, under this Order is required to conduct full field investigations on individuals in certain instances. The Bureau's Manual of Instructions as of April 13, 1972, cited this Order as investigative authority but the present Manual does not do so.

The Bureau has provided our Office with very little detail as to how the Order affects its intelligence investigations so our comments are necessarily limited. Although the Order does not explicitly authorize intelligence investigations, an intelligence function for the investigations may be inferred from the fact that determining suitability for employment rather than criminal prosecution is the primary objective of Bureau investigations under the Order.

The fourth and last authority source cited by the FBI are directives from the Attorney General or other officials of the Department of Justice. Again, 28 U.S.C. 533 provides the statutory basis for such directives by providing that the Attorney General may appoint officials "to conduct such other investigations regarding official matters under the control of the Department of Justice * * * as may be directed by the Attorney General."

Beginning in 1967, the Bureau received requests from the Attorney General and several Assistant Attorneys General for intelligence information in such areas as urban riots, campus disorders and militant Indian activities. Two of these requests recognized prior Bureau intelligence investigative activity. That recognition coupled with a request for further intelligence could be considered ratification of prior Bureau intelligence activities at least in the areas recognized.

Such are the sources of the Bureau's authority to conduct domestic intelligence investigations. Generally speaking, they are vague and ambiguous.

As indicated, there is no statute which explicitly authorizes the FBI to conduct domestic intelligence operations. We believe it would be appropriate for the Congress to specify such authority, especially in light of the ambiguities as to the scope of activity the Presidential directives meant to convey.

Among the issues legislation could address would be:

- The extent to which the FBI should be granted authority to conduct continuous surveillance in anticipation of a crime as opposed to investigating an allegation that a crime has been committed.
- The criteria for the FBI to initiate and conduct investigations of subversive or extremist organizations.

--What type and level of administrative authorizations and review are needed for the conduct of domestic intelligence operations.

--The congressional oversight role in terms of:

1. The need for the Attorney General to periodically consult with and report to the appropriate committee or committees on the focus of domestic intelligence operations, the groups under investigation, and techniques and methods used in such investigations.
2. The role GAO should play in assisting the Congress to carry out its oversight function.

We are hopeful that the information we are presenting in these hearings and in our written report will assist the Committee in addressing these complex issues.

II

We now turn to FBI domestic intelligence policies, how these policies are implemented in specific cases, what information is disseminated and to whom, and the results of domestic intelligence investigations.

DOMESTIC INTELLIGENCE POLICY

FBI policy documents have emphasized that groups and individuals are to be investigated because their actions may result in violations of criminal statutes, especially those dealing with rebellion or insurrection, seditious conspiracy, or advocating the overthrow of the Government. FBI policy also notes the importance of furnishing appropriate officials with intelligence information without specific regard to criminal prosecutions.

The FBI's basic policy document--the Manual of Instructions--emphasizes that investigations are primarily to be made of individuals whom the FBI determines pose immediate threats to the national security. Attention is supposed to be focused on individuals who are leaders of subversive or extremist groups or those who demonstrate a propensity for violence.

While FBI policy manuals provide the framework for investigations, they do not fully reflect the Bureau's

investigative policies. Policy as to scope of coverage and techniques used varies with the circumstances posed by each investigation.

Investigations can be initiated either at the preliminary (inquiry) or full scale level, depending on the adequacy and sufficiency of the available facts and circumstances.

According to FBI policy, a preliminary investigation may be undertaken when the subject's involvement in subversive or extremist activities is questionable or unclear and is to further define his involvement and determine whether a statutory basis exists for a full investigation. A preliminary investigation is supposed to be limited to a review of public source documents, record checks, and contacts with FBI established sources. The Manual of Instructions states that a preliminary inquiry may last no longer than 90 days by which time the field office should have determined whether a basis exists for continuing the investigation. If the investigation is to continue, the field office must present the facts of the case to FBI headquarters so headquarters can be advised of the need to continue the investigation.

According to FBI policy, a full scale investigation is thus initiated when the FBI has determined that there is good cause to believe the subject may violate a criminal statute, most likely 18 U.S.C. 2383-85, relating to rebellion or insurrection, seditious conspiracy, or advocating the overthrow of the Government.

