

*REPORT TO THE HOUSE
COMMITTEE ON THE JUDICIARY
BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

**FBI Domestic Intelligence
Operations--Their Purpose
And Scope: Issues
That Need To Be Resolved**

The FBI's authority to carry out domestic intelligence investigations is unclear. Legislation is needed.

Investigations are too broad in terms of the number of people investigated and scope of investigations. Legislation is needed.

Investigations are generally passive in that information is gathered from other sources. But they are all encompassing. Questionable techniques were used infrequently, but legislation is needed limiting their future use.

The FBI adequately controlled dissemination of investigative information, but has not adequately examined its procedures for maintaining such data. The Attorney General should limit retention of investigative data.

Neither the Justice Department nor the Congress exercised adequate control and oversight over FBI domestic intelligence operations. Legislation is needed.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D. C. 20548

B-179296

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

This report, done in response to your June 3, 1974, request, describes how the Federal Bureau of Investigation (FBI) carries out its domestic intelligence operations and makes recommendations to the Congress and the Attorney General to improve such operations.

As you know, we made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), the Accounting and Auditing Act of 1950 (31 U.S.C. 67), and the Legislative Reorganization Act of 1970 (31 U.S.C. 1156). Despite our clear authority in those acts to investigate the administration and operation of the FBI, the Attorney General denied us proper access to FBI investigative files. Thus, we cannot adequately assure the Committee and the Congress that our findings are complete.

Your June 3, 1974, letter mentioned that the Subcommittee on Civil and Constitutional Rights, chaired by Representative Don Edwards, would have responsibility for oversight of the FBI and requested that we work closely with the Subcommittee. Accordingly, we are also providing the Subcommittee copies of the report, and, as discussed with the Subcommittee, are providing copies to officials of the Department of Justice and the FBI. In addition, because of the extensive interest in the FBI's domestic intelligence operations, the Subcommittee agreed that the report should be provided to other appropriate congressional committees and Members of Congress, Government officials, and the general public.

We look forward to assisting your Committee in its continuing oversight of the FBI.

Sincerely yours,

A handwritten signature in cursive script that reads "Thomas P. Staats".

Comptroller General
of the United States

C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Other intelligence activity inquiries	1
	Review objectives	2
	Domestic intelligence: a definition	3
	Approach to review	4
2	FBI DOMESTIC INTELLIGENCE OPERATIONS--AN ORGANIZATIONAL PERSPECTIVE	7
	Organizational structure	7
	FBI field offices	9
	Filing and indexing investigative information	12
	Organization of domestic intelligence operations	13
3	LEGAL AUTHORITY FOR FBI DOMESTIC INTELLIGENCE INVESTIGATIONS	16
	Presidential statements and directives	16
	Statutory authority	21
	Executive orders	24
	Conclusions	26
4	POLICIES AND CRITERIA FOR DOMESTIC INTELLIGENCE INVESTIGATIONS	27
	What is FBI domestic intelligence policy?	27
	Criteria for predicating investigations	28
	Criteria for specific investigations	31
	What are the processes for opening and controlling domestic intelligence investigations?	37
	Conclusions	42
5	HOW POLICY IS APPLIED TO INVESTIGATIONS OF SPECIFIC GROUPS	44
	Nature of groups and length of investigations	44
	Circumstances for initiating investigations	45
	Investigative coverage	47
	Management controls	48
	Justice Department involvement in investigative decisions	58

	Other governmental interest in FBI investigations	62
	Conclusions	64
6	DOMESTIC INTELLIGENCE PROGRAMS AND TECHNIQUES	65
	Lists of individuals	66
	Efforts to locate and follow individuals' activities	75
	Liaison programs	79
	Counterintelligence program	84
	Special reporting programs	86
	Investigative techniques	90
	Conclusions	95
7	HOW THE FBI INITIATES AND CONDUCTS DOMESTIC INTELLIGENCE OPERATIONS	96
	Domestic intelligence investigations: organization oriented	96
	Initiation of domestic intelligence investigations could be more selective	98
	Sources and techniques used during investigations	106
	Distinction between preliminary and full-scale investigations not implemented	111
	Conclusions	116
8	HOW THE FBI MAINTAINS AND DISSEMINATES DOMESTIC INTELLIGENCE INFORMATION	118
	FBI files--where they are, what is in them	118
	Investigative information--who receives it, when, and how	121
	Conclusions	129
9	FBI RESOURCES APPLIED TO DOMESTIC INTELLIGENCE ACTIVITIES	131
	Money spent	131
	Investigative trends	132
10	RESULTS AND ACCOMPLISHMENTS OF FBI DOMESTIC INTELLIGENCE INVESTIGATIONS	138
	Prosecutions and convictions	138
	Advance knowledge of planned activities	140
	Extent of association established	145
	Intelligence evaluation capability	146
	Conclusions	147

CHAPTER		<u>Page</u>
11	CURRENT PROPOSALS FOR CHANGE, OVERALL CONCLUSIONS, RECOMMENDATIONS, AND AGENCY COMMENTS	148
	Attorney General's draft of domestic intelligence guidelines	148
	Overall conclusions	157
	Recommendations for domestic intelligence operations	159
	Agency comments	163
12	SCOPE OF REVIEW AND PROBLEMS ENCOUNTERED	166
	Scope and approach	166
	Access to records and other related problems	167
 APPENDIX		
I	June 3, 1974, letter from the Chairman, Committee on the Judiciary, House of Representatives to GAO	174
II	GAO verification proposal dated February 4, 1975	176
III	May 13, 1975, letter from the Chairman, Committee on the Judiciary, House of Representatives	178
	June 17, 1975, letter from the Attorney General	180
	June 25, 1975, letter from the Chairman, Committee on the Judiciary, House of Representatives	183
IV	Brief on FBI authority for domestic intelligence investigations	187
V	February 10, 1976, letter to GAO from the Justice Department	210
VI	Principal Justice Department and FBI officials responsible for administering activities discussed in this report during the last 15 years	232

ABBREVIATIONS

ADEX	Administrative Index
CIA	Central Intelligence Agency
COINTELPRO	Counterintelligence Program
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
SAC	Special Agent in Charge

D I G E S T

Changes are needed in the FBI's domestic intelligence operations. The operations are too broad in terms of the number of individuals investigated and the scope of the investigations.

Few would deny that some elements or groups within our Nation pose threats to our domestic security. But, differences appear on questions of the exact natures, intents, and threats of certain groups; the techniques used to identify and monitor them; and the scope of coverage applied to specific investigations.

It is a matter of deep concern to the security of our country and to the liberty of our citizens. Only through public debate, inherent in the legislative process, can the issues be adequately addressed.

GAO's recommendations are directed towards resolving problems in five main areas of concern:

- Authority for domestic intelligence operations.
- Initiating and continuing investigations and their results.
- Use of sources and techniques.
- Collection, dissemination, and retention of investigative information.
- Oversight and control.

The recommendations are based on GAO's analysis of 898 domestic intelligence cases randomly sampled from a universe of 19,659

cases acted on by the FBI during 1974 in 10 field offices.

AUTHORITY FOR DOMESTIC INTELLIGENCE OPERATIONS (Ch. 3)

Findings

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.

The FBI asserts that statements attributed to President Roosevelt in 1936 authorized and directed it to conduct intelligence investigations of subversive activities. But, alleged Presidential authorization is unclear as is the meaning of the term, subversive. What is clear is that in 1936 the FBI began intelligence investigations of the Communist and Fascist movements at the Secretary of State's request, pursuant to statutory authority in the 1936 appropriation act. Moreover, although the President had investigated the Secretary of State's request, the surrounding circumstances suggest that the President's concern was limited to organizations having some connection with a foreign government.

Subsequent Presidential directives in 1939, 1943, 1950, and 1953 did not explicitly delegate authority to the FBI to conduct intelligence investigations of subversive activities. To the extent, if any, that they fixed responsibility on the FBI for such investigations, they did not explicitly indicate that all types of domestic groups and individuals were subject to investigation or clearly indicate what constitutes subversive activities or subversion.

The FBI asserts parallel and preexisting statutory authority for domestic intelligence operations by contending that the

"detect and prosecute" language of 28 U.S.C. 533 authorizes intelligence investigations of groups and individuals who have violated or who are engaged in activities that may violate a substantive criminal statute, such as that pertaining to seditious conspiracy, 18 U.S.C. 2384. A precise definition of the duties intended to be encompassed by the phrase "detect and prosecute" is not possible because documentation related to congressional intent is either not available or does not provide an explanation. Therefore, the FBI's interpretation cannot be said to be incorrect.

Several directives from Attorneys General and other Justice Department officials, apparently issued pursuant to other provisions of 28 U.S.C. 533, also resulted in the FBI conducting certain domestic intelligence investigations. Additionally, Executive orders relating to the Security of Government Employees Programs have been cited as a basis of such investigations.

Conclusions

The FBI's authority to carry out domestic intelligence operations is unclear. It must be distilled through an interpretive process that leaves it vulnerable to continuous questioning and debate. There is a need for legislation that clearly provides such authority and delineates it in terms of objectives, scope, and functions encompassed.

Recommendations

GAO recommends that the Congress enact legislation concerning domestic intelligence operations clarifying the authority under which the FBI would be able to initiate and conduct such operations. In doing this, the Congress should (1) define the extent to which domestic intelligence investigations should be predicated on existing criminal statutes relating to the overthrow or advocating the overthrow of the Government and (2) specify the activities that should be investigated solely so appropriate Government officials can be aware of them.

Agency Comments

The FBI agreed that legislation is needed clarifying its authority to conduct domestic intelligence investigations. (See p. 163 and app. V.)

INITIATING AND CONTINUING INVESTIGATIONS AND THEIR RESULTS (Ch. 4, 5, 6, 7, 9, and 10)

Findings

FBI policy emphasizes that investigations are primarily made of groups and individuals whose actions may result in violations of criminal statutes, especially those dealing with rebellion or insurrection, seditious conspiracy, or advocating the overthrow of the Government. In practice, investigations of individuals occur because of their associations with groups the FBI has characterized as "subversive" or "extremist" regardless of whether the group is violent. (See pp. 27 to 42.)

The FBI primarily appears to justify domestic intelligence investigations on the need to provide the Attorney General and other officials with information upon which to make assessments and policy recommendations regarding the national security.

The FBI field office squad supervisor is responsible for day-to-day control of domestic intelligence investigations. He is responsible for insuring that (1) investigations are in accord with policy, (2) there is a sound basis for opening the investigation, and (3) results are achieved and reported to headquarters.

FBI officials stressed that investigative decisions are based upon the judgment of the agent. GAO believes decisions have to be made this way because the basis for such investigations is ambiguous and specific criteria delineating when to initiate them is lacking.

FBI officials stated that the rhetoric of a group or individual is sufficient to attract initial investigative interest if it could result in criminal violations and adversely affect the Nation's security.

Noticeable membership growth by a group advocating revolution would warrant an investigation as would such actions as buying and storing arms, engaging in firearms practice, or purchasing survival equipment.

Investigations can be initiated either at the preliminary or full-scale level, depending on the available facts and circumstances. The multilevel headquarters review of investigative decisions indicates the FBI's desire to strongly control field office investigations. What is lacking is an adequate independent assessment of the FBI's domestic intelligence policies and procedures.

The FBI believes its domestic intelligence programs fit within the policy framework for such investigations. GAO categorized the programs that came to its attention into five groups:

- Lists of individuals intensively investigated, which included the Security Index, the Communist-Reserve Index, the Administrative Index, and the Key Extremist and Key Activist Programs. (See pp. 66 to 75.)
- Special efforts to locate or follow certain individuals, which included the Stop Index, Computerized Telephone Number File, and the computerization of foreign travel effort. (See pp. 75 to 79.)
- Special liaison programs to focus attention on investigative problem areas, which included the False Identities Program and the efforts to be aware of extremist revolutionary, terrorist, and subversive activities in penal institutions. (See pp. 79 to 83.)
- Counterintelligence Programs. (See pp. 84 to 86.)
- Special reporting efforts of things such as civil disturbances and the "new left's" activities. (See pp. 86 to 90.)

Generally, the FBI's greatest consideration in developing such efforts has been the efficiency and effectiveness of them, rather than their

propriety in terms of protecting individuals' civil liberties. Although the FBI usually did not seek Justice Department approval for the programs, they largely coincided with Department interests.

GAO's review of the 797 randomly sampled cases on individuals showed that many investigations were opened on the basis of weak evidence concerning the nature and extent of the subjects' involvement with a subversive or extremist organization or activity and resulted in establishing either no or minor involvement by the subject.

GAO estimates, on the basis of its sample results, that about 32 percent of the 17,338 cases on individuals were initiated on the basis of hard evidence, about 32 percent on the basis of medium evidence, and about 36 percent on the basis of soft evidence.

--In the 263 sampled cases which the FBI initiated on the basis of hard evidence, it established that the subject was either a leader, member, or a violence prone person in 81 percent of the cases.

--In the 263 sampled cases initiated on the basis of medium evidence, the FBI established leadership, etc., in 49 percent.

--In the 271 sampled cases initiated on the basis of soft evidence, it established leadership, etc., in only 12 percent and found no association in 86 percent. (See pp. 99 to 103.)

Informants, the most common source of information, resulted in initiating 48 percent of the cases on individuals, compared to the next highest source, other FBI field offices, which provided such information in only 17 percent of the cases. (See pp. 103 to 106.)

State and local police, the principal outside sources used by the FBI to initiate investigations, were used in 12 percent of the cases. The remaining 23 percent of the cases were initiated on the basis of information received from confidential sources, other

Federal, State, or local agencies or from miscellaneous sources.

The strongest evidence by far was provided by the most common source of initiating information--FBI informants. Eighty-three percent of the cases initiated on the basis of such information were opened with either hard or medium evidence while only 17 percent were opened with soft evidence.

Overall, about 19 percent of the matters investigated by the FBI related to intelligence, domestic and foreign, from fiscal years 1965 through 1975. A further breakdown is classified because of the need to prevent disclosure of the FBI's counter-espionage effort. But, the percentage has not varied greatly over the last decade, despite the increased emphasis given to domestic intelligence operations between fiscal years 1967-72. By fiscal year 1975, domestic intelligence operations had declined close to the 1965 level. (See pp. 131 to 137.)

FBI and Justice Department officials also estimate that the FBI spent about \$82.5 million on general intelligence in fiscal year 1975. The estimated amount includes money spent on FBI staff involved in criminal as well as domestic and foreign intelligence operations but does not include all funds spent on certain technical support functions associated with such operations.

The purposes of the FBI's domestic intelligence investigations are to (1) prosecute and convict subjects for violating appropriate statutes, (2) continuously keep appraised of the strength, danger, and activities of subversive and extremist groups, and (3) provide information to assist executive branch officials in making decisions affecting national security.

There have been few tangible results from such investigations. This is not to say that domestic intelligence is unnecessary or of no value.

GAO estimated, on the basis of its random sample, that, of the 17,528 individual cases investigated by the 10 FBI field offices during 1974:

- 3 percent (533) were referred for prosecution.
- 1.6 percent (281) were prosecuted.
- 1.3 percent (231) were convicted.
- 2.7 percent (476) resulted in the FBI obtaining advance knowledge of planned activities. (See pp. 138 to 144.)

GAO also analyzed the 101 organization, or control and miscellaneous cases it sampled to determine whether any contained instances where the FBI obtained advance knowledge of planned activities. Twenty-one cases contained specific instances of advance knowledge. The number of instances in each case varied from 1 to 51. GAO considered 12 percent of such instances to be of a potentially violent nature. Others involved speeches, conferences, and demonstrations.

Furthermore, on the basis of its sample results, GAO estimates that:

- In 50 percent of 17,528 cases the FBI was unable to establish the individual's association with a group or its activities.
- In 44 percent (7,772), the FBI established that the individual was a leader, member of an organization, or violence prone individual. (See pp. 145 to 146.)

There was also a lack of evaluation and analysis capability in connection with the FBI's domestic intelligence operations. (See pp. 146 to 147.)

Other than effectively identifying and gathering information on groups and affiliated individuals that espouse and carry out subversive and extremist activities, the FBI's domestic intelligence operations do not appear to have achieved many tangible results. However, this may be sufficient, because who is

to say that the FBI's continuous coverage of such groups and their key leaders has not prevented them to date from achieving their ultimate subversive or extremist goals? The problem is one of adequately assessing the value and effectiveness of an operation which by its nature is preventive and by its mere existence may be accomplishing its purpose.

Conclusions

An essential difficulty with the domestic intelligence investigations has been the FBI's failure to adequately distinguish the extent to which groups are likely to use force or violence to achieve their goals and to investigate and use certain techniques accordingly. Priorities for such investigations are not systematically determined. Moreover, no outside organizations have effectively held the FBI accountable for such decisions.

Violent groups, such as the present-day Weatherman, or previously the Ku Klux Klan, warrant the FBI's full attention. Rather than concentrating on the most violence prone groups, the FBI has diffused its domestic intelligence investigative coverage to the point where many investigations do not lead to positive results. Perhaps if the FBI concentrated its efforts on those groups and individuals who represent the highest priority from a standpoint of a national security threat as determined by the Attorney General and FBI, the domestic intelligence program would be more productive.

GAO assumes that in any intelligence-type investigation, one objective must be to merely gather information. Such an objective is appropriate, but only within the confines of a clearly defined policy setting out the nature of groups and individuals to be investigated. Thus, the key decision must be that of deciding when to investigate a group or individual.

Recommendations

GAO recommends that the Congress enact legislation concerning domestic intelligence operations:

- Limiting such investigations only to groups that have used or are likely to use force or violence: a determination that must be made at least annually by the Attorney General or Deputy Attorney General in accordance with specific criteria issued by the Attorney General.
- Limiting investigations of individuals who are merely members of groups classified as warranting investigation, but which have only shown a likelihood of violence, to instances when information indicates the individuals may be involved in or are likely to become involved in specific criminal acts.
- Allowing the FBI to conduct yearlong, extensive investigations of individuals associated with, or suspected of associating with, groups that have proven abilities to commit violent acts and have been classified annually by the Attorney General or Deputy Attorney General as being grave threats to the public well-being. The phrase "proven ability to commit violent acts" could be defined by the frequency of acts and time period in which they were committed.
- Allowing the FBI to (1) establish and operate informants who could penetrate properly classified groups which have evidenced a likelihood of violence or used violence and (2) investigate leaders of such groups or potential groups to determine their identities, extent of their followings, and propensities for violence.