FBI officials consider that their programs fit within the policy framework of the Manual of Instructions. They describe programs as instructions to the field emphasizing aspects of the Manual, such as reporting requirements or emphasis on gathering particular background information.

The programs which have come to our attention fall in two basic categories. The first category is composed of lists of individuals subject to intensified investigative interest because of their leadership roles, potential for violence, or in some cases, organizational affiliation. The Security Index and its successor the Administrative Index, called ADEX, the Agitator Index, and the Key Activist and Key Extremist programs fall within this category.

The second category consists of special efforts to locate or follow the activities of subjects of FBI investigative interest. Programs within this category include the Stop Index and the Computerized Telephone Number File.

Bureau officials did not, as a rule, seek Attorney General approval for such programs. But the Security Index and its successor, the Administrative Index, were established and maintained with Department of Justice approval. Programs designed to intensify Bureau efforts in gathering intelligence regarding civil disturbances were developed in response to concerns expressed by the Department, a Presidential Commission, 1/ and other Government officials.

1/ The National Advisory Commission on Civil Disorders (1967).

The recent effort by the Attorney General to develop investigative guidelines within which the FBI must operate is unprecedented. Previously, the Department provided the FBI with no continuous policy direction. Rarely did departmental attorneys assess FBI cases from anything other than a prosecutorial standpoint.

The lack of adequate departmental direction has already been discussed by the present Attorney General on several occasions. The development of guidelines is a positive beginning.

A serious question is how the guidelines will be implemented and enforced. Some discussions we have had with Department of Justice officials give the impression that the Attorney General may continue to allow the divisions responsible for certain statutory crimes to implement and monitor adherence by the FBI to the appropriate guidelines. Responsibility for overseeing the FBI would still be diffused throughout the Justice Department.

A regular review process should be established to focus on investigative problems faced by the FBI, the priorities established by the Bureau, and the appropriateness of alternative strategies to achieve these goals. The Deputy Attorney General would be a logical focal point for such an effort. He is responsible for day-to-day operations of the Department and for a staff whose concerns relate to policies and management, as well as to potential prosecutions. Furthermore, the Deputy's office along with the Attorney General's

has the broadest picture of what is occurring in the Department. We do not believe that decisions relating to the propriety of certain techniques and programs should reside primarily with those divisions having responsibilities over the crimes under investigation.

CONDUCT OF DOMESTIC INTELLIGENCE ACTIVITIES

As mentioned previously our comments and observations to date are based on 676 cases or 75 percent of our total sample.

Of the 676 cases reviewed to date, the subjects in 577, or 85 percent, were investigated because of their known or alleged affiliation with organizations which the FBI was investigating for known or alleged subversive or extremist activities. The remaining 99 cases involved individuals not affiliated with any particular group.

Basis for Initiating Investigations

The Manual of Instructions is vague with respect to the amount and type of information or degree of evidence needed to open an investigation. With respect to full scale investigations, both the subversive and extremist sections of the Manual provide a few examples of the type of information which would support a predication for such an investigation. However, both sections emphasize that the examples are "illustrative" and that "the basis for each individual case must be tailored to the circumstances of such case."

Although the FBI does not categorize the degree of information or evidence needed to initiate a subversive or extremist investigation, we determined through our analysis of cases in the 10 field offices that the degree of initiating evidence fell into three general categories which we called hard, medium, and soft.

Hard evidence indicated that the subject was definitely a leader or member of a subversive or extremist group or violence prone for a subversive or extremist cause.

Medium evidence indicated that the subject was associated with a group, but the association was less than definite membership.

Soft evidence indicated that the subject may have had some connection with a group, but no definite link between the subject and membership was evident.

Our analysis of the 676 cases showed that only 34 percent were initiated on the basis of a hard degree of evidence; 30 percent on a medium degree; and 36 percent on a soft degree.

In the 230 cases which the FBI initiated on the basis of hard evidence, it established that the subject was either a leader, member, or violence prone in 79 percent of the cases.

On the other hand, when it initiated cases on the basis of soft evidence, it established leadership, etc., in only 9 percent of the cases and found no association in 88 percent of the cases.

Sources of Initiating Information

About 49 percent of the cases in our sample were opened upon information received from an FBI informant generally indicating that the subject was somehow affiliated or associated with a predicated organization. This is not surprising in view of the Bureau's general instructions to aggressively pursue efforts to develop informants and even to consider the subjects of investigations as potential informants.

Information received from other FBI field office sources and as a result of other ongoing FBI investigations was the second most common basis for initiating cases--108 of 676 cases or 16 percent. This was followed by State and local police which led to the initiation of 84, or 12 percent, of the cases. Eighty-two percent of the cases initiated on the basis of informant information were opened with either hard or medium evidence while only 18 percent were opened with soft evidence.

Other Federal agencies and miscellaneous sources also provided a high degree of hard or medium evidence upon which to open investigations. But over 50 percent of the cases initiated through confidential sources, local police, other FBI offices and investigations, and other State and local agencies were based on soft evidence.

Sources and Techniques Used
During an Investigation

Informants, and State and local police were by far the most common sources contacted during an investigation. Informants were used in 83 percent of the 676 cases while police sources were contacted in 74 percent.

Confidential sources and State Motor Vehicles divisions were both contacted in about 50 percent of the cases. The confidential sources used most frequently during investigations were affiliated with utilities, particularly telephone companies, educational institutions, and State employment agencies. The various State Divisions of Motor Vehicles were used frequently as sources for subjects' pictures and identifying information, such as date of birth and residence.

The Postal Service and Passport Agency were the two most frequently contacted "Other Federal Agencies." Other agencies which the FBI contacted included Immigration and Naturalization, CIA, and Customs. The Postal Service was contacted mostly for addresses in attempts to locate subjects. The other four agencies mentioned furnished information (1) related to the foreign travel of subjects especially to Communist countries or (2) on subjects who had lived in foreign countries.

If established sources are unable to provide the necessary information required, the FBI then uses interviews and other

investigative techniques. The FBI conducted one or more interviews in about 40 percent of the 676 cases. The subject of the case was interviewed the most--in about 20 percent of the cases.

The most commonly used investigative techniques were physical surveillance and pretext contacts which were both used in about 18 percent of the cases.

In only 5 percent of the 676 cases reviewed to date was information obtained from electronic surveillances. All of these occurred prior to the June 1972 Keith decision in which the Supreme Court prohibited the use of electronic surveillances for domestic intelligence purposes. All of the surveillances were targeted at the headquarters of organizations under investigation, not the individual case subjects.

Only four subjects were targets of the FBI's Counterintelligence Programs (COINTELPRO). All the subjects were key leaders or activists in subversive or extremist organizations. Only 1 or 2 COINTELPRO-type actions were taken in each case, and all were taken prior to April 1971, when the program was officially terminated.

There are no indications that two other techniques--surreptitious entry and mail opening--were used in any of 676 cases we reviewed to date. However, FBI officials advised us that surreptitious entries or mail openings were associated with 9 of the remaining 224 cases. Bureau officials stated that generally organizations were the prime targets of both

techniques. We were also advised that COINTELPRO-type activities were used in at least 4 of the remaining cases.

Distinction Between Preliminary
and Full-Scale Investigations

Since September 1973, FBI headquarters has made a distinction in its policy instructions to the field between preliminary and full-scale investigations and has imposed general limitations on the frequency, length, and scope of preliminary investigations.

Our review indicates that in practice the FBI field offices have not adequately distinguished between the two types of investigations or limited the frequency, length and scope of preliminary investigations. As a result, headquarters is unaware of a large percentage of the intelligence investigations being conducted and only has limited control--mostly through the Inspections Division--over such investigations.

As a basis for reviewing the preliminary/full-scale concept, we used 371 (of the 676) cases which were initiated after December 31, 1973, since the distinction was not made official until September 1973. Of the 371 cases, about 88 percent were initiated and conducted as preliminaries, and only 9 percent were initiated and conducted as full-scale investigations. Another 3 percent of the cases started as preliminaries and became full-scale investigations apparently after a sufficient statutory basis had been established.

These results indicate that not only were preliminaries the common practice as opposed to an occasional instance, but

also that only a small percentage of them were apparently of sufficient concern to the FBI to warrant full-scale investigations.

Although the Manual of Instructions confines the scope of preliminaries to the use of established sources, our review of the cases showed that the 10 field offices generally used the same sources in the preliminary cases as full-scale cases. This includes virtually all of the same types of sources which we discussed earlier today. In addition, the field offices went beyond established sources and conducted interviews in 14 percent of the preliminary cases.