Agency Comments

The FBI did not agree that domestic intelligence operations should be directed only to those groups engaged in or likely to

engage in force or violence. The FBI essentially believes that it should be allowed to investigate groups that evidence a possibility of using violence, regardless of the probability that they will do so.

The Justice Department committee drafting FBI domestic intelligence guidelines stated in the guidelines that such investigations should be of activities which involve or will involve use of force or violence and the violation of Federal law.

The FBI also stated that GAO did not specifically address the need to investigate individuals unaffiliated with groups, which the FBI characterized as anarchists or terrorists.

No GAO recommendation would preclude the FBI from investigating any individual plotting the imminent use of force or violence in a specific criminal act. Moreover, GAO questions how the FBI presumes it could effectively obtain such knowledge of violent acts planned by individuals affiliated with no group when GAO results showed that the FBI obtained advance knowledge of actions--violent or otherwise--in few of the affiliated cases GAO sampled. (See pp. 163 to 165 and app. V.)

SOURCES AND TECHNIQUES (Ch. 7)

Findings

The FBI's domestic intelligence investigations are generally "passive" but all encompassing. Information is gathered from other sources, rather than being developed originally by the FBI.

The FBI first contacts a vast variety of routine, established sources to identify the subject and determine his or her activities. If those sources are unable to completely provide the required information, then the FBI uses interviews and other investigative

techniques. The use of special investigative techniques and programs seemed to depend on the results of the investigation. They were used once a subject's involvement in subversive or extremist activities was confirmed.

Informants and State and local police were by far the most common sources contacted during investigations. Informants were used in about 83 percent of the individual cases while police sources were contacted in about 77 percent. Confidential sources were used in 54 percent; credit bureaus, in 39 percent; educational institutions, in 21 percent; utilities, in 18 percent; and banks and other financial institutions, in 4 percent of the cases. (See pp. 106 to 108.)

With the exception of using certain minor investigative techniques to identify a subject, special or unusual techniques or programs were used infrequently. For example, the most common active investigative techniques used were pretext contacts and physical surveillance, which were both used in only about 20 percent of the cases. Photo surveillance was used in only 4 percent, while mail covers were used in only 1 percent of the cases. (See pp. 108 to 111.)

Interviews were conducted by the FBI in about 42 percent of the investigations of individuals. The subjects of the inquiries were interviewed in about 22 percent of the cases. Friends and associates were interviewed in 12 percent; neighbors, in 11 percent; employers, in 9 percent; relatives, in 9 percent; and others (including landlords, businessmen, attorneys and school officials), in 15 percent of the cases.

Information was obtained from electronic surveillances in only about 8 percent of all cases GAO sampled. In all but two of the cases, the information was obtained as the result of "overhears" on surveillances targeted against the subjects of cases not included in GAO's sample. Most electronic surveillances were targeted at the headquarters or chapters of subversive or extremist organizations. All were approved by the Attorney General.

There were only 6 cases in which the subjects were targets of neutralizing or disruptive actions under the FBI's counterintelligence programs. The actions consisted primarily of sending anonymous materials to the subjects and leaking nonpublic or disseminating public information to media sources. "Surreptitious entries" were used in nine sampled cases, and in one of those cases mail was opened. All but one of the cases were conducted by the FBI New York field office against groups or individuals classified as "subversive" by the FBI.

FBI policy has officially distinguished between preliminary inquiries and full-scale investigations since September 1973, to limit the impact of domestic intelligence investigations on the subjects and give headquarters greater control. Preliminary inquiries are to be undertaken through established sources, are not to exceed 90 days, and are to establish whether there is evidence to warrant a full-scale investigation. FBI field offices, however, did not distinguish between preliminary inquiries and full-scale investigations in practice.

GAO estimates that 7,562 of the 8,392 cases opened after December 31, 1973, were opened as preliminary inquiries. Moreover, the 10 FBI field offices generally used the same sources in preliminary inquiries as in full-scale investigations. Further, GAO estimates that inquiries lasted longer than 90 days in 72.5 percent of the cases and FBI headquarters was aware of such cases only about 35 percent of the time. Thus, many cases were not properly controlled. In December 1975 the FBI revised its policy to provide for better headquarters control of preliminary inquiries. (See pp. 111 to 116.)

Conclusions

Generally the FBI appeared to use appropriate techniques and sources during its investigations. Questionable actions were the use of counterintelligence techniques and surreptitious entry. Preliminary and full-scale

investigations, if properly implemented, could be an effective administrative aid and control. This concept, together with stricter, more specific requirements for opening investigations could help to limit the scope and conduct of the FBI's domestic intelligence operations.

Recommendations

GAO recommends that the Congress enact legislation concerning domestic intelligence operations limiting the extent to which the Attorney General may authorize the FBI to take nonviolent emergency measures to prevent the use of force or violence in violation of Federal law. Preventive measures should only be used when there is probable cause that violent actions pose real and immediate threats to life or property and would interfere substantially with the functioning of Government.

GAO recommends that, until guidelines or further legislative changes are enacted, the Attorney General direct the FBI to enforce its current requirements that (1) only established sources be contacted during preliminary inquiries and (2) preliminary inquiries be completed within the required 90-day time frame or that FBI headquarters approval be sought for an extension.

COLLECTION, DISSEMINATION, AND RETENTION OF INVESTIGATIVE INFORMATION (Ch. 8)

Findings

Overall, the FBI appears to have adequately controlled the dissemination of investigative information. However, the FBI had not adequately examined its procedures for maintaining information.

The FBI assumes that anything pertinent to an intelligence investigation will be included in a report and placed in a headquarters file. This information will be retained indefinitely because of the possibility that such data might be useful in future investigations. But,

neither the FBI nor the Justice Department has adequately determined the frequency and purposes of using investigative information after a case is closed. (See pp. 118 to 129.)

There was no indication that the collection of personal data was widespread. When it was recorded, agents generally indicated that it was unsolicited but included it in the file because it was provided by an informant or obtained through an electronic surveillance. (See pp. 120 to 121.)

There was some dissemination in 399--or about half--of the individual cases GAO sampled. Information was disseminated orally in only 6 percent of the cases, in writing in 79 percent, and both orally and written in 15 percent.

The U.S. Secret Service was the most frequent recipient of FBI-provided information--in 89 percent of the cases. But the Secret Service had intelligence files on the subjects of only about 4 percent of the cases GAO followed up with them. It destroyed the rest. Both FBI and Secret Service officials stressed the need to maintain the procedures governing the exchange of information between them, because it assures that there is little doubt that, if an individual investigated by the FBI meets Secret Service criteria, the Service would be aware of it.

Generally, the FBI appeared to adequately control the dissemination of information. But, improvements could be made. In 47 percent of the cases on individuals GAO sampled, the FBI could not establish any associations on the part of the subjects with subversive or extremist groups. Yet, in 21 percent of these cases the FBI disseminated reports identifying the individuals to other Federal, State, or local law enforcement agencies. Furthermore, in 71 percent of the cases opened in 1974 with dissemination, the dissemination was made during preliminary inquiries or during the preliminary stage of full-scale investigations.

Conclusions

GAO questions the need for disseminating information on individuals whom the FBI has not determined to be leaders, active members, or violence prone individuals because once the FBI disseminates information it loses control over how it is used, interpreted, and how long it is retained.

Recommendations

GAO recommends that the Attorney General direct the FBI to:

- Limit the type of information that can be collected by any source to that pertinent and necessary to the investigation.
- Establish a limit for the retention of all information obtained in domestic intelligence investigations after completing a study showing how, and the frequency with which, this information is used in subsequent investigations.
- Review, with appropriate agencies, current agreements regarding dissemination and exchange of information to assess the usefulness of FBI-provided information and if possible, reduce the amount of information exchanged.
- Only disseminate information relevant to an appropriate agency's organizational interest in the case, and in usual circumstances disseminate no information on individuals whose associations with a properly classified group or propensities for violence have not been established.

OVERSIGHT AND CONTROL (Ch. 5, 6, and 11)

Findings

Department of Justice officials exercised virtually no policy direction of FBI domestic intelligence investigations. In most instances when the Department requested particular investigations by the FBI, the request paralleled FBI efforts already underway.

Normally, Department of Justice policy guidance was provided only when the FBI requested it. However, the Department did not independently assess the extent to which the FBI was adhering to the guidance it did provide.

FBI investigations were not conducted in a vacuum. FBI internal documents frequently refer to the many inquiries from Government officials concerning the activities of individuals or groups. (See pp. 44 to 63.)

The Attorney General's draft guidelines for controlling domestic intelligence investigations are a step in the right direction and indicate a firm commitment to try to begin exercising proper departmental control of FBI operations. GAO believes the guidelines adequately address some of the problems associated with past and current domestic intelligence operations.

Under current FBI policy and the draft guidelines, preliminary inquiries are opened essentially to determine whether individuals associated with groups may be engaged in activities in which there is a likelihood that their actions will involve the use of violence. But, GAO found that many such inquiries did not result in positive information regarding the subject's association with a subversive or extremist group. There is a basis for questioning the need for such investigations. The draft guidelines do not adequately address the problem. (See pp. 148 to 157.)

Until recently, there has also not been any systematic or continuous congressional oversight of the FBI's domestic intelligence operations.

Conclusions

There must be continuous and conscientious oversight of domestic intelligence operations by the Justice Department and the Congress to help assure that the FBI's investigative efforts

are consistent with any legislative or administrative changes. Such decisions will, of necessity, be subjective to a certain extent, based on perceptions of domestic security at the time they have to be made. A broad spectrum of views should be marshaled in deciding the extent to which certain domestic intelligence efforts are needed.

Recommendations

GAO recommends that the Congress enact legislation requiring the Attorney General to periodically advise and report to the Congress on such matters as (1) the focus of current domestic intelligence operations, (2) groups under investigation, (3) anticipated actions of such groups and how they might affect policy decisions, and (4) the extent to which certain sensitive techniques, such as mail covers and preventive action, were approved and used.

GAO also recommends that the Attorney General publish specific rules and regulations establishing a systematic process for providing proper departmental control and oversight of FBI operations.

Some of these recommendations could be implemented by carrying out sections of the Attorney General's draft guidelines on FBI domestic intelligence operations. Others would require additional actions.

BLANK

PAGE

CHAPTER 1

INTRODUCTION

In June 1974 the Chairman, House Committee on the Judiciary, requested that we review operations of the Federal Bureau of Investigation (FBI) on a continuous basis. The Chairman stated that the purpose of our reviews should be to continually assist the Committee in its legislative oversight responsibilities for the Department of Justice. This would provide the Committee with information on the efficiency, effectiveness, and economy of FBI operations. (See app. I.)

The Chairman specifically requested that we first review the FBI's domestic intelligence operations. This report presents the results of that review.

In September 1975, we testified on the preliminary results of our review before the Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, which is specifically responsible for overseeing the FBI. The conclusions in this report are similar to those we testified to in September 1975. However, the analyses in the report are based on a larger number of domestic intelligence cases (898 versus 676) and include more detailed information on the FBI's intelligence programs and activities.

OTHER INTELLIGENCE ACTIVITY INQUIRIES

Since we began our review, other groups also initiated inquiries into the intelligence activities of the Federal Government, including the FBI. These groups include the President's Commission on CIA Activities Within the United States (Rockefeller Commission), the Senate Select Committee on Intelligence Operations, and the House Select Committee on Intelligence.

The President's Commission, chaired by the Vice President, was appointed January 4, 1975. The Commission's functions were to (1) ascertain and evaluate any facts relating to unauthorized Central Intelligence Agency (CIA) activities within the United States, (2) determine whether existing safeguards were adequate to prevent any unauthorized CIA activities, and (3) make any appropriate recommendations to the President and to the Director of the CIA. The Commission issued its report to the President on June 6, 1975.

The Senate Select Committee was established on January 27, 1975, primarily to investigate the extent to which Federal agencies may have engaged in illegal, improper, or unethical activities in carrying out intelligence operations.

The Committee was also authorized to review coordination among the various intelligence agencies, the adequacy of the laws governing intelligence activities, and the need for better congressional oversight of intelligence activities.

The House Select Committee was established on July 17, 1975, to inquire into the organization, operations, and oversight of the Government's intelligence community. The Committee was directed to review the collection, analysis, use, and cost of intelligence information; any allegations of illegal or improper activities on the part of Federal intelligence agencies; and the procedures for and effectiveness of coordination among intelligence agencies.

Both the Senate and House Committees held hearings on FBI and other agencies' intelligence and surveillance activities, including use of techniques such as mail openings, surreptitious entries, electronic surveillance, and counterintelligence actions against U.S. citizens. The Committees are expected to issue reports on their findings and recommendations to the Congress in early 1976.

REVIEW OBJECTIVES

Unlike other inquiries into Federal intelligence activities, our review was restricted to FBI domestic intelligence operations. Also, our review concentrated on current activities rather than specific past alleged improprieties and other activities and was aimed at determining how the FBI presently conducts its intelligence operations. (We reviewed past intelligence activities, primarily, to put current operations into proper perspective and to determine how they evolved.)

The main objectives of our review were to determine and evaluate the

- FBI's legal authority for conducting domestic intelligence investigations,
- policies and procedures established and used by the FBI to conduct intelligence investigations of domestic groups and individuals and to maintain and disseminate intelligence information,
- methods, techniques, and programs used by the FBI in carrying out its intelligence investigations,
- controls and decisionmaking processes used by the FBI and the Department of Justice in developing domestic intelligence policies and procedures and in conducting investigations, and

--FBI's use of funds and staff in the domestic intelligence area.

DOMESTIC INTELLIGENCE: A DEFINITION

Until recently, the FBI had not publicly defined "domestic intelligence." In the past, the FBI has used the terms "internal security" and "domestic intelligence" interchangeably. No concise definition of these terms is available either in the FBI's annual testimony before the House and Senate Appropriations Committees or in its annual reports over the last 5 years. In fact, the Intelligence Division, which oversees the FBI's domestic and foreign intelligence investigations, was previously referred to as the Domestic Intelligence Division.

For our purposes, 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 their civil liberties or rights. After our September 1975 testimony and shortly after completing our fieldwork in November 1975, the FBI Deputy Associate Director for Investigations used essentially the same definition in his testimony before the House Select Committee on Intelligence. With this definition as a guide, we concluded that FBI investigations of the following relate to domestic intelligence:

- Subversion.
- Extremism.
- Sedition.
- Treason.
- Sabotage.
- Certain bombings.
- Violations of antiriot laws.
- Protection of foreign officials.

Examination of periodic reports on the numbers and types of FBI investigations showed that relatively few investigations nationwide dealt with sedition and treason. Investigations of sabotage, certain bombings, antiriot law violations, and 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. Therefore, we did not consider these to be intelligence-type investigations and focused on investigations of subversives or extremists.

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 statutes cited by the manual as a basis for investigations of subversives and extremists 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), the Internal Security Act of 1950 (50 U.S.C. 783(a)), and the Civil Rights Act of 1968 (18 U.S.C. 241).

APPROACH TO REVIEW

Since our objective was to analyze how the FBI conducts domestic intelligence operations, we examined many recently active domestic intelligence cases ^{1/} in several field offices. We randomly selected 898 cases which were investigated in calendar year 1974 at 10 of the 59 FBI field offices.

We selected the field offices on the basis of location and volume of cases on subversives and extremists which they had prime responsibility for investigating in 1974. After ranking the 59 field offices we selected four--Chicago, Los Angeles, New York, and San Francisco--which had very high volumes of domestic intelligence investigations during 1974 and six--Atlanta; Buffalo; Columbia, S.C.; Sacramento; San Diego; and Springfield, Ill.--which had medium volumes.

^{1/}A case, or investigation, represents the total investigative effort spent by the FBI on a specific subject (individual or group). The full results of this effort are maintained in a case, or investigative, file at the FBI field office primarily responsible for the case or investigation.

In 1974, the 10 offices were primarily responsible for 19,659 cases on subversives and extremists. Depending on the total cases in each field office, we randomly selected between 79 and 100 cases to review in each, divided about equally between subversive and extremist cases. Overall, we selected 898 cases for review (about 4.6 percent of the 19,659 cases).

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, the results provide a good overall picture of what the FBI is doing in the domestic intelligence area. Because some of our sampled cases had been open for several years, in some instances counterintelligence 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 essential to have access to information in the FBI's investigative files, we were willing to allow certain information in those files, such as the names of informants, to be protected.

Our approach was governed by the need to independently verify how the FBI developed and implemented domestic intelligence operations. Therefore, in lieu of reviewing raw investigative files, we agreed with the FBI Director to let FBI special agents prepare summaries of the information in each case selected, provided we could randomly verify the accuracy and completeness of the summaries against information in the corresponding files.

We devised the summary format and the type of information to be included in the summaries. We reviewed each summary in detail and held followup interviews with the FBI special agents, who either were associated with the cases or prepared the summaries, to clarify information in the summaries and to expand on certain points. After completing this process for each case, we believe we had a good understanding of what occurred in each investigation.

However, to assure the Congress that the FBI-prepared summaries were accurate and complete, we believed it necessary to randomly select certain documents from the FBI case files and compare them to their summaries.

We submitted our proposal for verifying the summaries to the FBI on February 4, 1975. (See app. II.) However, the Attorney General and the FBI Director rejected our verification proposal because it would allow us to see raw investigative files.

Our proposal clearly protects the integrity of the FBI's investigative operations while allowing for a completely independent verification of how the FBI conducts its domestic intelligence operations. Equally clear is our right of complete access, let alone random access, to the FBI's investigative files.

The Chairman, House Committee on the Judiciary, in an exchange of correspondence with the Attorney General, has supported our verification proposal. (See app. III.) To date, however, the Attorney General has rejected our proposal. We cannot independently verify our findings, and the Congress cannot be assured that our work is complete.

For a more detailed explanation of the review scope and approach, the verification issue, and other related problems, see chapter 12.

CHAPTER 2

FBI DOMESTIC INTELLIGENCE

OPERATIONS--AN ORGANIZATIONAL PERSPECTIVE

The FBI is the principal investigative arm of the Department of Justice. Fundamental FBI activities are authorized in chapter 33, title 28, United States Code, which establishes the FBI within the Department of Justice and prescribes FBI personnel and administrative requirements. In addition, title 18, section 3052, as amended, authorizes FBI representatives to serve warrants and subpoenas and to make arrests without warrants for any offenses against the United States committed in their presence or for any felonies under U.S. laws, which they reasonably believe a person has committed. The FBI has also been made responsible by the Congress, the Attorney General, and the President for certain specific auxiliary and general investigations.

ORGANIZATIONAL STRUCTURE

FBI operations are directed and coordinated from FBI headquarters by 13 operating divisions. (See chart on p. 10.) All divisions, except the two internal review divisions, report to the Director through the Associate Director and Deputy Associate Director for Administration or through the Deputy Associate Director for Investigation. The Office of Planning and Evaluation and the Inspection Division report to the Director through the Associate Director.

The 13 divisions and their major functions are:

1. The Identification Division maintains about 162 million fingerprint files and civil, criminal, and deceased name card indexes. During fiscal year 1975 the division received about 5.8 million sets of fingerprints.
2. The Training Division maintains and operates the FBI Academy, trains FBI personnel, and provides training assistance to State and local law enforcement personnel. A total of about 320,000 Federal, State, and local law enforcement officers attended courses during fiscal year 1975.
3. The Administrative Division is responsible for budget preparation and control in addition to other administrative matters, such as personnel services for, and the assignment of, FBI special agents and noninvestigative personnel.

4. The Files and Communications Division maintains the FBI's central investigative, applicant, and administrative files and records and the master indexes, which relate to those files and records. It also handles all requests under the Freedom of Information Act. During fiscal year 1975, the division had about 6.5 million files and about 59 million index cards on subjects relating to the files. During fiscal year 1975, the FBI processed about 2.2 million name checks through the division.
5. The Intelligence Division makes investigations, related to national security, in foreign counter-intelligence and domestic intelligence matters.
6. The General Investigative Division makes investigations in the general criminal, civil rights, accounting, fraud, and white collar crime areas.
7. The Laboratory Division makes scientific examinations of criminal evidence for Federal, State, and local law enforcement agencies; provides expert scientific testimony on criminal matters; and conducts scientific research.
8. The External Affairs Division maintains contact with the press and public and conducts research regarding problems and projects concerning crime prevention and law enforcement.
9. The Special Investigative Division makes investigations and gathers criminal intelligence on organized crime and on fugitives; conducts certain applicant and employee investigations; and answers special inquiries for the White House, the Congress, and Government agencies.
10. The Inspection Division conducts internal reviews of all FBI operations for the Director. The division attempts to inspect all FBI headquarters divisions and field offices yearly.
11. The Legal Counsel Division acts as legal counsel to the Director and other FBI officials, does legal analysis and research, maintains contact with congressional members and staff, and handles litigation related to the Freedom of Information Act.
12. The Computer Systems Division provides the FBI and other Federal, State, and local law enforcement agencies with a broad range of data processing

services, including the Uniform Crime Reporting Program and the National Crime Information Center.

13. The Office of Planning and Evaluation, which serves in an advisory capacity to the Director, conducts studies of FBI policies, procedures, and general operations and makes recommendations regarding policy changes and long-range planning.

FBI criminal and security investigations are carried out by special agents in the 59 field offices and 495 resident agencies or suboffices in the United States and Puerto Rico.

The FBI also maintains 15 liaison posts in Embassies throughout the world to facilitate the exchange of information on matters pertaining to international crime and subversive activities.

To carry out its operations, the FBI requested \$468.3 million for fiscal year 1976. This was a 4.3 percent increase over its fiscal year 1975 appropriation of \$449 million. As of June 30, 1975, the FBI had approximately 19,100 employees, including about 8,400 special agents. The Bureau's administration of its funds and staff in the domestic intelligence area is discussed in chapter 9.

FBI FIELD OFFICES

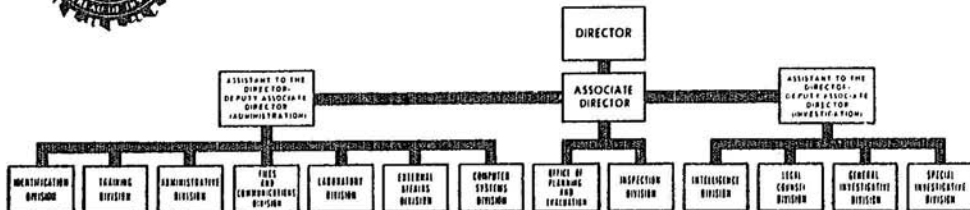
The alinement of the 59 FBI field offices, where investigations are conducted, generally corresponds to the Federal District Court jurisdictions. All but two offices are directed by Special Agents in Charge (SACs) who are also responsible for the various resident agencies within their jurisdiction. Each SAC is generally assisted by one or two Assistant SACs, depending on the size of the field office. The two largest field offices, New York and Los Angeles, are headed by Assistant Directors. They are assisted by several SACs, each responsible for a broad functional or investigative area.

Field offices are organized along functional lines by squads, which are specifically responsible for investigating activities such as organized crime, espionage, and domestic intelligence and for investigating other criminal or security violations. Each squad is generally headed by an agent supervisor; however, the SAC and Assistant SAC often head a squad in addition to carrying out their overall responsibilities.

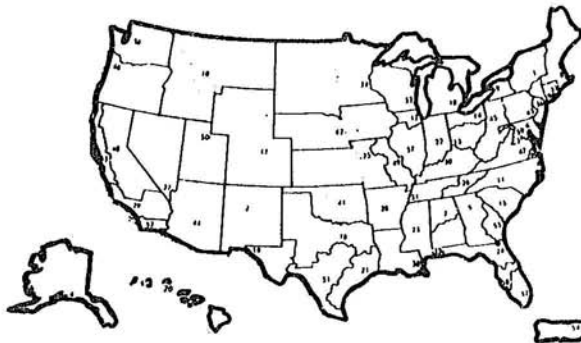
The number and makeup of squads in each field office varies from a few squads in smaller field offices each covering several investigative areas to numerous more specialized



ORGANIZATION OF THE FBI



FBI FIELD OFFICES



1 ALBANY	21 HOUSTON	41 OKLAHOMA CITY
2 ALBUQUERQUE	22 INDIANAPOLIS	42 OMAHA
3 ALEXANDRIA	23 JACKSON	43 PHILADELPHIA
4 ANCHORAGE	24 JACKSONVILLE	44 PHOENIX
5 ATLANTA	25 KANSAS CITY	45 PITTSBURGH
6 BALTIMORE	26 KNOXVILLE	46 PORTLAND
7 BIRMINGHAM	27 LAS VEGAS	47 RICHMOND
8 BOSTON	28 LITTLE ROCK	48 SACRAMENTO
9 BUFFALO	29 LOS ANGELES	49 ST. LOUIS
10 BUTTE	30 LOUISVILLE	50 SALT LAKE CITY
11 CHARLOTTE	31 MEMPHIS	51 SAN ANTONIO
12 CHICAGO	32 MIAMI	52 SAN DIEGO
13 CINCINNATI	33 MILWAUKEE	53 SAN FRANCISCO
14 CLEVELAND	34 MINNEAPOLIS	54 SAN JUAN
15 COLUMBIA	35 MOBILE	55 SAVANNAH
16 DALLAS	36 NEWARK	56 SEATTLE
17 DENVER	37 NEW HAVEN	57 SPRINGFIELD
18 DETROIT	38 NEW ORLEANS	58 TAMPA
19 EL PASO	39 NEW YORK	59 WASHINGTON, D.C.
20 HONOLULU	40 NORFOLK	

squads in larger offices. For example, in the 10 field offices we visited, the number of squads varied from 5 in Columbia, S.C., which had 70 agents assigned and about 1,900 pending investigative matters ^{1/} as of June 30, 1975, to 51 squads in New York, which had 973 agents and about 14,900 pending investigative matters. One squad in Columbia is responsible for conducting all domestic intelligence investigations as well as foreign counterintelligence, civil rights, and selective service investigations. New York, on the other hand, has one squad which handles only "extremist" investigations.

The number of agents, squads, and pending investigative matters as of June 30, 1975, in each office we visited are shown in the following table, together with comparative totals for all FBI field offices.

	<u>Agents</u>	<u>Squads</u>	<u>Pending investigative matters</u>	<u>Average cases per agent</u>
New York	973	51	14,910	15.3
Los Angeles	497	27	12,913	26.0
San Francisco	350	19	8,427	24.1
Chicago	361	19	8,152	22.6
Atlanta	132	9	3,429	26.0
Sacramento	93	6	2,762	29.7
San Diego	91	5	2,697	29.6
Buffalo	81	6	2,267	28.0
Springfield	80	6	1,972	24.7
Columbia	<u>70</u>	<u>5</u>	<u>1,908</u>	<u>27.3</u>
Total	<u>2,728</u>	<u>153</u>	<u>59,437</u>	-
Average	273	15	5,944	21.8
Total (59 field offices)	7,455	449	182,944	-
Average (59 field of- fices)	126	8	3,101	24.6

^{1/}"Investigative matter" is an administrative term used by the FBI to measure workload. It should not be confused with a case or investigation which may entail many investigative matters. (Further explanation is provided on p. 132.)

FILING AND INDEXING INVESTIGATIVE INFORMATION

Information gathered during FBI investigations is cataloged in investigative files and on index cards. During fiscal year 1975, FBI headquarters had about 6.5 million files and about 59 million index cards. In addition, each field office participating in an investigation also creates investigative files and index cards on all subjects of investigations.

The files contain all material, evidence, or documents collected during an investigation. Individual investigative files are numbered sequentially at FBI headquarters and field offices within each of 185 different investigative classifications. Each case classification indicates the type of violation investigated, such as kidnapping, or bank robbery. Investigative files within a particular classification are prefaced with the classification number and numbered sequentially without regard to whether the case is on an organization or individual or whether the field office is primarily responsible for the case or is merely assisting another office in the investigation.

For example, if domestic intelligence investigations on extremists were classification number "1," a case numbered "1-1234" in a particular FBI field office might concern a local extremist group for which that office has prime investigative responsibility. A case numbered "1-1235" in the same field office might concern the local activities of a leader of a national extremist organization whose overall investigation is being directed and coordinated by another FBI field office.

Individual pieces of correspondence, reports, or other documents to be included in an investigative file are stamped with the case or file number followed by a group of numbers called a serial number. Serial numbers are assigned sequentially as information is added to a file. Therefore, a document stamped "1-1234-45" indicates 44 other documents were previously included in the file.

A multipurpose alphabetical index of 3 by 5 cards is the link to retrieving information from the FBI headquarters and field office investigative files. All documents entering the FBI are automatically reviewed. The names of most individuals or organizations mentioned are indexed. Once filed, the cards serve as the primary means of retrieving information by subject matter and of determining when individuals or organizations might have been involved in other FBI investigations. Secondly, the cards serve as a basis for completing FBI name check searches to assist in such matters as Federal security clearances.

Two types of cards are included in the indexes--subject cards and cross reference cards. Subject cards are prepared only on the main subject of reports or correspondence. If the reports or correspondence concern an individual, the card should contain the individual's name, aliases, date and place of birth, and social security number. In addition, the card should contain, if available, the occupation, employer, military service number, residence, or any other data which might specifically identify the subject. Cross reference cards are prepared for all other names mentioned in correspondence or reports, including aliases and nicknames of each individual, names in titles of reports, and other names or data requested by special agents to be indexed. Generally, identifying data, such as date of birth and social security number, is not always available on such individuals, but it will be included on the card if available. Cross reference cards also contain the case file number and serial number of the original document used to index the card.

ORGANIZATION OF DOMESTIC INTELLIGENCE OPERATIONS

The Intelligence Division is responsible for directing and coordinating all FBI investigations of foreign intelligence and internal security or domestic intelligence matters. The division has two branches--Counterintelligence and Internal Security.

The Counterintelligence Branch counters, combats, and observes the activities of contingents of unfriendly foreign governments within the United States and enforces statutes, such as the Foreign Agents Registration Act. The Internal Security Branch supervises and coordinates all investigations of subversives and extremists relating to the internal security of the United States and does research for the entire division. Its investigative jurisdiction covers sabotage, treason, insurrection, rebellion, seditious conspiracy, and advocating the overthrow of the Government or depriving citizens of their civil liberties or rights and other matters.

Our review focused primarily on the Internal Security Branch, since it administers the FBI's domestic intelligence activities. The branch has three sections--Extremist Section, Subversive Section, and Research Section. Each section has several units responsible for supervising specific types of investigations either nationwide or within a specific area.

The Extremist Section is responsible for supervising investigations of individuals and organizations categorized as "black, white, or American Indian extremists." It is concerned with Communist influence in extremist matters and

the operation and development of extremist informants. The section, which had 8 agents as of June 30, 1975, has a Civil Disorders Reporting Unit and four other units responsible for investigations in specific regions.

The Extremist Section formulates policy, furnishes guidance to field offices, and insures that the FBI's responsibilities in the extremist investigative area are discharged adequately. The section is also responsible for developing special programs for handling racial intelligence relating to riots, disturbances, demonstrations, and other acts of civil disobedience and for promptly disseminating to appropriate Government officials and agencies pertinent information developed as a result of relevant investigations.

The FBI has termed "extremist" and publicly announced it has investigated, according to policies and procedures developed by the Extremist Section, many major groups and affiliated individuals. Some of the groups are the Black Panther Party, the Black Liberation Army, the Symbionese Liberation Army, the Ku Klux Klan, the Nation of Islam, and the American Indian Movement.

The Subversive Section is responsible for supervising investigations relating to the activities of revolutionary Communist organizations, groups, and individuals. It is also responsible for investigating revolutionary fugitives who have been involved in terrorist activities and for the development and use of subversive informants. The section, which had 19 agents as of June 30, 1975, has 2 units responsible for investigating Communist groups; 2 units responsible for investigating revolutionary, urban guerrilla type groups in specific regions; and an informant control unit.

Other functions of the Subversive Section include (1) formulating policy and furnishing guidance to field offices on subversive matters, (2) initiating and reviewing the results of subversive programs and investigations and disseminating pertinent intelligence data to Government officials and agencies, and (3) maintaining the FBI's Administrative Index (ADEX) of subversive and extremist individuals it considers extremely dangerous.

The FBI has labelled "subversive" and publicly stated it has investigated, according to policies and procedures developed by the Subversive Section, many groups and affiliated individuals. Some of the groups are the Communist Party, USA; the Socialist Workers Party; the Progressive Labor Party; Students for a Democratic Society; and the Weatherman.

The Research Section acts as a service agency for the Intelligence Division by preparing research papers and

analyses on broad intelligence areas when requested by supervisors in both the Counterintelligence and Internal Security branches. Most assignments handled by the section are requested by the Counterintelligence Branch. In addition, the section is specifically responsible for (1) preparing requests for authorization for electronic surveillance, maintaining departmental policies on the use of electronic surveillance, and monitoring electronic surveillance records; (2) serving as instructors and establishing schools for agents before they are assigned to counterintelligence work; and (3), advising the FBI on how new bills and legislation will affect the Intelligence Division. As of June 30, 1975, the section had 20 agents assigned to 4 units--Training, Central Research, Special Records and Related Research, and Analytical Research.

In carrying out their investigative responsibilities, the Extremist and Subversive sections deal and coordinate with field office squads responsible for initiating and conducting domestic intelligence investigations. Field office squads are generally not assigned sole responsibility for conducting subversive and extremist investigations but will also be responsible for conducting other security and criminal investigations.

The following table shows by field office visited during this review the number of squads having some domestic intelligence responsibility and the estimated number of agents assigned to those squads as of January 1975.

<u>Field office</u>	<u>Squads with some domestic intelligence responsibility</u>	<u>Agents on squads with some domestic intelligence responsibility</u>	<u>Estimated total equivalent full-time agents on domestic intelligence investigations (note a)</u>
San Francisco	5	86	86
New York	7	82	82
Los Angeles	3	59	59
Chicago	3	36	36
San Diego	2	14	14
Buffalo	2	22	11
Sacramento	1	11	11
Atlanta	1	15	8
Springfield	2	36	3
Columbia	<u>1</u>	<u>6</u>	<u>3</u>
	<u>27</u>	<u>367</u>	<u>313</u>

a/Based on percentage of time spent by agents on domestic intelligence investigations, i.e. five agents spending 80 percent of time on domestic intelligence equals four equivalent full-time agents.

CHAPTER 3

LEGAL AUTHORITY FOR FBI

DOMESTIC INTELLIGENCE OPERATIONS

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 the authorities cited by the FBI are generally ambiguous in that some do not explicitly delegate investigative authority, while others leave unclear what groups are to be investigated and what circumstances warrant commencing investigations. A summary of our detailed analysis of the FBI's authority for intelligence investigations (app. IV to this report) appears below.

PRESIDENTIAL STATEMENTS AND DIRECTIVES

In August 1936, President Roosevelt had several meetings with FBI Director J. Edgar Hoover to discuss the President's concern about subversive activities, "particularly [those of] Fascism and Communism." As reflected in Mr. Hoover's August 24 and 25, 1936, memorandums of those meetings, the President showed a desire for intelligence information about these two movements.

Subsequently, pursuant to a statutory procedure previously outlined by Mr. Hoover to President Roosevelt, the Secretary of State requested the FBI to conduct an investigation to obtain the desired information. This request was approved by the Attorney General in September 1936.

Thus the FBI began intelligence gathering activities in September 1936 (not from a direct order by the President, but from a request by the Secretary of State) conforming to the statutory requirements of the FBI's 1936 appropriation act that stated:

"Detection and prosecution of crimes: * * * for such other investigations regarding official matters under the control of * * * the Secretary of State as may be directed by the Attorney General * * * ."

The FBI asserts that the statements attributed to President Roosevelt in 1936 authorized and directed it to conduct intelligence investigations of subversive activities. Certainly, Mr. Hoover's August memorandums reflecting those statements show a Presidential desire for intelligence information. But, intelligence about what? Subversive activities are mentioned but never defined, and an overall reading of the same memorandums shows a particular Presidential concern only about the Communist and Fascist movements within the country. They are in fact the only groups or movements specifically mentioned in the memorandums. And, the Secretary of State's request to Mr. Hoover, made pursuant to the 1936 appropriation act, seems to have been only to investigate Communist and Fascist activity.