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

Despite the specific emphasis placed on the 90-day time limitation by the Manual of Instructions as well as the Inspections Division during its review, most of the preliminary cases we reviewed lasted over 90 days. In addition most of these were not brought to the attention of FBI headquarters. Of the 339 cases which were either initiated as preliminaries only, or initiated as preliminaries and advanced to the full-scale stage,

73 percent lasted more than 90 days. The average length of overextended preliminary investigations was 152 days.

In the 246 of the 339 cases which went over 90 days, the field offices notified FBI headquarters in only 32 percent of the cases. Thus, it appears that FBI headquarters was unaware of 68 percent of the cases which extended beyond the authorized 90-day period and had no opportunity to review and possibly terminate the investigation, if unwarranted.

The results of our analysis raise several issues regarding the scope of the Bureau's investigations, and when and on what basis investigations should be initiated.

In many instances, the FBI initiated investigations on the basis of soft or medium evidence, and contacted a variety of sources to obtain information on the background and activities of an individual only to find out that the individual either had no association with or no significant involvement in a subversive or extremist organization or activity.

From an overall standpoint there could be a question as to the need for the FBI to initiate such contacts with individuals outside the FBI on the basis of evidence indicating a minor or unknown role in subversive or extremist activities.

MAINTENANCE AND DISSEMINATION OF INFORMATION

According to the Manual of Instructions, field offices should provide FBI headquarters with all pertinent information developed during security investigations. These reports should

be submitted to provide timely and significant information regarding subversive and extremist activities of subjects. In addition, they should be submitted when setting out results of any extended inquiries or when recommending a subject for ADEX.

The Manual of Instructions indicates communications should be limited to information regarding (1) the subject's subversive activities, sympathies, and affiliations, (2) pertinent background data concerning other subversive groups or individuals the subject is connected with, and (3) essential background data regarding the subject. Agents are advised that reports should not include information regarding the subject's social or personal affairs or other background data not relevant to the subject's subversive activities or affiliations.

The majority of items disseminated in cases we selected for review consisted of reports and, what the FBI calls, letterhead memorandums. Basically these documents contain vital statistics on the subjects and background information on the relevant activities of the subjects and groups with whom they are associated.

Maintenance of Information

The FBI operates under the assumption that anything pertinent to a security investigation will be included in a report and sent to Washington and placed in a headquarters file. This information will be retained indefinitely because of the

possibility that information presently contained in the files might be useful in future investigations.

In discussions with FBI headquarters officials we were told that they normally do not destroy headquarters security investigative files. They stated that although they had requested approval from the National Archives and Records Service to destroy certain intelligence related information which was at least 25 years old they have not sought approval for the continuous destruction of subversive or extremist investigative files maintained at headquarters.

Our review of the conduct of investigations, as discussed earlier, did not show any appreciable difference in the type of information collected in preliminary inquiries or full field investigations.

There was also no appreciable difference in the type of information maintained in the files on individuals who were active members, leaders, or violence prone for a cause.

Although the Manual of Instructions indicates that personal data should not be included in reports, the Manual does not prohibit this information from being collected and retained. Since we did not have access to case files, we cannot comment on the amount of personal data obtained or included in them. It is doubtful if information of this nature would ever be the major subject of a report and therefore included in a summary prepared for us, or that if the information were reported, that the agent preparing

our summary would have summarized the information since summaries generally only included major information.

While there is no indication the collection of personal data is widespread we did note a few examples where this occurred. Agents generally indicated information of this type was unsolicited but included in the file because it was provided by an informant or obtained through an electronic surveillance.

Method of Dissemination

The FBI disseminates the majority of information as written reports to other agencies such as the Secret Service. The Manual of Rules and Regulations, however, indicates that FBI field offices may also disseminate information orally.

Local and State law enforcement officials have indicated to us that the majority of dissemination provided to them by the FBI was made orally and on an agent-to-agent basis.

Information available to date shows that oral dissemination occurred in about 8 percent of the cases, while dissemination was in writing in about 79 percent and both oral and written dissemination occurred in about 13 percent.

When is Dissemination Made

Although preliminary inquiries were included in the guidelines prior to January 1, 1974, we analyzed the 110 cases opened after that date to determine the amount of preliminary inquiries in which dissemination was made and the amount of full scale investigations in which information was disseminated.