Did President Roosevelt desire an investigation of Communists and Fascists only, of similar groups dominated or controlled by a foreign government, or of all domestic groups whether foreign controlled or not? Any answer, because of a lack of definition for "subversive activities" and because of general ambiguity in the memorandums, must be speculative. However, the request for investigation made by the Secretary of State, after he had been advised by the President that the Communist and Fascist movements were international in scope and controlled by foreign powers and, consequently, that their activities fell within the scope of foreign affairs, suggests that the President's concern was, at most, in the prewar year of 1936, limited to organizations having some connection with a foreign government.

Whatever may be deduced from Mr. Hoover's memorandums of August 24 and 25, 1936, it is clear that from the earliest times he acted as if he had received broad authority to investigate subversive activities in general, whether groups or individuals, and not just the Communist and Fascist movements or other similar organizations controlled or directed by foreign governments. Mr. Hoover's letter to FBI field offices on September 5, 1936, following his meeting with the President and the Secretary of State reads:

"The Bureau desires to obtain from all possible sources information concerning subversive activities being conducted in the United States by Communists, Fascists and representatives or advocates of other organizations or groups advocating the overthrow or replacement of the Government of the United States by illegal methods. * * * It is desired, accordingly, that you immediately transmit to the Bureau any information relating to subversive activities on the part of any individual or organization, regardless of the source from which this information is received."

In June and September 1939, President Roosevelt issued directives relating to investigations of espionage, counter-espionage, sabotage, and neutrality act matters by the FBI and certain military intelligence agencies. Intelligence investigations are not explicitly mentioned, nor is the FBI explicitly delegated authority to conduct investigations of subversive activities.

President Roosevelt's June 26, 1939, confidential directive issued for the guidance of Government agencies states his desire that "the investigation of all espionage, counter-espionage, and sabotage matters be controlled and handled by the Federal Bureau of Investigation * * *" and certain military intelligence agencies. The directors of the three agencies involved were to function as a coordinating committee. No other agencies were to investigate " * * * into matters involving actually or potentially any * * *" of these specified matters, and the heads of all other investigative agencies were to immediately refer to the Bureau information "bearing directly or indirectly on espionage, counterespionage, or sabotage."

The June directive merely assured the primacy of the FBI in the investigation of espionage, counterespionage, and sabotage matters by barring other agencies from such activity and by evidencing a Presidential desire that the FBI (and military intelligence agencies) be responsible for those investigations--investigations that apparently had been conducted by the FBI during and at times since World War I. This distinction between authority and responsibility seems to be recognized by the FBI's own manual. In this context, we do not construe the Presidential directive's phrase "controlled and handled" as authority for intelligence investigations by the FBI but only as fixing responsibility for them.

Yet aside from the question of authority, the directive does provide some basis for concluding that the investigations controlled and handled by the FBI were intelligence investigations. It should be noted that counterespionage is not a crime and that in 1939 certain acts of espionage and all acts of sabotage were not punishable under the espionage and sabotage laws, since criminal penalties did not apply unless the country was at war. Investigations by the FBI (and certain military intelligence agencies) at this time, a time when the United States was not at war, were arguably not intended or conducted for purposes of immediate criminal prosecution under the espionage and sabotage laws. By elimination, the only purpose remaining for the investigations is intelligence.

Because the directive refers to activities, not named groups, investigations of groups and individuals engaged, or possibly engaged, in those activities might not necessarily be limited to groups or individuals subject to a foreign influence.

President Roosevelt issued the first public Presidential directive on September 6, 1939. The first paragraph stated:

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

The second paragraph stated that: "This task [taking charge of investigative work] must be conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated" to avoid confusion.

The last paragraph requested information in the following terms:

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

This directive provided public notice of prior Presidential instructions that the FBI was to take charge of matters relating to espionage, sabotage, and neutrality law violations and also requested that law enforcement officials turn over to the FBI information on those subjects and on counterespionage and subversive activities. Obtaining the referral of information to the FBI by law enforcement officials was, in fact, the sole motivation for the issuance of this directive since the FBI had requested it upon learning that a sabotage squad had been established in one large city police force. The aim of this directive was basically the same as that of the confidential June 1939 directive--to maintain and insure a steady and direct flow of information to the FBI--except that the impediment to the information flow addressed by this directive was local law enforcement agencies, not other Government agencies.

The September 1939 directive, then, did not and was not intended to delegate authority to the FBI to conduct intelligence investigations of subversive activities in general.

The September 6, 1939, directive was referred to in three subsequent Presidential directives. These later directives were also, judging from their language, designed to solicit information from the public for the FBI along the lines of the September 6 directive. They did not, by their terms, delegate investigatory authority or fix investigatory responsibility on the FBI. Their issuance may have been dictated by the events of the times or by new legislation, but we know of nothing that would impart to these directives a meaning or purpose beyond the obvious one of assuring a flow of information to the FBI.

The first of the three was issued on January 8, 1943, by President Roosevelt. This directive summarized the FBI investigative activities mentioned in the September 6, 1939, directive as relating to "espionage, sabotage and violations of the neutrality regulations," and, in addition to reminding law enforcement officers of the request made to them in the earlier directive, suggested that "all patriotic organizations and individuals" also report such information to the FBI.

The second was President Truman's directive of July 24, 1950. This directive stated that Presidential directives had been issued September 6, 1939, and January 8, 1943, providing that the FBI "should take charge of investigative work in matters relating to espionage, sabotage, subversive activities and related matters." (Underscoring supplied.) This was in fact a misstatement of the language of the earlier directives, which were directed to "espionage, sabotage, and violations of the neutrality regulations." The Truman directive, then, reiterated the request for all law enforcement officers to report information on these matters to the FBI and the suggestion that patriotic organizations and individuals do likewise.

The third, issued by President Eisenhower on December 15, 1953, referred to the requests of the earlier directives that law enforcement officers report to the FBI information "relating to espionage, sabotage, subversive activities and related matters." The directive then recited the investigative responsibility of the FBI under the Atomic Energy Act, requested Federal and State enforcement officers to report to the Bureau information relating to violations of that act, and suggested that patriotic organizations and individuals do likewise. Considered in context, the reference to the prior directives was only to establish a precedent upon which to request information on Atomic Energy Act violations.

The first mention in the directives of investigative work in the area of subversive activities, then, was in the 1950 Truman directive. But that mention did not purport to impose investigative responsibility for subversive activities; it was only a reference to the prior directives as providing that the Bureau should take charge of investigative work in matters relating to, among others, subversive activities. And since the prior directive did not so provide, it cannot fairly be said that the FBI received responsibility to investigate subversive activities from the Truman Presidential directive.

In sum, the Presidential statements and directives did not, whether considered individually or collectively, explicitly delegate authority to the FBI to conduct intelligence investigations of subversive activities. To the extent, if any, that they fixed responsibility on the FBI for such investigations, they did not explicitly indicate that all types of domestic groups and individuals were subject to investigation or clearly indicate what constitutes subversive activities or subversion. Responsibility was fixed in the FBI only for investigations of espionage, counterespionage, sabotage, and neutrality act violations. While subversive activities may include these specific matters, the FBI's investigative responsibilities were delineated only in terms of these specifics.

What is clear, however, is that, pursuant to the June and September 1939 directives, the directors of the two military intelligence agencies and the FBI formed a committee, the Interdepartmental Intelligence Conference, and delineated their respective investigative responsibilities in the areas of espionage, counterespionage, sabotage, and subversive activities. 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.

STATUTORY AUTHORITY

The FBI asserts parallel and preexisting statutory authority to conduct domestic intelligence investigations in addition to the asserted authority derived from the Presidential directives and statements.

The FBI thinks that 28 U.S.C. 533 authorizes intelligence investigations of groups and individuals who have violated or who are engaged in activities that may violate a substantive criminal statute such as that pertaining to seditious conspiracy, 18 U.S.C. 2384. Section 533 provides:

"The Attorney General may appoint officials--

- (1) to detect and prosecute crimes against the United States; * * * ."

The detect and prosecute language, like other provisions of section 533 relied on by the FBI as justification for intelligence investigations, had its genesis in appropriation acts applicable to the Department of Justice. The historical note following section 533 reports that similar language has been contained in each Department of Justice appropriation act since 1921; our research indicated its existence as early as 1871. As to the Department of Justice, the detect and prosecute language first appeared in H.R. 3064, ultimately enacted as the Sundry Appropriations Act of March 3, 1871.

As originally passed by the House and reported to the Senate, H.R. 3064, unlike prior appropriation acts applicable to the Office of the Attorney General, lacked language providing for expenditures in aid of the "prosecution of crimes against the United States." The Senate Committee on Appropriations recommended to the Senate an amendment to H.R. 3064 that would provide, among other things, an appropriation for the "* * * detection and prosecution of crimes against the United States * * * ." The amendment was adopted by the Senate, without objection or discussion. Thereafter, the House, without objection or discussion, adopted the Senate amendment. Apparently there were no written reports on the amendment that might have helped determine what the Congress meant by "detection."

A precise definition of the duties intended to be encompassed by the term "detect" in section 533 is therefore not possible, but its use in conjunction with "prosecute" suggests that matters appropriate for detection are those for which prosecution, as opposed to intelligence gathering, is seriously contemplated. In fact it could well be that the Congress intended "to detect and prosecute crimes" to mean exactly that: to discover (detect) crimes that have been committed and to prosecute the perpetrators. Long-term monitoring of groups and individuals for primarily intelligence purposes may therefore be of questionable propriety when conducted pursuant to this statutory authority. Nonetheless, without a clear indication of what the Congress intended, the FBI's interpretation, that allows the monitoring of groups and individuals for intelligence purposes to detect crimes against the United States, cannot be said to be clearly incorrect.

In addition to the detect and prosecute language, section 533 also allows the Attorney General to appoint officials

"(3) to conduct such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General."

We have already discussed comparable language found in the FBI's appropriation act for 1936 that allowed it to undertake general intelligence investigations of Communist and Fascist movements (and perhaps others) at the request of the Secretary of State. In fact, as early as 1924, the FBI thought that comparable language authorized the investigation of certain domestic activities in connection with State Department recognition of a foreign government.

Aside from investigations initiated at the request of the Secretary of State, section 533(3) has been the basis for intelligence investigations regarding matters under the control of the Department of Justice. Internal security has been one such matter since 1962, when National Security Action Memorandum No. 161 not only brought the Interdepartmental Intelligence Conference under the control of the Attorney General but also assigned to him "primary responsibility" for developing plans, programs, and proposals to protect the internal security of the country. The Attorney General or the Department implemented this responsibility by issuing directives to the FBI.

Department of Justice directives

In September 1967, for example, the Attorney General, as a result of urban riots, charged the FBI to

"use the maximum available resources, investigative and intelligence, to collect all facts bearing on the question as to whether there has been or is a scheme or conspiracy by any group of whatever size, effectiveness or affiliation, to plan, promote or aggravate riot activity."

Later, the Department of Justice requested information from the FBI relating to possible subversive group and individual involvement in campus disorders and militant Indian activities. The requests for information relating to urban riots and campus unrest both recognize prior FBI intelligence activity in each of these areas.

The Department has also issued regulations that relate to the FBI's domestic intelligence activities. They are found at section 0.85, title 28, Code of Federal Regulations, and state:

"0.85 General functions.

"Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Director of the Federal Bureau of Investigation shall:

"(a) Investigate violations of the laws of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency."

* * * * *

"(c) Conduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise.

"(d) Carry out the Presidential directive of September 6, 1939, as reaffirmed by Presidential directives of January 8, 1943, July 24, 1950, and December 15, 1953, designating the Federal Bureau of Investigation to take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and related matters."

EXECUTIVE ORDERS

Finally, the FBI also claims to have conducted intelligence investigations under the authority of Executive Orders 10450 and 11605, dated April 27, 1953, and July 2, 1971, respectively.

Executive Order 10450 establishes programs to insure that the employment and retention of Government employees is consistent with interests of national security. Under the Executive order, each agency is to conduct security investigations of its personnel. However, section 8(d) of the Executive order, as amended, states:

"(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion,

influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation."

The "matters described" include, for example, establishing or continuing an association with any person who advocates the use of force to overthrow the Government of the United States by unconstitutional means or membership, affiliation, or association with any foreign or domestic group which seeks to alter the Government of the United States by unconstitutional means.

Executive Order 10450 also effected a general revocation of Executive Order 9835, dated March 21, 1947, also dealing with Government employee loyalty programs, except for a provision that the Department of Justice provide the Loyalty Review Board certain information developed by its investigations and determinations. That provision was saved, but the information was now to be provided directly to the head of each department or agency. The function so saved, as it appeared in Executive Order 9835, was:

"3. The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

"a. The Loyalty Review Board shall disseminate such information to all departments and agencies." (Underscoring supplied.)

Executive Order 11605 amended Executive Order 10450, in part, by authorizing the Subversive Activities Control Board, upon petition of the Attorney General, to hold hearings to determine whether any organization is totalitarian, Fascist, Communist, subversive, or seeks to overthrow the Government of the United States or any State by unlawful means.

This authority was revoked nearly 3 years later, but the FBI says of the authority derived from Executive Order 11605:

"By inference, the FBI, as investigative arm of the Attorney General, would develop evidence for hearings required [by the Subversive Activities Control Board]. Also, FBI, by inference, would develop evidence of membership in such organizations, which may be basis for denial of Government employment."

The FBI, then, has taken the position that the Attorney General, under these Executive orders, had the responsibility to provide information about groups and organizations to the departments and agencies, or to the Subversive Activities Control Board, information which he or she could obtain only as a result of FBI intelligence investigations.

CONCLUSIONS

We do not concur in the FBI's interpretation of Mr. Hoover's August 1936 memorandums and the later Presidential directives as providing or evidencing a Presidential delegation of authority to conduct intelligence investigations of subversive activities and subversion. The FBI's commencement of intelligence activities in 1936, made at the request of the Secretary of State, did conform to the language contained in the FBI's appropriation act. But we point out that the Secretary's request was apparently limited to investigation of Communist and Fascist activities.

As to the authority now asserted to conduct domestic intelligence investigations based on 28 U.S.C. 533 and various Executive orders, however, we cannot say that it does not exist. The problem with the FBI's authority even under these delegations remains: it is not clearly spelled out, but must be distilled through an interpretive process that leaves it vulnerable to continuous questioning and debate.

On the basis of our review of FBI authority and responsibility for domestic intelligence investigations, there is a need for legislation that clearly provides such authority and delineates it in terms of objectives, scope, and functions encompassed.

Chapter 4

POLICIES AND CRITERIA FOR

DOMESTIC INTELLIGENCE INVESTIGATIONS

FBI policy 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 leaders of subversive or extremist groups or those who demonstrate a propensity for violence.

In practice, individuals are investigated for domestic intelligence purposes, usually, because of their associations with groups the FBI has characterized as subversive or extremist regardless of whether the group is violent.

On the basis of our work showing the results of such efforts, many FBI decisions to investigate certain individuals appear questionable. This apparently resulted from the vagueness of FBI policy documents, which call for FBI agents to make considerable judgments as to the threats posed by the individuals.

WHAT IS FBI DOMESTIC INTELLIGENCE POLICY?

Four major policy documents govern FBI operations:

- The Manual of Instructions.
- The Manual of Rules and Regulations.
- The Agent's Handbook.
- Letters to SACs of Field Offices.

The most important document for understanding FBI investigative policy is the Manual of Instructions. It is divided into specific sections. Each explains how to investigate a specific crime or related investigative techniques, such as surveillance and raids. The principal sections dealing with domestic intelligence investigations are those pertaining to subversives and extremists.

The Manual of Rules and Regulations contains broad administrative rules, regulations, and procedures for administering FBI headquarters and field office operations. Some sections dealing with dissemination, communication, and indexing and filing directly affect the FBI's investigative functions.

The Agent's Handbook is an abridged version of the Manual of Instructions and the Manual of Rules and Regulations. Each agent receives a handbook. Only the field squad supervisors and headquarters section chiefs receive the Manual of Instructions. The sections pertaining to extremist and subversive investigations provide instructions on whom to investigate; what investigative steps should be followed in conducting an investigation; and how, when, and to whom reports should be made.

SAC memorandums are directives from the FBI Director to all SACs of FBI field offices. While they advise SACs on various topics concerning the operations of field offices and personnel policies, they also serve to continually update the Manual of Instructions. SAC letters may also inform the field of new investigative emphasis within the FBI.

In addition to the above-cited policy documents, supplemental supervisory instructions are routinely communicated to the field by teletypes and letters. They may provide instructions on the investigative steps to be followed in investigating specific groups. They may detail reporting requirements, apprise the field offices of the tactics or strategies of groups under investigation, or direct the field offices to concentrate their investigative effort. Additionally, these communications can contain the only references to new or ongoing investigative programs used by the FBI.

CRITERIA FOR PREDICATING INVESTIGATIONS

Appropriate FBI policy documents, last substantially revised in 1973, have emphasized that groups and individuals characterized as subversive or extremist are investigated because their actions may result in violations of criminal statutes. Although the Manual of Instructions directs agents to be alert for violations of any Federal statutes, domestic intelligence investigations are generally predicated upon the following statutes:

1. 18 U.S.C. 2383--Rebellion or Insurrection--prohibits the incitement, initiation, participation in or assistance to any rebellion or insurrection against the authority of the United States or its laws.
2. 18 U.S.C. 2384--Seditious Conspiracy--prohibits two or more persons within the jurisdiction of the United States from conspiring,

"* * * to overthrow, put down, or to destroy by force, the Government of the United States, or to levy war against them, or to

oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof * * * ."

3. 18 U.S.C. 2385--Advocating the Overthrow of the Government--prohibits the knowing or willful advocacy, aid, advisement, or teaching of the duty, necessity, desirability, or propriety of overthrowing or destroying the Government of the United States or any political subdivision by violence or by the assassination of any officer of any such government.

In addition, certain extremist groups may be investigated under 18 U.S.C. 241 (the Civil Rights Act of 1968). Subversive organizations and individuals may be investigated under 50 U.S.C. 783(a) (the Internal Security Act of 1950).

Current FBI investigations are based on statutes as a result of an extensive 1972 and 1973 internal FBI review of the legal basis for domestic intelligence investigations. The conclusion of the study was that the FBI derived its authority to conduct such investigations from statutes. Previously, the FBI based its authority on appropriate statutes as well as Presidential communications and Executive orders. (See ch. 3.)

As a result of the decision, the appropriate sections of the Manual of Instructions were revised in August 1973 to reflect the statutory basis. To comply with the revised manual, FBI headquarters developed statutory bases for investigating groups characterized as subversive or extremist. All leaders, members, or associates of groups under investigation are to be investigated under the same statutes used for investigating the groups. Continuing association with a group therefore implies acceptance of its subversive or extremist objectives, according to the FBI.

Four different examples follow of FBI approved predications which were cited, almost verbatim, as the basis for investigating every individual, we sampled, associated with the mentioned groups. The judgment to investigate such individuals was not based on necessarily whether they were possibly violating any statutes but whether the group they associated with might be.

1. "This investigation is based on information which indicates that * * * [the Communist Party,

USA] is engaged in activities which could involve a violation of Title 18, U.S.C. 2385 (Advocating Overthrow of the Government), 2383, (Rebellion or Insurrection), 2384 (Seditious Conspiracy); or Title 50, USC 781-798 (Internal Security Act of 1950 and the Communist Control Act of 1954)."

2. "This investigation is based on information which indicates * * * [the Vietnam Veterans Against the War] is engaged in activities which could involve violations of Title 18, USC 2383 (Rebellion or Insurrection), 2384 (Seditious Conspiracy), 2385 (Advocating Overthrow of the Government), 2387 (Sedition), 793 (Espionage), 844 (Explosives and Incendiary Devices), 2155-56 (Sabotage) and 2101 (Antiriot Laws)."
3. "Investigation of the Black Panther Party is based on information which indicates the * * * [Party] is engaged in activities which could involve a violation of Title 18, USC, Section 2383 (Rebellion or Insurrection), 2384 (Seditious Conspiracy), or 2385 (Advocating the Overthrow of the U.S. Government)."
4. "This investigation is based on information which indicates that * * * [the Ku Klux Klan] is engaged in activities which could involve a violation of Title 18, USC 241 (Conspiracy against rights of citizens); Section 245 (Federally protected activities), Civil Rights Act of 1968; or related Civil Rights Statutes."

FBI officials stated that domestic intelligence investigations are based on criminal statutes to control the scope of investigations (to prevent overly broad inquiries) and to insure that only potential threats to the national security are investigated. Yet, the extensive 1972 FBI prepared study of its legal authority concluded that the statutes would still permit the FBI to continue its domestic intelligence investigations in largely unaltered fashion.

FBI officials believe the manual's criminal statutory bases have restricted the scope of domestic intelligence investigations. As shown in chapter 9, domestic intelligence investigations have declined since 1973. However, we agree with those FBI officials who said that the impact of the statutory bases cannot be assessed and that the caseload decline probably resulted from the relative domestic tranquility following the U.S. withdrawal from the Vietnam War and reduced racial extremism.

The Intelligence Division has recognized the weaknesses of using criminal statutes as bases for investigations. In a written statement provided us in September 1975 it set forth the objectives of domestic intelligence investigations. The Division said:

"That the scope of domestic security investigations has been limited to activities which may fall within the Federal criminal law should not obscure the primary purpose of these inquiries: to anticipate threats to domestic security and provide timely information to Government officials. Prosecution is a secondary objective, which is frequently unobtainable consistent with more valuable continuing coverage.

"Thus, the FBI's domestic security function is to obtain information which will enable the Attorney General to fulfill responsibilities which relate to the enforcement of Federal statutes but which also require that the Attorney General be provided, on a continuing basis, with information upon which to make assessments and policy recommendations pertaining to specific, nonpenal, aspects of the Nation's internal security program which are administered by the Department of Justice."

Thus, the real reason for domestic intelligence investigations is obscured.

The FBI primarily appears to justify domestic intelligence investigations on the need to provide the Attorney General and other officials " * * * with information upon which to make assessments and policy recommendations pertaining to specific nonpenal, aspects of the Nation's internal security program * * *." But, as we discuss in chapter 10, the Department of Justice has never had the capability to conduct a continuous, adequate analysis and assessment of FBI domestic intelligence investigations to determine what changes in national policy should be made as a result of such investigations.

CRITERIA FOR SPECIFIC INVESTIGATIONS

The Manual of Instructions, as noted earlier, contains separate chapters pertaining to subversive and extremist investigations. But, the two sections are nearly identical in setting forth purposes of investigations and information to be developed during the investigations.

However, the manual does not specify circumstances needed to justify opening an investigation because of a potential violation of the previously mentioned statutes.

FBI officials provided us examples of activities, which, if engaged in by groups or individuals, would, in their opinions, warrant opening a domestic intelligence investigation.

Any groups which justify the use of violence to achieve their political goals are of interest. Thus, any group espousing Marxist-Leninist or Maoist philosophy is of investigative interest. Such groups are of priority interest (1) if they operate clandestinely or (2) if they couple revolutionary rhetoric with developing a capability to commit violence, such as buying and storing arms, engaging in organized firearms practice, purchasing survival equipment, or robbing banks to fund their activities.

According to FBI officials, the rhetoric of a group or individual is sufficient to attract initial investigative interest when, if followed to its logical conclusion, it could result in criminal violations and affect the Nation's security. Officials said noticeable membership growth by a group espousing revolution could also be sufficient justification for FBI investigation.

FBI officials stressed that investigative decisions are based upon the judgments of the agents--their knowledge of the activities and methods of operation of major subversive and extremist groups and their knowledge of extremist and subversive activity in their areas. We believe decisions have to be made this way because the basis for such investigations is ambiguous and specific criteria delineating when to initiate them is lacking.

Investigations of organizations

The goal when investigating an apparent extremist or subversive group is to determine the extent to which the group threatens the national security. If the FBI determines that a group might resort to violence and other extremes to achieve its objectives, the FBI endeavors to assess the group's ability to accomplish its objectives.

To assess the threat posed by a subversive or extremist organization, the Manual of Instructions indicates that the following information should be gathered:

- Stated aims and purposes, particularly when the rhetoric advocates violence or illegal activity.
- Identities of leaders, with particular interest directed at those with subversive or extremist backgrounds.

- Membership information.
- Publications which clearly depict the subversive character of the organization.
- Sources of finances, with particular attention to funding by foreign elements.
- Evidence of foreign influence.
- Connections with other subversive or extremist groups.
- Summary of activities with particular reference to activities involving violence or threatened violence and reflecting the success or failure of the organization in achieving its goals.

Investigations of individuals

Individuals are investigated under the same authority as groups. The Manual of Instructions states investigations must show evidence of violation of 18 U.S.C. 2383-85 or other statutes. According to some FBI officials, in essence, the purpose of the investigations is to assess the individuals' loyalties to our Government.

According to the Manual of Instructions, the following extremist individuals are investigated:

- Officers and leaders of extremist organizations.
- All other members of extremist organizations who have demonstrated a propensity for violence.
- Individuals not affiliated with extremist organizations but having demonstrated strong extremist attitudes and an inclination to employ violence.

The following subversive individuals are investigated:

- Current, active members of subversive organizations or movements.
- Individuals actively supporting the subversive goals of a movement when the movement is not formally organized.

In addition, the manual provides for 90-day, preliminary investigations on individuals in contact with known subversives, to determine the purpose of the contacts.

To determine whether an individual is involved in criminal violations, the Manual of Instructions directs field agents to obtain:

- Details of a subject's involvement in subversive or extremist activity.
- Facts pertinent to assessing the subject's propensity for violence.
- Background data for identification purposes to include: date and place of birth, past and present residences, occupations and employments, citizenship status, family background, military records, educational background, arrest record, physical description, and photograph. (Investigations of extremists should also determine descriptions of automobiles, including license plates; social security numbers; and close associates.)

The manual suggests that the desired background information be gathered from public source material, the files of the FBI and other Federal and local government agencies, and the records of private firms. When further information is required, agents are instructed to contact the neighbors and fellow employees of the extremists. Established sources and informants are contacted to get information regarding the subject's association with subversives or extremists. Finally, the manual indicates that physical and photographic surveillances should be considered when needed.

In addition to the investigative steps described above, the Manual of Instructions states that subjects of investigations should be interviewed in the absence of a " * * * sound basis for not doing so." In fact, when an investigation is closed without interviewing the subject, the agent must justify this in his or her final report.

The manual indicates that the main purpose of the interview is to develop intelligence information on the subject's activities. However, FBI officials provided additional rationales for interviews:

- An opportunity to assess whether an individual would be a good informant. The manual informs agents that they must strive to develop informants at every level of an organization being investigated. Informants can only be developed through personal contact.
- To confront the subject with the facts concerning the organization of which he or she is a part.

--To make the subject aware of the FBI's interest in his or her activities, which could lead him or her to reconsider his or her activities.

Increasingly, groups under FBI investigation have considered FBI interviews as harassment and have advised their members not to cooperate with FBI agents. In a recent interview, a spokeswoman for the Socialist Workers Party referred to a 1974 Counterintelligence Program (COINTELPRO) report by then Assistant Attorney General, Henry Peterson, to buttress her argument that the FBI was continuing the alleged harassment associated with COINTELPRO.

The Peterson report, released November 18, 1974, indicated that the interviews, which it said were "totally legal," were implemented as part of COINTELPRO "* * *" in only a small number of instances for the purpose of letting members know that the FBI was aware of their activity and also in an attempt to develop them as informants." The report then noted that interviews were conducted routinely during investigations of individuals and organizations. They were not interviewed at the behest of COINTELPRO.

Determinants of FBI investigations

The manual gives the impression that groups classified as extremist or subversive will be investigated differently. Generally, they are not. Our review indicates that the intensity and scope of investigations vary according to the organizational structure of groups and the violence associated with their members.

According to the FBI, subversive groups have rigid organizational structures with centralized control exercised by the national leadership. Chapters and individual members are subject to strict discipline. Membership can only be obtained after a prolonged observation period. Prospective members spend this period being indoctrinated into Marxist-Leninist or Maoist philosophy. The organization makes heavy demands on the time, talents, and finances of members. The demands may include participating in front groups, infiltrating nonsubversive groups, or accepting geographic resettlement to accept new organizational assignments. Such groups hold closed meetings and may have secret members involved in clandestine work on behalf of the organization.

Individuals in groups fitting the above description are subject to full investigations. As members, they are presumed to recognize that the use of violence as a political tool is inevitable. All members are investigated sufficiently to assess their willingness to use violence for their cause.

Leaders and activists may be subject to continuous investigation.

FBI officials said they try to identify all members of subversive groups for several reasons:

- To develop a complete picture of an organization's activities.
- To assess the ability of a group to act to achieve its stated goals.
- To identify all members of the organization, including secret members.
- To identify attempts to infiltrate nonsubversive groups.
- To conduct an effective Security of Government Employees Program. According to internal FBI communications, the FBI is concerned that members of subversive groups will, at some future time, gain responsible positions not only in Government but also in industry and education.
- To meet the FBI's responsibilities for reporting information to the Secret Service, to help in protecting the President and other Government officials.
- To assess potential informants. FBI officials said no person should be investigated as an extremist or subversive solely to assess his or her chances of becoming an informant.

In contrast to most subversive groups, FBI officials said extremist groups tend to be more openly organized with few prerequisites to membership. Additionally, they tend to be less structured. Members of unstructured groups need not conform to the dictates of the national leadership. Thus individuals can join such groups out of sympathy with objectives yet without a commitment to engage in criminal acts to achieve those objectives. This serves as the FBI rationale for investigating only persons believed to be extremist leaders or violence prone. Factors considered in assessing a subject's propensity for violence include

- evidence of a history of violence,
- actions taken to acquire firearms,

--the study of urban guerilla warfare, and

--threats of violence the subject made.

However, the FBI is interested in investigating only persons whose propensity for violence is associated with a political cause.

Despite the guidelines in the Manual of Instructions for investigations of extremists and subversives, the structure of an organization is a key factor in determining how much coverage it will receive. Thus, all members of a disciplined, secretive extremist group may be investigated, particularly when members of the group have engaged in violent activities. On the other hand, only the leaders of subversive or extremist front groups 1/ are investigated. Members of a front group are attracted to the stated goals of the group but are not subject to the discipline of the subversive group. Therefore, according to FBI policy, they are not investigated.

Investigations could vary when subversive group leaders or members are thought to have infiltrated nonsubversive groups. These are extremely sensitive investigations; they involve investigating political, social, or economic interest groups which may be unaware of the subversive backgrounds of some members. For this reason, the FBI attempts to investigate subversives discreetly.

The FBI's interest is in monitoring whether the subversives gain control of the infiltrated organization. We were told that such infiltrations are always directed by the leadership of the subversive organization and, thus, need to be investigated. The FBI is not interested in investigating members of the infiltrated group, although the FBI will conduct prudent preliminary inquiries of group leaders to determine their relationships with the subversives.

WHAT ARE THE PROCESSES FOR OPENING AND CONTROLLING DOMESTIC INTELLIGENCE INVESTIGATIONS?

Domestic intelligence investigations are usually started by an FBI field office or by request of FBI headquarters or the Justice Department. The investigations are developed and controlled similarly.

Within an FBI field office, the SAC is ultimately responsible for the effectiveness of the investigations, as well as compliance with headquarters instructions. However, the field squad supervisor controls the day-to-day investigations.

1/A group substantially directed, dominated, or controlled by a subversive or extremist group.

The supervisor must insure that

- investigations are made in accordance with the Manual of Instructions and FBI headquarters supplemental investigative instructions and
- a sound basis exists for opening an investigation, for achieving investigative results, and for reporting to headquarters.

Additionally, headquarters officials said the field supervisor is the key control point in the FBI regarding investigations of most individuals, because headquarters supervisors are oriented toward investigating organizations and key individuals.

Preliminary and full-scale investigations

Investigations can be begun either at the preliminary or full-scale level, depending on the available facts and circumstances.

According to FBI policy, a preliminary inquiry may be made when the subject's involvement in subversive or extremist activities is questionable or unclear. It is conducted to further define the subject's involvement and determine whether a statutory basis exists for a full-scale investigation. Frequently, preliminary inquiries are opened because the FBI has information that an individual may be a member of a subversive or extremist group being investigated.

A preliminary inquiry is supposed to be limited to a review of public documents, record checks, and contacts with FBI-established sources. The Manual of Instructions states that a preliminary investigation may last no longer than 90 days, by which time the field office should have determined whether a basis exists for continuing the investigation. The inquiry can be ended any time during the 90 days. The field office does not have to advise FBI headquarters that a preliminary inquiry was opened or closed if the results of the inquiry were negative and it was completed within 90 days.

But, if the investigation is to continue beyond 90 days, the field office must present the facts of the case to FBI headquarters. If, at the end of 90 days, the field office concludes that a basis exists for a more extensive investigation, it must summarize the facts of the case and receive headquarters approval to open a full-scale investigation. Field offices must receive FBI headquarters approval to continue a preliminary inquiry beyond 90 days, if during that time a statutory basis for the investigation cannot be developed.

According to FBI officials, the preliminary inquiry is supposed to have less impact on the subject than an investigation. Before the September 1973 Manual of Instructions revision, the concept of preliminary inquiry existed, but no time limit existed, and field offices had to inform headquarters of all investigation results. FBI officials said the time limit, plus restrictions on sources that could be contacted during a preliminary inquiry were to serve as a check on investigations begun by field offices.

The policy of doing preliminary inquiries is sound. But, in practice, FBI field offices have not adequately distinguished between preliminary inquiries and full-scale investigations. They have not adhered to the 90-day time limit or to restrictions on sources that can be contacted.

According to FBI policy, a full-scale investigation is initiated when the FBI has determined that a subject may have violated a criminal statute, most likely 18 U.S.C. 2383-85. The field office must advise FBI headquarters in writing that a full-scale investigation is being initiated, must report to headquarters within 90 days on the progress of the investigation, and must recommend further investigative action.

The policy distinction between a preliminary inquiry and full-scale investigation, while existing in the Manual of Instructions, does not exist in practice. (See pp. 111 to 116.)

FBI headquarters control

The unit level of the Intelligence Division is primarily responsible for monitoring and supervising investigations. Under the guidance of a unit chief, supervisors review field office communications to insure that they comply with the Manual of Instructions and with supplemental investigative instructions.

Supervisors generally are responsible for monitoring fieldwide investigations of groups and investigations within an area or for supervising an investigative program. Thus, within the Subversive Section of the Intelligence Division, for example, one unit supervises investigations in the East and another unit supervises investigations in the West. Within the eastern unit, one supervisor is responsible for investigating a Maoist group nationwide. Another supervisor, in addition to supervising the investigation of a group, is responsible for supervising the FBI's False Identities Program.

When a 90-day summary report is received at FBI headquarters, it is routed through the unit chief to the headquarters supervisor. The supervisor reviews the field office report to determine whether the investigation, as described, is warranted. He or she drafts a communication to the field office advising it of headquarters' decision. If headquarters agrees with the field office request for the investigation, the communication is prepared in final form, setting forth the statutory basis for the investigation as well as how extensively the leaders and rank-and-file members should be investigated. This is referred to as a "predication" for investigation. Depending upon the circumstances surrounding the investigation, the supervisor may also draft a memorandum highlighting problems or issues he or she believes his or her supervisor should be aware of. The supervisor's memorandum, if approved by his or her unit chief, is forwarded to the section chief for signature.

The section chief signs any communication ordering initiation, continuation, or termination of an investigation. In practice, he or she usually accepts responsibility for approving investigations of new chapters of groups already being investigated.

Numerous circumstances may lead the section chief to forward the draft communication to his or her superiors for approval. An important consideration is the sensitivity of the investigation. Investigations considered sensitive include those involving (1) nonsubversive groups allegedly infiltrated by subversives or extremists, (2) individuals or groups associated with the media or educational institutions, or (3) prominent citizens. Communications to the field involving nationwide investigations are approved by the Assistant Director, Intelligence, or his or her deputy.

The Assistant Director often will forward communications to FBI field offices to the Deputy Associate Director for Investigations, Associate Director, or Director for approval. Any communications to all 59 field offices must at least be approved by the Deputy Associate Director.

According to FBI officials, this policy originates from the need for FBI headquarters to coordinate, among its divisions, the work given to the field offices. It also keeps top Bureau officials informed of developments in important, sensitive investigations.

At any level of review, communication may be questioned. Such questions require approving officials to justify the facts and may lead to redrafting the instructions to the field.