Our analysis indicates that in 58 percent of the 110 cases the dissemination was made during the preliminary inquiry. In 44 percent of these cases the subject was not associated with any group or the FBI was unable to establish the degree of the individual's association.

Generally we question the need to disseminate information on individuals whom the FBI has not determined to be leaders, active members, or violence prone in support of subversive or extremist causes.

RESULTS OF DOMESTIC INTELLIGENCE ACTIVITIES

The purpose of the FBI's domestic intelligence investigations is to collect information needed to determine whether the subject has violated, or is engaged in, activities which could result in a violation of previously mentioned statutes. Also such actions are taken to gather and disseminate intelligence-type data so the FBI can (1) continuously keep appraised of the strength, danger, and activities of subversive and extremist groups and (2) assist appropriate officials in the executive branch in making decisions affecting national security.

However, the FBI's domestic intelligence investigations we reviewed resulted in few prosecutions or convictions. Only 16 of the 676 cases, or less than 3 percent, were referred to a local U.S. attorney or to local authorities for possible prosecution. Of the 16 referrals for criminal violations, only 7 were prosecuted, 4 of which were convicted.

There were only 12 instances--or less than 2 percent--in which the FBI obtained advanced knowledge of planned activities on the part of a subversive or extremist group or individual.

Most of the 676 cases we reviewed were initiated because of the subject's known or suspected involvement with organizations and groups on which the Bureau already had extensive information. We determined that in 344, or 51 percent, of the 676 cases the FBI was unable to establish the individual's association with the group or its activities. The FBI was able to establish that the subject was a leader, rank and file member, or violence prone member in 43 percent of the cases. Although we recognize the need to "follow-up every lead" with respect to new groups or groups where informant coverage is limited or non-existent, we question the need--except perhaps to identify an individual's subversive and extremist associations in connection with the Security of Government Employees Program--to go beyond informant coverage of the subject group and the investigation of leaders and key or violence prone members.

There was a lack of evaluation and analysis capability in connection with the FBI's domestic intelligence operations. The lack of such a function makes the Bureau's domestic

intelligence gathering operations incomplete and raises questions regarding the effective use of the information which the Bureau gathers and its value to executive branch officials in making decisions concerning national security.

The Rockefeller Commission in its recent report on CIA activities within the United States emphasized the importance of evaluating, analyzing, and coordinating domestic intelligence information and recommended the development of an evaluative capability within the FBI, or elsewhere in the Department of Justice. FBI officials told us that evaluation of domestic intelligence has never been a responsibility of the Bureau. They stated that as an investigative agency its job is to collect and report the facts. Department of Justice officials also stated that they do not routinely evaluate the FBI's domestic intelligence investigative reports from an "intelligence" standpoint but review the reports primarily to make prosecutive determinations.

Other than effectively identifying and gathering information on groups and their individuals affiliated with groups who espouse and carry out subversive and extremist activities, the FBI's domestic intelligence operations do not appear to have had much other impact. However, this may be sufficient because, who is to say that the Bureau's continuous coverage on such groups and their key leaders has not prevented them, to date, from achieving their ultimate subversive and extremist goals. The problem is one of adequately assessing the value and

effectiveness of an operation which by its nature is preventive and which by its mere existence may be accomplishing its purpose.

We do not believe that as a result of our work we have all the answers to the complex questions of possible concern to the Congress regarding domestic intelligence operations. But, we strongly believe that, for an effective national dialogue on the efficacy of such operations, more information should be available to the Congress.

It seems to us that the issue is not whether the FBI should conduct domestic intelligence operations but, rather, what the purpose and scope of such operations should be. Few would deny that there are elements or groups within our Nation which pose threats to our domestic tranquility. But differences begin to surface on questions of the exact nature, intent, and threat of certain groups; the techniques used to identify and monitor them, and the scope of coverage applied to specific investigations. We believe that the results of our review show that there is need for a clear statement as to what the objectives of the FBI's domestic intelligence operations should be, what functions it should include and what its scope of coverage should be.

This concludes my prepared statement. We trust the information presented today and that which we will provide

in our written report will assist the Committee to carry out its oversight of this important activity. We would be pleased to respond to questions.