Communications to the field seldom are routed through the FBI's Legal Counsel Division for review. All predications setting forth the legal basis for each investigation are reviewed by legal counsel before final approval.

Decisions are made in the context of a coordinated FBI policy. This policy develops as a result of routine consultations at several levels. The Executive Conference, chaired by the Director and attended by the Associate Directors and all 13 Assistant Directors, considers policy questions concerning the entire Bureau. Within the Intelligence Division, the Assistant Director calls regular conferences attended by his or her deputies and section chiefs. The discussion at this level establishes a consensus by which internal security and counterespionage investigations are conducted. Further consensus is established at section chief meetings. Supervisors are informed of policy decisions at their section meetings.

Inspections

While day-to-day investigative operations are controlled by headquarters' supervision, the annual inspections of FBI headquarters divisions and field offices by the Inspection Division are the major means of assessing the efficiency and effectiveness of FBI operations and administration. The Inspector's Manual sets forth 12 general purposes of inspections. With respect to one purpose, the manual states that inspectors will

"* * * report on whether or not applicable laws, regulations, and instructions have been complied with; resources are used in an economical and efficient manner; desired results and objectives are being achieved effectively * * *."

To accomplish this, Intelligence Division files must be reviewed. The Inspector's Manual states that the most important cases pending will be reviewed, along with "* * * any other files deemed necessary to resolve any apparent weaknesses * * *." The primary purpose of file reviews is to determine the quality of FBI headquarters supervision and guidance. Thus, cases are reviewed to determine, among other things, if they warrant continued investigation, if investigations are being pursued expeditiously, and if reports are being disseminated properly.

Field office inspections are made for the same reasons. In addition, during the annual inspection of each field office, the inspectors review the file of each investigated organization. This helps regulate field investigations,

especially preliminary inquiries of groups which may not have been reported to FBI headquarters.

The Inspector's Manual also requires review of all files pending more than 1 year. It emphasizes the need to report "unwarranted, harmful, or extensive delays in investigation or reporting * * *." Pending cases are to be reviewed to insure that any investigations having covered all logical leads are closed. Additionally, inspectors must review at least 25 percent of the subversive cases closed within the previous year to insure that manual provisions regarding the opening and closing of cases have been complied with.

According to FBI officials, this last provision was included in the inspection process to help enforce the requirements relating to the scope and length of preliminary inquiries. However, no provision was made for a similar review of cases on extremists, although preliminary inquiries also apply to them. But, more importantly, the provision relating to the Inspection Division's review apparently was not adequately used to effectively control preliminary inquiries; many preliminary inquiries exceeded the 90-day limit and FBI headquarters was never advised of a considerable number of such investigations (see pp. 114 to 116).

CONCLUSIONS

Domestic intelligence investigations are exceedingly broad. This is because they are supposed to gather enough information to make the FBI fully aware of the activities of subversive or extremist individuals and groups. Continuing this objective will insure future broad investigations. Moreover, given the broad objectives of domestic intelligence investigations, judgments made by FBI special agents will be crucial in determining how extensive such investigations will be.

The multilevel review of investigative decisions indicates the FBI's desire to strongly control field office investigations. The organizational structure is adequate for communicating changes in investigative policies. What is lacking is any adequate independent assessment of the FBI's domestic intelligence policies and procedures.

The strength of the FBI's structure is also a weakness. Very experienced headquarters agents supervise domestic intelligence cases. They, therefore, can assist investigations by identifying investigative weaknesses and pinpointing investigative leads. But, they are naturally most tied to the FBI's policies and procedures. While they are extremely

capable of making decisions about the adequacy and need for specific investigations, do their positions afford them the proper perspective from which to independently judge the overall scope of the FBI's domestic intelligence operations? We think not. Views from persons outside the FBI are needed.

CHAPTER 5

HOW POLICY IS APPLIED TO

INVESTIGATIONS OF SPECIFIC GROUPS

To better understand how the FBI initiates and manages its domestic intelligence investigations, we selected 18 groups that individuals in our sample cases were most frequently associated with and certain local groups investigated by only 1 FBI field office. We asked the FBI to let us review the appropriate headquarters organization files to determine:

- The basis for initiating the investigation.
- How specific investigative guidelines were developed.
- How the investigations were controlled.
- The extent that Justice Department officials were involved in investigative decisions.

The FBI refused us access to the files. Because of their refusal, appropriate headquarters supervisors reviewed the headquarters control files and, after extensive interviews with us, gave us investigative histories of the groups and copies of communications we would be interested in. Unfortunately, we have no assurance that we received all appropriate communications; FBI officials, not us, determined what was relevant.

NATURE OF GROUPS AND LENGTH OF INVESTIGATIONS

The FBI has publicly stated that it has, or is investigating, 17 of the 18 groups we selected. The FBI has classified 10 of the groups as subversive and 8 as extremist:

Subversive

- Communist Party, USA
- Socialist Workers Party
- Progressive Labor Party
- Students for a Democratic Society
- Venceremos Brigade
- Revolutionary Communist Party
- October League
- National Caucus of Labor Committees
- Weatherman
- Vietnam Veterans Against the War

Extremist

- Symbionese Liberation Army
- Black Panther Party
- Black Panther Party--Clever faction
- Nation of Islam
- Klan groups
- American Indian Movement
- National Socialist White Peoples' Party
- A right wing extremist group not publicly disclosed

The 18 groups have been under FBI investigation an average of about 11 years. Investigations of four groups began before 1960, seven began during the 1960's, and seven began after 1970. Because the threat posed by an organization may change, the FBI continues its investigations over an extended period. The FBI is always concerned, based on past experiences, that a nearly defunct, harmless organization will be revitalized by new leadership.

FBI officials were continually concerned about small Marxist-Leninist study groups suddenly transforming into armed revolutionary bands. As an example, the FBI mentioned the National Caucus of Labor Committees, once an ineffective, loosely knit group, which is expanding rapidly under new national leadership.

FBI investigations continue so long because the FBI has been responsible for terminating the investigations. Bearing responsibility for upholding the law and anticipating violence, the FBI is slow to conclude that further investigation is not warranted. The Department of Justice has seldom questioned the duration of FBI investigations.

CIRCUMSTANCES FOR INITIATING INVESTIGATIONS

The investigative histories of the 18 groups indicates that FBI investigative interest frequently resulted from information developed during ongoing investigations of other groups or individuals. This was true in 9 of the 18 groups. The investigations of the other nine were opened based on specific information related solely to that group's activity.

Commonly, factional disputes within an organization being investigated by the FBI led to the formation of new organizations which became subjects of investigation:

- The Weatherman was formed as a result of a factional dispute at the June 1969 convention of the Students for a Democratic Society.

- The National Caucus of Labor Committees began when persons expelled from the Students for a Democratic Society established their own organization in New York.
- The followers of Eldridge Cleaver formed a splinter group of the Black Panther Party in early 1971.
- The leaders of the Progressive Labor Party were expelled from the Communist Party, USA because of their adherence to the Chinese Communist interpretation of Marxist-Leninism.
- Progressive Labor Party dissidents formed the Revolutionary Union now known as the Revolutionary Communist Party.
- Information developed during the FBI investigation of the Revolutionary Communist Party led to its investigation of the October League.

Other investigations arise as a result of the monitoring of old-line Communists' efforts to infiltrate nonsubversive groups. Thus, initial FBI concern with the Students for a Democratic Society was that it was a target for Communist Party, USA infiltration. Later, the members' militancy resulted in the Students for a Democratic Society being investigated in its own right. The Vietnam Veterans Against the War has been investigated not only because some members and chapters have been involved in militant demonstrations but also because members of the Communist Party, USA and Socialist Workers Party were involving themselves in the group's affairs.

In addition to information developed during ongoing investigations, groups in contact with foreign governments considered hostile to the United States are the objects of FBI investigations. The Communist Party, USA is the prime example. The Socialist Workers Party, while not associated with a foreign government, is investigated because of its association with the worldwide Trotskyist Communist movement. The investigation of the Venceremos Brigade has concentrated on identifying persons subject to recruitment by foreign intelligence services to carry out intelligence assignments or to foment violence in the United States. Continuing contacts by members of the Revolutionary Communist Party and the October League with the People's Republic of China are a matter of FBI investigative concern. The FBI will also investigate a group involved in violence for a political cause. The FBI began investigating the Symbionese Liberation Army after the assassination

of Dr. Marcus Foster, an Oakland, California; school superintendent. The American Indian Movement was investigated after a Justice Department request (following the siege at the Bureau of Indian Affairs in Washington, D.C.) that the movement be investigated.

INVESTIGATIVE COVERAGE

FBI investigations of groups vary according to the organizational structure and violence associated with the groups. The most extensive coverage is given to groups perpetrating violence or controlled by a national headquarters espousing the violent overthrow of the Government. The following table shows the FBI's investigative policy toward the 18 groups.

Full investigation of leaders
and rank-and-file members

Subversive:

Communist Party, USA
Socialist Workers Party
Progressive Labor Party
October League
Revolutionary Communist
Party
National Caucus of Labor
Committees
Students for a Democratic
Society
Weatherman

Extremist:

Black Panther Party
Black Panther Party-
Clever faction
Symbionese Liberation Army
A right wing group not
publicly disclosed

Full investigation of
leaders and activists,
preliminary investigations
of supporters or members

Subversive:

Venceremos Brigade
Vietnam Veterans
Against the War
(only subversive
element)

Extremist:

National Socialist
White Peoples'
Party
Nation of Islam
(with certain
restrictions)

Full investigation of
leaders and activists,
persons at meetings
possibly involving vio-
lation of Federal law

Extremist:

Ku Klux Klan
American Indian Move-
ment (only extremist
element)

Eight of the 10 subversive groups were comprehensively investigated. Both leaders and rank-and-file members were investigated, because membership in the groups implied

that they were subject to organizational discipline and accepted the use of violence for a political cause. Four of the eight extremist groups received the maximum investigative coverage because they demonstrated propensities for violence.

Four groups fall within the second investigative category. While persons associated with three of these groups have been involved in violence, mere membership or association in the groups is not interpreted by the FBI as a willingness to participate in illegal activities. Yet, these groups have been marked by sufficient violence, and members or supporters may be preliminarily investigated to determine their willingness to commit illegal acts. The investigation of Venceremos Brigade is unique. The FBI is concerned with identifying Venceremos Brigade recruits for foreign intelligence services among persons who returned from Cuba. All such travelers are subject to full investigation.

Investigations of the Klan and the American Indian Movement are the least extensive. Only leaders, activists, and persons in attendance when illegal acts are committed or planned are subject to full-scale investigations. Members or supporters are not subjected to preliminary inquiries to determine their propensities for violence.

The FBI uniformly applies its policy toward most local chapters of national groups investigated nationwide. The FBI contends that members or associates of most groups under investigation must be aware of the groups' inherently violent characters because of the ideological training they receive or because of the groups' histories of violence. Investigations are, thus, uniform.

MANAGEMENT CONTROLS

A key factor in the control of FBI investigations is the judgment exercised by special agents. Subjective decisions are made on investigations, from the case agent to the FBI Director. Given the diversity of investigative situations confronting the FBI special agent and the vagueness of the Manual of Instructions, great reliance is placed upon these judgments.

Headquarters is supposed to insure that investigations are well founded and comply with the provisions in the manual. Such supervision existed. Yet, headquarters supervisory personnel are also responsible for pursuing investigations. Indeed, some FBI officials said headquarters personnel continually encourage investigations. Many directives urge

the field to improve informant coverage of investigative subjects and to develop better evidence of the subversive or extremist character of groups. Additionally, in some instances headquarters overruled plans by field offices to discontinue or reduce investigative coverage and instead directed that existing investigative policy be continued.

Thus, an incongruous situation exists. The supervisors responsible for insuring the appropriateness of the investigation are also responsible for pursuing it. But, these investigations are checked in the form of ad hoc questioning by the Assistant Director of the Intelligence Division or higher level officials and by the Inspection Division. In these instances, arguments for continuing the investigation are made. Often, due to a felt responsibility to uphold the laws and anticipate acts of violence, the decision is to continue the investigation. However, some investigations confined to a single FBI field office can continue without being reviewed by FBI upper management.

Drafting laws governing FBI domestic intelligence investigations plus active supervision by the Justice Department would go far toward improving control over these investigations.

Numerous examples of FBI headquarters control

Control is sometimes directed at ending specific investigative excesses while, at other times, at reiterating FBI policy.

Specific investigations

As shown in a 1973 headquarters communication to all field offices, one FBI field office had obtained a list of individuals receiving a newsletter published by a leader of a rightwing extremist group. However, the newsletter was not an official party publication. The field office directed other field offices to investigate persons on the list to determine their associations with the rightwing extremist group. Headquarters directed that, in the absence of additional indications of rightwing extremist involvement, an investigation could not be begun.

In a letter to FBI field offices on March 3, 1975, headquarters informed field agents that the Inspection Division had discovered one FBI office was initiating preliminary inquiries of individuals who merely attended Klan functions. The letter noted that this contradicted FBI policy (only Klan leaders and members demonstrating a propensity for violence can be investigated) and directed the practice to be stopped.

Reiterating FBI policy

As shown in a teletype to all field offices on January 10, 1974, American Indian Movement leaders charged that the Government was directing agent provocateurs 1/ at the movement. Declaring the charge "totally inaccurate," the teletype reminded FBI agents to insure that FBI informants do not become involved in agent provocateur activities. Additionally, agents were directed to insure that informants not violate the attorney-client relationship by reporting trial strategies of defendants in court proceedings.

In addition to directing that the attorney-client relationship be protected, the FBI wants to protect itself from charges that it is investigating purely political activities. Thus, in its investigations of groups who field political candidates, such as the Socialist Workers Party and the National Caucus of Labor Committees, the FBI has directed that political candidates not be actively investigated. That is, FBI agents should not solicit or actively seek information by taking actions on their own, such as a physical surveillance, which would result in obtaining information. However, headquarters advised the field offices that these individuals' activities may be followed through confidential sources who volunteer information and through public information.

FBI directives urging greater investigative effort

FBI internal documents reflect the role of headquarters in "intensifying" domestic intelligence investigations. The intensification is usually a requirement that the field offices report information of concern to headquarters at a particular time. The field agents are consequently pressured to develop informants.

Investigations intensified without clear instructions

The investigation of the new left began because the FBI believed the movement was infiltrated by subversives. A headquarters letter of January 30, 1967, alerted the field offices that the Communist Party, USA, was trying to influence the unorganized new left movement. In describing groups fitting the name "new left," the letter said:

1/ A person employed to associate himself or herself with members of a group and by pretended sympathy with their aims or attitudes, to incite them to some illegal or harmful action which will make them liable to apprehension and punishment.

"Each office must remain constantly alert to the existence of organizations which have aims and objectives coinciding with those of the Communist Party and are likely to be susceptible to communist influence. This necessarily includes antiwar and pacifist groups, civil rights groups, and other radical groups which advocate civil disobedience and oppose the exercise of authority by duly constituted Government officials."

The letter directed field offices to conduct discreet preliminary investigations of such groups, limited to contact with established sources, to determine whether the groups were targets of Communist infiltration or were, in fact, controlled by the Communist Party, USA.

In a letter of May 13, 1968, to all FBI field offices, headquarters referred to recent attempts to violently seize control of colleges and universities. These outbreaks of violence were described as " * * * a direct challenge to law and order and a substantial threat to the stability of society in general." Referring to the FBI's responsibility " * * * to keep the intelligence community informed of plans of new left groups and student activists to engage in acts of lawlessness on the campus," each field office was instructed

" * * * to immediately expand its coverage and investigation of campus-based new left groups and black nationalist organizations with the objective of determining in advance the plans of these elements to engage in violence or disruptive activities on campus."

On July 23, 1968, the FBI Director noted the increasing emphasis by the new left extremists on terrorist acts, such as arson and bombing. Expressing dissatisfaction with the field office investigations, his letter to field offices said:

"I have been appalled by the reaction of some of our field offices to some of the acts of violence and terrorism which have occurred, such as those which have recently taken place in certain college towns and in some instances on college campuses. While it is recognized that many of these acts do not constitute violations of law within the primary investigative jurisdiction of the Bureau, it is essential, where the strong presumption exists that acts

of violence have been perpetrated by New Leftists or other subversive elements under investigation by the Bureau, that every logical effort should be made to resolve through contact with established sources whether these elements are in fact responsible for such acts. Of course, good judgment and extreme caution must be utilized in this connection so as not to convey the impression to the public or other investigative agencies that we are assuming jurisdiction in those instances where there are not facts which would establish FBI jurisdiction."

* * * * *

"I have reminded you time and again that the militancy of the New Left is escalating daily. Unless you recognize this and move in a more positive manner to identify subversive elements responsible so that appropriate prosecutive action, whether federally or locally initiated, can be taken, this type of activity can be expected to mount in intensity and to spread to college campuses across the country. This must not be allowed to happen and I am going to hold each Special Agent in Charge personally responsible to insure that the Bureau's responsibilities in this area are completely met and fulfilled."

In 1969, increasingly militant statements and actions of some persons in the Students for a Democratic Society caused FBI agents within the Intelligence Division to conclude that no person could join the organization without accepting the principle of violent dissent. Consequently, on July 11, 1969, FBI field offices were instructed to investigate all members of any faction of the society. Because of the amorphous structure of the group, the communication informed field offices that they were responsible for deciding what constituted membership in the group. Noting that headquarters expected campus disorders to intensify in the coming school year, the letter concluded

"* * * each office is personally accountable to follow the activities of each SDS chapter in its area to insure that the Bureau receives in advance all pertinent information concerning potential demonstrations and possible acts of violence."

This communication was approved by the then Associate Director, Assistant to the Director, and the Assistant Director of the Intelligence Division.

On September 16, 1969, the instructions of July 11, 1969, were rescinded. Instead, investigation of the Students for a Democratic Society was limited to top leaders and members prone to violence. This communication was approved by the then Associate Director and the Assistant to the Director.

FBI officials in the operating section of the Intelligence Division said they never were provided an official explanation for the September decision. One official stated that perhaps the political sensitivity inherent in investigations of college students led to the change.

By November 4, 1970, the violence associated with society chapters apparently had convinced upper FBI management of the necessity for intensified investigative coverage. In a communication to the field of that date, approved by the then Associate Director and the Assistant to the Director, the field offices were instructed to investigate all members of the Students for a Democratic Society and members of pro-Communist, militant new left campus organizations advocating violent revolution.

While the FBI letters cited in the new left investigation describe the purpose of the investigation as the need to anticipate violence, other communications urged field offices to identify all subversives as part of the Security of Government Employees program.

The November 6, 1967, letter to all FBI field offices regarding the new left investigation noted the increasingly militant nature of the new left movement. Its activities were found to be

"* * * no longer in the realm of legitimate dissent, but are now directed toward violence, resistance, and 'direct confrontation.' In fact, some of their activities border on anarchy and/or sedition. This poses a serious threat to the security of the Nation not only due to the current activities of this movement, but because some of the leaders and active participants in the movement could very well hold responsible positions in our Government and society in another five to ten years."

Similarly, a letter of November 3, 1971, noted the "remarkable" membership growth of the Young Socialist Alliance, a youth group of the Socialist Workers Party, on college campuses. Noting a large discrepancy between Socialist Workers Party's announced membership figures and those reported by FBI field offices, the letter said:

"It is absolutely imperative that we promptly identify and investigate all present members and new members as they are recruited. It is conceivable that some of these present or former members of YSA and SWP may eventually apply for positions in Government or in key private industries."

During 1974, the time of our review, groups with Maoist interpretations of Marxism-Leninism were intensively investigated as a result of directives from headquarters to develop more informants reporting on such groups. These intensified investigations were conducted to identify all leaders and members, publications, front groups, sources of funds, propensity for violence, and foreign intelligence ramifications of a group.

In a directive of October 4, 1973, to field offices investigating a subversive group, agents were instructed to direct "forceful and imaginative investigative efforts" at the organization's organizing and recruiting activities. This followed a communication of September 25, 1973, which directed offices to " * * * intensify * * * [the group's] investigations with special emphasis on the development of member informants." Field offices were told: "Your progress in this matter will be closely followed at FBI [headquarters]. Insure this investigation receives proper and imaginative attention." The pressure on the field offices was maintained in a directive of March 6, 1974, which said:

"The development of member-informants is vital to our investigation of the * * * [group] and recipients are urged to implement a program whereby genuine efforts are utilized to develop quality informants. Recipients should advise FBI * * * [headquarters] by letter of steps being taken to secure additional informant coverage of the * * * [group]."

As noted earlier, headquarters has overruled investigative judgments by field offices. Thus, in April 1975, headquarters turned down a request by the New York field office to relinquish its responsibility to supervise the national investigation of the Black Panther Party--Cleaver faction. New York stated the activity of the group greatly declined and no national structure existed. In turning down the recommendation, headquarters cited the need to have one office responsible for supervising the Cleaver faction and its urban guerilla warfare arm, the Black Liberation Army, due to its violent activities and the support such groups receive " * * * in prisons, ghettos, and many other areas of malcontentment."

Disagreements on continuing investigations were also found in cases on individuals, particularly when these involved special investigative attention. One field office recommended in March 1973, on the basis of a file review, that a member of a certain group be removed from the FBI's Administrative Index because he did not greatly influence the activities of the group and was regarded as a theorist who had not been shown to actively participate in actions to overthrow the Government. Thus, the field office concluded that the subject did not appear to pose a current danger to the national security.

FBI headquarters disagreed and ordered that the subject continue to be listed on ADEX because of his position in a group, his office in the local chapter, and because he was a lecturer. Headquarters said " * * * it clearly appeared that he was in a position to interfere with the survival and effective operation of this government and was a definite threat." In June 1974 the field office again recommended that the subject be deleted from ADEX. In view of the subject's inactivity, headquarters approved the recommendation.

In another case, an FBI field office recommended in September 1973 that a 63-year-old member of a main committee of a certain group be removed from the ADEX. The field office maintained that she could not accurately be described as a party leader and that nothing in her activities, past or present, suggested that she was a danger to the national security. Headquarters turned down the recommendation in view of her past positions of leadership in the group and in the absence of any indications of a change in her activities. This case was continuing at the time of our review.

In another case, the FBI field office responsible for investigating a black extremist organization recommended in June 1973 that a leader be excluded from the Key Extremist list because the group no longer advocated the use of force and violence. Headquarters denied the request and the subject continued to be listed as a key extremist until February 1975, when the program was terminated.

Judgment in interpreting investigative authority

The Bureau of Indian Affairs in Washington, D.C., was occupied during November 1972 by members of the American Indian Movement. This prompted a series of letters from the Department of Justice to the FBI asking the FBI to investigate the group. In a letter of November 21, 1972, the Deputy Attorney General requested the FBI to identify violence

prone individuals or Indian organizations that might be planning future violent demonstrations or criminal activities.

Upon receipt of the departmental letter, the Intelligence Division forwarded a draft communication to the field to the then acting Director of the FBI. The acting Director questioned whether the FBI had the jurisdictional authority to conduct the investigation called for by the draft communication. He considered requesting more definitive guidelines from the Department.

The FBI Office of Legal Counsel advised the acting Director that the FBI could conduct the envisioned intelligence-type investigation because it was authorized by 18 U.S.C. 2383 (Rebellion or Insurrection) and 18 U.S.C. 2384 (Seditious Conspiracy). Therefore, the Office of Legal Counsel maintained, further guidance from the Department was unnecessary. FBI officials said they could not find a written opinion by the Office of Legal Counsel. They said such questions are routinely settled orally.

Accordingly, a December 6, 1972, communication was sent to the field offices instructing that discreet investigations be conducted to identify extremist organizations or extremist individuals within the Indian community. This was to develop advance information regarding their plans or organized efforts to create disturbances and civil unrest. This communication was approved by the acting Director and the investigation was started.

Some judgments justified; others, not

One investigation which may be justified, based upon FBI information furnished us, is an FBI-initiated investigation of an allegedly subversive group. This investigation was debated within the Intelligence Division for more than 2 years. The group was formed when a campus group being investigated split up. The group could not organize or engage in more than rhetoric. In late 1972 and early 1973, a branch chief of the Intelligence Division questioned whether the investigation should be continued. During 1973, as the debate continued, the group came under more effective leadership and an FBI source provided information that the group was planning the eventual overthrow of the Government by force. As a consequence, the investigation was continued. The FBI supervisor said the files contain no formal correspondence concerning this debate.

In early 1975, after reviewing an internal memorandum from the case supervisor, the Assistant Director of the Intelligence Division again questioned the need for

investigating the group. He said the group's rhetoric seemingly was not supported by actions. In an internal memorandum of April 8, 1975, the headquarters supervisor outlined the activities of the group which, in his opinion, justified continued investigation. These activities included formation of front groups, establishment of paramilitary training camps, and attempts to obtain intelligence data concerning U.S. military programs.

In contrast to the apparent justification of the case just described, another investigation could not be justified for the time it was pursued and raises questions about the supervision of the most sensitive cases (those dealing with small groups not associated with well known subversive groups or groups engaged in violence).

In August 1972, an FBI office received information that three college professors were forming a study group to teach radical political theory. The group obtained a large collection of literature from groups under FBI investigation, established a library, and created a meeting place for local radicals. The local FBI field office was interested from the beginning, because it had an ongoing investigative interest in the group's founders. The field office supervisor thought the group could be a front group for a subversive organization.

The FBI investigation lasted from August 1972 to June 1975, at which time the field office decided to close the case because of the group's inactivity. FBI officials said the group itself was not of investigative interest but that monitoring the meetings was a way to keep track of its key subjects. Bureau officials told us that, while informants monitored the organizational activities and meetings, no investigations were opened on mere participants or attendees.

During the investigation, the FBI field office sent regular reports to the Bureau summarizing the investigation. The report of October 3, 1973, offered a predication for the investigation. However, at no time did the FBI field office request permission to continue its investigation. Since the FBI headquarters official responsible for monitoring the field office investigation was satisfied with the appropriateness of the investigation, he permitted the investigation to continue and did not bring the investigation to the attention of FBI upper management. The official said that as long as a field office provides good justification for continuing an investigation, he will permit the investigation to continue. He noted that the 90-day period for a preliminary investigation serves only as a guideline. He also thought that 2-1/2 years is not too long to conduct an investigation to determine if a group is serving as a front group.

JUSTICE DEPARTMENT INVOLVEMENT IN INVESTIGATIVE DECISIONS

Our review supports statements by FBI and Justice Department officials that the Department has exercised virtually no policy direction of FBI domestic intelligence investigations. In most instances when the Department requested particular investigations by the FBI, the requests only paralleled investigations already being conducted by the FBI. Normally, Department of Justice policy guidance was provided only when the FBI requested it. Such guidance often came in the form of an FBI request that the Department determine whether information developed during an investigation could be used in prosecution. The Department did not use its auditors to assess the extent to which the FBI was adhering to that guidance it did provide. Thus, the Department has not independently assessed FBI operations.

However, despite the apparent absence of meaningful Justice Department direction, FBI investigations were not conducted in a vacuum. FBI internal documents frequently refer to the many inquiries from Government officials concerning individuals or groups. As a result of these inquiries, investigations frequently were broadened and intensified.

FBI officials did not advise us of any substantive communications from the Department of Justice to the FBI regarding the investigations of 8 of the 18 groups. Seven of these groups were classified as subversive. The one extremist group is being investigated in only a limited number of FBI offices.

Of the 18 groups, only the investigation of the American Indian Movement was initiated at Justice Department direction.

During three investigations, the FBI requested prosecutive opinions from the Department. In one case, the FBI asked for a determination regarding possible violations of 18 U.S.C. 2385 (Advocating the Overthrow of the Government) by the Weatherman. In this instance, the Department decided not to prosecute after interviewing FBI sources. FBI officials said they were never advised of the Department's reasons for not prosecuting.

In another case, the FBI gave the Department copies of newspapers published by the Black Panther Party--Clever faction and asked to be advised of any action which could be taken concerning the publications. The Department advised

that a violation of 18 U.S.C. 1461 (Mailing Obscene or Crime Inciting Matter) could exist if the newspapers were sent through the mails. To develop such information, the Department suggested that the FBI interview certain individuals. The FBI conducted an investigation to develop a case but never developed evidence that the newspapers were sent through the mails.

During the investigation of the National Socialist White Peoples Party, the FBI twice furnished investigative reports to the Department and requested a prosecutive opinion. In the first instance, in 1965, the Department of Justice concluded that public statements by the group's leader implied threats to minorities but always were qualified by statements that all actions should be constitutional. The Department then requested that an investigation be conducted to determine if the organization advocated acts of force or violence to deny others their rights under the Constitution. In 1972, as a part of the ongoing investigation, the FBI requested a prosecutive opinion on a transcript of a telephone message. The Department advised the FBI that the message did not involve a violation of Federal law.

In three other investigations, the Department advised the FBI of its intent to develop evidence that persons were violating the security statutes, 18 U.S.C. 2383-85. In two instances, grand jury action was contemplated, while, in the third case, the Department was planning to present a case before the Subversive Activities Control Board. There were no successful prosecutions.

FBI anticipation of departmental requests

Department letters to the FBI recognized FBI efforts to develop intelligence and requested that the Department be advised of additional information as it developed. This became a pattern.

For instance, in a February 26, 1974, letter from the Assistant Attorney General, Criminal Division, to the Director of the FBI, the departmental official expressed his interest in any information developed by the FBI regarding attempts by persons or groups outside prisons to foment discontent and disorder among prisoners. The letter recognized the FBI's awareness of certain groups' attempts to radicalize prisoners. FBI investigative interest in organized attempts to disrupt prisons was apparent as early as August 1970 (see pp. 82 to 83.)

On February 18, 1969, the Assistant Attorney General, Internal Security Division, wrote the FBI Director advising

him of the Department's interest in determining whether a subversive group was causing campus disorders throughout the country. The Department recognized that the FBI already had furnished a great deal of information regarding campus demonstrations. However, it listed suggested areas of particular interest for future investigations. The Department directed the FBI:

- To follow the activities of activists traveling from campus to campus inciting or participating in riots.
- To develop information showing movement of information, reports, or directives between organizations, or branches of the same organization, at campuses where violent or illegal disorders had taken place.
- To develop information on who paid for bail or fines where any large number of demonstrators had been arrested.
- To develop information indicating movement of funds between organizations on one campus to another where sitins or unauthorized occupations of college buildings had taken place.
- To use FBI or police department records to identify persons arrested at demonstrations at more than one campus.

By a communication of March 4, 1969, the FBI field offices were provided copies of the February 18, 1969, letter with the notation that "these suggestions should be borne in mind during your coverage of such disorders." Upon receipt of the February 18, 1969, memorandum, Mr. Hoover directed that the investigation of campus disorders be intensified.

However, the FBI was already conducting an investigation corresponding to the investigation suggested by the Department. In a January 30, 1967, communication to the field offices, the FBI noted Communist Party, USA, efforts to infiltrate the new left. The communication directed each office to

"* * * remain constantly alert to the existence of organizations which have aims and objectives coinciding with those of the Communist Party and are likely to be susceptible to communist influence. This necessarily includes anti-war and pacifist groups, civil rights groups and other radical

groups which advocate civil disobedience and oppose the exercise of authority by duly constituted Government officials."

The communication indicated that the desired information could only be developed through a " * * * systematic, well organized program of development of sources who can keep us advised of the participation of subversive elements in activities of the 'new left.'"

In a communication to the field on November 6, 1967, the FBI noted that the militancy of the antiwar demonstrations removed these activities from the realm of legitimate dissent. It therefore gave instructions

- that leaders and activists in the movement and organization associated with it be identified,
- all participants in demonstrations and disturbances who were arrested be identified, and
- newly formed new left groups be identified.

Finally, as is evident from the descriptions of the key activists (see pp. 74 to 75) and new left movement (see pp. 88 to 90), the FBI had already initiated investigations to obtain the information sought by the Assistant Attorney General. Thus, when the Assistant Attorney General followed up the February 18, 1969, letter with one of March 3, 1969 (requesting the FBI to provide the identities and background of persons whose activities on campuses could make them subject to prosecution under the seditious conspiracy, antiriot, civil disorders, and other statutes), the FBI could report detailed background information developed through the Key Activist Program.

The FBI also anticipated a Department request on civil disturbances. On September 14, 1967, the Attorney General addressed a memorandum to the FBI Director noting a nationwide pattern of riots and directing the FBI to fully use its investigative and intelligence resources to determine whether a conspiracy was planning or promoting the riots. The investigation was to develop informants in black nationalist organizations. The memorandum indicated the Attorney General's awareness of the FBI's ongoing " * * * extensive and comprehensive investigations of these matters" but, in effect, said the effort had to be intensified.

The FBI had been reporting on racial conditions and the potential for civil disturbances for years, as an outgrowth of the civil rights investigations conducted for the Justice Department. The interest of the Department and other agencies in receiving this type of information led the FBI to create a regular reporting program to assess the potential for racial disturbances around the Nation.

In an August 20, 1964, letter to the field offices, the FBI noted that information had been developed showing that civil disturbances had been nurtured and sustained, and possibly initiated, by subversive or extremist elements. The field offices were advised of their responsibilities to develop advance knowledge of any racial disturbances, with particular emphasis on determining whether the incidents were spontaneous or the result of subversive or extremist conspiracies to cause racial discord. The letter recognized the importance of having informants in subversive and extremist groups to obtain the necessary information.

OTHER GOVERNMENTAL INTEREST IN FBI INVESTIGATIONS

The FBI regularly received requests for information from White House and other Government officials. These requests corresponded to ongoing FBI investigations, but they resulted in intensifying FBI investigations in an effort to comply.

The FBI received frequent requests for information on the new left movement. In a letter to all field offices on January 31, 1969, headquarters noted the radical increase in campus disorders:

"The Bureau is increasingly called on by interested Government officials and agencies to quickly and accurately assess these disorders and identify leaders, organizations and issues involved, any inflammatory statements made, and pertinent background information concerning goals and objectives of the organizations.

"In order for the Bureau to fulfill its responsibilities in these matters, it is incumbent upon each office to insure there is adequate coverage of all campuses in their division in order to quickly obtain this information as well as be in a position to have advance knowledge of planned disorders so that preventive or protective steps can be taken by appropriate authorities."

In a letter of November 4, 1969, to all field offices, headquarters said it was receiving an increasing number of requests from " * * * other agencies of the Government including the White House * * *" for the details of participation by U.S. new left activists in foreign conferences which denounced United States foreign policy in Vietnam and in other parts of the world. The letter informed the field offices that Communist bloc countries provided aid and counsel to these conferences. This adversely affected U.S. policies while lending support to international interests opposed to the United States. The letter went on to hold each SAC personally responsible for intensifying efforts to obtain intelligence concerning these conferences, noting:

"Even though these meetings and conferences are held abroad, the continuing participation by United States citizens makes it incumbent upon the Bureau to develop all pertinent information concerning events transpiring at these meetings and conferences."

A November 10, 1969, letter reminded the field offices that identifying the sources of new left groups' funds was important as the shift of such groups toward terrorist tactics could be expected to dry up funding by "well-meaning liberals." The letter directed field offices to watch for their sources of financial support to permit the Bureau " * * * to responsibly answer the high level inquiries * * *" that frequently follow " * * * recurring allegations that various tax-exempt charitable foundations have contributed large sums of money, either directly or indirectly to the Movement."

In a followup letter of March 16, 1970, headquarters again referred to the interests of "high officials of the Government" in allegations that tax-exempt charitable foundations were supporting the new left movement. Field offices were directed to exhaustively survey their files

" * * * to determine any instances where financial support, including gifts of equipment or facilities, has been furnished to New Left groups or individuals by 1) tax-exempt charitable foundations or funds; 2) prominent or wealthy individuals, or other individuals, who have contributed over \$1,000 in a single contribution; 3) politically oriented groups including unions. Such support would include and not be limited to, furnishing bail money to arrested demonstrators, furnishing printing equipment or office space, and underwriting the cost of conventions or rallies."

CONCLUSIONS

The FBI's actions related to the specific groups we have discussed were all in accordance with its policies for initiating and conducting domestic intelligence investigations. Yet, the policies allowed some decisions to be made that may have unnecessarily extended the investigations. More specific policies need to be developed.

The basic finding as a result of this analysis is that the Manual of Instructions does not sufficiently explain FBI policy on conducting domestic intelligence investigations. The manual only provides a very broad framework for deciding such matters as how extensively to investigate a group.

CHAPTER 6

DOMESTIC INTELLIGENCE PROGRAMS AND TECHNIQUES

To completely understand FBI domestic intelligence policy, certain programs and techniques used by the FBI must be discussed. The programs and techniques were not adequately described in the Manual of Instructions. But, they provided the framework for conducting many domestic intelligence investigations.

Most of the programs discussed below are no longer operating because the FBI does not think they are needed now. The FBI believes, however, that the premise for the efforts (to identify individuals and groups that should be the subject of intensified investigations) is valid.

How is the decision made to intensively investigate individuals and groups? To what extent should the FBI officials responsible for such investigations have to justify their actions to officials outside the FBI? The history of previous programs and techniques used in the domestic intelligence field shows that the FBI rarely advised the Justice Department or other executive and congressional officials of the programs or techniques. This lack of communication was not entirely due to FBI reticence. Justice Department and other officials never asked about the programs and techniques. Little, if any, effort was made by the Justice Department or congressional committees to set up procedures so effective dialogue on the efficacy of certain programs or techniques could exist.

FBI officials believe their domestic intelligence programs fit within the policy framework of the Manual of Instructions. They said programs usually emphasized certain aspects of the manual, such as reporting requirements or gathering particular background information.

We categorized into five groups the programs which came to our attention:

- Lists of individuals intensively investigated because of their leadership, potential for violence, or organizational affiliation.
- Special efforts to locate or follow the activities of certain individuals.
- Special liaison, to focus attention within the FBI and other law enforcement agencies on investigative problem areas by exchanging investigative information.

--Counterintelligence activities taken to "neutralize individuals or disrupt groups."

--Special reporting requirements for certain types of activities and groups.

Additionally, the FBI used special techniques during the investigations. These included surreptitious entry, mail covers and openings, use of tax returns, and electronic surveillance.

LISTS OF INDIVIDUALS

The FBI began keeping lists of specific individuals of special investigative concern in the domestic intelligence area as early as 1939, as a result of the September 6, 1939, Presidential directive (see p. 19). To take charge of investigative matters relative to espionage, sabotage, and violations of neutrality regulations, the FBI began compiling a "suspect list" of individuals who exhibited strong Nazi and Communist tendencies. The directive also requested all law enforcement officials within the United States to provide the FBI information relating to subversive activities as well as the above mentioned matters. To supplement this information, FBI offices were instructed to submit the names of individuals to be considered for custodial detention, pending investigation in the event of a national emergency. This was the Custodial Detention List. The FBI had discussed earlier with officials of the War Department and the Justice Department the idea of detaining certain individuals.

However, according to some FBI special agents, maintaining investigative indexes was actually an outgrowth of Mr. Hoover's prior experience as a Department of Justice attorney investigating sabotage during and after World War I. Placed in charge of the General Intelligence Division of the Justice Department in August 1919, Mr. Hoover supervised wide-ranging investigations of " * * * radical activities in the United States * * *." To rapidly retrieve information, Mr. Hoover's division established a card index that contained 150,000 index cards by October 1920.

Security Index

In July 1943 the Attorney General advised the FBI that no statutes or other justifications existed for maintaining the Custodial Detention List and that the Department of Justice fulfilled its functions by investigating the activities of individuals who may have violated the law.

The FBI did not destroy the list or discontinue its use. Rather it renamed it the Security Index. This appears questionable in light of the Attorney General's statement that such a list was not justified.

The Security Index was used as an administrative aid within the FBI and contained information regarding individuals considered potentially dangerous to the United States. No evidence shows that the FBI advised the Attorney General it maintained the index.

The Department was advised by letter on March 8, 1946, of the FBI's intention to compile a list of Communist Party members and others who would be dangerous if diplomatic relations with the Soviet Union were broken. By letter dated September 20, 1946, the Department advised the FBI that it was considering developing a detention plan to be used during a national emergency.

During 1948, the Justice Department gave the FBI a departmental portfolio which set forth procedures to be followed, in the event of a national emergency, to apprehend and detain individuals considered potentially dangerous to the national defense. An FBI official said a review of the files did not indicate why the Justice Department reversed its position on a custodial detention program between 1943 and 1948.

On September 23, 1950, the Internal Security Act of 1950, (50 U.S.C. 781-798) became law. Title II of the act, known as the Emergency Detention Act, permitted the Government to detain persons considered dangerous to internal security during a national crisis. "Dangerous individuals" was defined as persons who reasonably could be expected to commit, or conspire with others to commit, espionage or sabotage.

As a result, by January 1951 the FBI had placed 13,901 names on the Security Index. These names were furnished to the Department of Justice as part of the Emergency Detention Program. Criteria for including individuals on the Security Index was later broadened to include members or affiliates of other revolutionary groups. The index consisted of 5 by 8 cards which contained the name, date and place of birth, citizenship, occupation, residence, nationalistic tendency or sympathies, FBI file number, and organizational affiliation of an individual. Cards were maintained at FBI headquarters as well as field offices in the area in which the individual lived.

The FBI and the Justice Department realized from the start that certain individuals were more dangerous than others and should be subject to greater attention. Initially, these distinctions were part of the Detention of Communists Program. Persons listed were assigned to one of three priority categories. The most important national Communist leaders were designated "top functionaries." State and local leaders of the Communist Party were designated "key figures." Other Communists marked for detention were designated "DETCOM only." Persons in the latter category included those who had received training in a foreign country or had exhibited some potential for violence, such as having received explosives training. In 1968, the program was replaced with the Priority Apprehension Program.

Priority I consisted of national and State leaders of revolutionary organizations and individuals showing a propensity for violence, including preparation for underground operations and guerilla warfare. Suspected saboteurs and spies also were included. Individuals meeting the Security Index criteria and employed in key facilities 1/ were also entered in the first priority.

Names of persons in second-level leadership positions in subversive organizations were included in priority II. Names of all other index members were assigned to priority III.

To insure that the subjects could be apprehended, field offices were responsible for being advised of the residence and business addresses of subjects at all times. Residence and business address information for priority I subjects was to be checked every 3 months and an annual report was to be filed with FBI headquarters reviewing the subject's status on the index. The addresses of other index subjects were to be verified annually. A report reviewing the justification for continually including subjects in priority II was to be filed annually. The Manual of Instructions, in August 1970, did not include specific reporting requirements for priority III subjects.

Criteria for placing an individual on the index were established jointly by FBI and Justice Department officials and as of August 1970, were:

1/These include industrial plants, utilities, transportation and communications systems, and other public and private facilities designated as vital to the national defense by the Department of Defense.

- Membership or participation in a basic revolutionary organization within 5 years.
- Formal or informal leadership in a front group of a revolutionary organization within the last 3 years.
- Demonstrated anarchistic or revolutionary beliefs coupled with evidence of a willingness to commit acts interfering with the national defense.
- Unmistakable indications, unestablished by investigation, of a willingness to interfere with a war, despite failure to meet the three criteria listed above.

The Manual of Instructions specifically stated that, if a witness cited the fifth amendment before a governmental body when directly questioned regarding present or past membership in a subversive organization, the name of the witness was to be included in the Security Index.

The initial decision to include the name of a subject on the Security Index were made by the SAC of the appropriate FBI field office. In larger offices, those with 1,000 or more Security Index subjects, the decision could be made by an FBI-designated officials.

The recommendations were reviewed at FBI headquarters and final approval was made within the Department of Justice. The Department also periodically reviewed the justification for continually including subjects listed in the index.

By November 1954, approximately 26,000 persons were listed in the index. In 1955, criteria for placing a person on the index were refined. By October 1955, only about 12,900 persons were listed; by February 1969, only about 10,200 persons were listed. The index was discontinued in 1971 when the Emergency Detention Act was repealed.

Communist or Reserve Index

From 1948 to 1960, the FBI maintained a Communist Index, separate from the Security Index. Until 1956, the Communist Index included all individuals known to have affiliation or sympathy with the Communist Party. During October 1956, the Communist Index was revised to include persons in some way associated with revolutionary groups other than the Communist Party. This led to the index being redesignated the Reserve Index in 1960. The Reserve Index was abolished in September 1971.

Although the Justice Department was advised in March 1946 of the FBI's decision to compile a list of all Communist Party members and others who would be dangerous if diplomatic relations with the Soviet Union were broken, the Justice Department was not specifically told about the Communist Index.

The index was maintained as an administrative aid within the FBI. It was to monitor persons who, in the event of a national emergency, would be of secondary investigative importance to the FBI--after Security Index subjects. If a subject no longer met Security Index criteria, the individual was considered for the Communist-Reserve Index. Security Index subjects could be apprehended and detained; Communist-Reserve Index subjects could not.

Criteria for including the names of subjects in the Communist Index closely approximated criteria for the Reserve Index. As of August 1970, the Reserve Index criteria included:

- Membership in a revolutionary organization after January 1, 1949, together with indication of continuing sympathy with such organization.
- Activity, association, or sympathy for a subversive cause during the past 5 years, without substantiated evidence of membership in a revolutionary organization.
- Associations, writings, financial support, or conduct in support of subversive organizations (or the international Communist movement) within the past 5 years by a person capable of influencing others.
- Leadership in a major subversive front group before the last 3 years, along with evidence of continued sympathy for a subversive cause.
- Membership in a subversive front organization within the past 3 years.

The Reserve Index was composed of two sections. Section A consisted of individuals who, because of their subversive associations or ideology, were likely to influence others against the national interest or who were likely to furnish material or financial aid to subversives. The Manual of Instructions indicated that section A was to be composed of persons who met the Reserve Index criteria and who were educators, labor officials, entertainers, media personalities, lawyers, doctors, scientists, and other potentially influential persons. Anyone else was assigned to section B.

Instructions for placing people on the Communist-Reserve Index changed during the 23 years of its existence. However, for many of those years the Communist-Reserve Index was maintained only at the field offices on 5 by 8 cards. Inclusion or deletion of names was approved by the SAC. No regular review process existed. As a result, by 1958, the Communist Index contained 17,783 names. Because of the unwieldiness of such a list, a yearlong review of Communist Index files was made to develop informants or remove persons who no longer met the criteria. The Communist Index was reduced to 13,015 names by July 1959.

An FBI official said that because the Communist-Reserve Index was maintained at the field offices for most of its existence, headquarters had no historical records of the size of the index. The figures for 1958 and 1959 are recorded, because of the formalized review made during that time.

Administrative Index

When the Congress abolished the Emergency Detention Act, the statutory basis for the Security Index was thus removed. However, the FBI believed a need existed for such a list and asked the Department of Justice to advise it of the legality of maintaining a list for administrative purposes only. The Attorney General advised the FBI in October 1971 that no legal barriers existed for maintaining such a list.

With Department approval, the FBI established the ADEX. The field offices were informed that ADEX was to be used

"* * * solely to list individuals who constitute a potential or actual threat to the internal security of the United States and/or whose activities and statements indicate that they would resort to violent, illegal, or subversive means."

These persons would be investigated first in a national emergency. The FBI terminated ADEX on January 14, 1976.

The original criteria for including subjects on ADEX closely approximated those of priorities I-III of the Security Index, and section A of the Reserve Index. Using this set of criteria, 13,026 subjects were maintained on ADEX on January 15, 1972. As with the Security Index, field offices were to be aware of the whereabouts of ADEX subjects at all times. This involved reopening investigations (to verify residence and business addresses) every 3 to 12 months, depending upon the subject's categorization on the index.

Additionally, each subject was to be reviewed every 6, 12, or 24 months, depending upon his or her categorization on the index, to determine whether he or she should still be included in ADEX.

The size of the index and the burdens imposed by the reporting requirements led to an FBI headquarters review of the entire system in 1972. The review resulted in tightened criteria, stressing that subjects be indexed if deemed "currently dangerous" to the national security. These persons were described as having shown a

"* * * willingness and capability of engaging in treason, rebellion, or insurrection, sedition, sabotage, espionage, terrorism, guerilla warfare, assassination of government officials, or other such acts which would result in interference with or a threat to the survival and effective operation of national, State or local government."

Included on the list are leaders of subversive or extremist organizations and individuals who are violence prone. Mere membership in a subversive organization does not justify including a subject's name in ADEX. The Manual of Instructions specifically forbids including the names of persons exercising their constitutional rights of protest and dissent from Government policies.

The revision in the criteria resulted in reducing the size of the index. By November 1975, 1,250 persons were maintained on ADEX.

Any subject of an FBI domestic intelligence investigation or security of Government employee investigation was routinely considered for ADEX. When an agent believed an individual met the criteria, he or she prepared a recommendation setting forth the rationale. The recommendation was reviewed by the agent's field supervisor, the SAC of the field office and the headquarters supervisor, unit chief, and section chief for internal security matters. The section chief could disapprove the recommendation. Approval must have been made by the Deputy Assistant Director for Internal Security.

There was a 90-day review of subjects on ADEX. This review was conducted by the appropriate headquarters supervisor. ADEX was computerized at FBI headquarters in 1972.

Rabble-Rouser or Agitator Index

The summer of 1967 was marked by intense racial riots. A prevalent theory of the time was that the violence was attributable to a conspiracy to cause general disorder. The Attorney General expressed this in a September 14, 1967, memorandum to the FBI Director. It was also a concern of members of the National Advisory Commission on Civil Disorders. During testimony before the Commission on August 1, 1967, the FBI Director was asked if the FBI could identify those individuals who, by their words and actions, were creating an atmosphere from which civil disorders were erupting.

In response to this direct inquiry, the FBI created the Rabble-Rouser Index on August 4, 1967, to follow the activities of extremists who had demonstrated by their actions and speeches a propensity for fomenting disorders of a racial and/or security nature. The purpose was to provide (1) a ready reference in the field and at the Bureau to specified personal data and (2) a short summary of activities of indexed subjects indicating a propensity for violence.

Originally, the Rabble-Rouser Index included only individuals of national prominence, especially those who traveled extensively, engaging in activities linked to racial disorder. However, FBI officials said that, by November 1967, the national security problems created by local activists had grown sufficiently to warrant including them in the index.

Field offices recommended including subjects in the index and FBI headquarters approved including them. Field offices were to review the subject's qualifications for the index in an annual report.

The Manual of Instructions provided for including leaders of rightwing groups, old and new leftists, civil rights organizations and black nationalist groups. One category was marked "anti-Vietnam" and one was marked "Latin American."

The Rabble-Rouser Index was renamed the Agitator Index on March 13, 1968. Just before the redesignation 250 persons were listed on the index. During 1969, the Agitator Index contained approximately 700 names. On October 29, 1970, 1,131 persons appeared on the list.

In April 1971, after a decision was made to remove Security Index subjects from the Agitator Index, the Agitator Index was discontinued. The FBI felt that it had served its purpose.

Key Activist and Key Extremist programs

While the various indexes required the field to report on many individuals, events in the late 1960s called for more intensive investigations, requiring coordination among FBI field offices. This coordination was necessary because, according to the FBI, certain vocal individuals were traveling extensively, calling for civil disobedience and other unlawful and disruptive acts. To adequately investigate these individuals, the FBI developed the Key Activist and Key Extremist programs which provided investigative guidelines to all field offices.

The Key Activist Program, initiated on January 30, 1968, was suggested by a headquarters supervisor. The Key Extremist Program, initiated as the Key Black Extremist Program on December 23, 1970, was modeled after the Key Activist Program. The investigations of the programs were disseminated outside the FBI, but the programs' existence was not disclosed outside the FBI.

Both programs were devised to develop information on the day-to-day activities of subjects and on their future plans for staging demonstrations and acting against the Government. As noted in an FBI internal memorandum on the Key Black Extremist Program:

"We should cover every facet of their current activities, future plans, weaknesses, strengths, and personal lives to neutralize the effectiveness of each * * * [Key Black Extremist]."

The investigative guidelines on the two programs did not depart from the investigative guidelines in the Manual of Instructions. They merely suggested intensifying the investigation. Thus, field offices were to closely monitor subjects' activities and statements, to discover violations of Federal statutes. Investigations were to develop detailed information on personal finances, including, when circumstances justified, an annual review of Federal income tax returns to determine whether income was being reported properly. The travel plans and foreign contacts of key investigative subjects were also of great interest to the Bureau.

Both key extremists and key activists were targets for the FBI's Counterintelligence Program. On December 23, 1970, field offices were told:

"Continued consideration must be given by each office to develop means to neutralize the effectiveness of each * * * [Key Black Extremist]. Any

counterintelligence proposal must be approved by the Bureau prior to implementation."

FBI officials said a principal way to neutralize individuals was to show that they were violating Federal, State, and local statutes. This information was referred to the proper authorities so they could consider prosecution. In an August 1971 justification of the Key Activist Program, the FBI stated that more than one-half of the individuals designated key activists were subjects of prosecution.

These objectives were to be attained by using high-level informants. When this was not possible, technical surveillance or physical surveillance was considered.

When the Key Activist Program began in January 1968, 15 subjects were investigated. At the peak of the program, the FBI reported 76 key activists being investigated. Twelve activists were under investigation when the program was discontinued in February 1975.

The Key Black Extremist Program was initiated on December 23, 1970, with 90 subjects listed. On January 8, 1973, Klan-type subjects and American Indians were also included in investigations and the program was redesignated the Key Extremist Program. The program was terminated on February 4, 1975, with 51 subjects listed.

FBI communications indicated that both the Key Activist and the Key Extremist programs were terminated because the subjects were not very active and FBI investigations through normal procedures were more practical.

EFFORTS TO LOCATE AND FOLLOW INDIVIDUALS' ACTIVITIES

As a normal investigative procedure in the domestic intelligence field, the FBI tries to identify the associations of the subject of an investigation and determine and continually track the subject's whereabouts, both within and outside the United States. This technique was expanded considerably in the early 1970s through use of the computer. The FBI called its computerized programs:

- The Stop Index.
- The Computerization of Foreign Travel of Extremists and Subversives.
- The Computerized Telephone Number File.

The FBI expected that the computer could greatly reduce the time required to develop and pursue investigative leads.

The FBI did not tell anyone of the programs' existence. All were terminated because of a lack of results and an awareness of congressional concern regarding computerization of investigative files.

Stop Index

The Stop Index was initiated in April 1971 to follow the travel and activities of individuals of key interest to the FBI in domestic intelligence, criminal, and espionage investigations and to locate other persons sought for FBI questioning.

This program, developed as a result of proposals from an Intelligence Division supervisor, FBI field offices, and the Inspection Division, used information supplied by State and local law enforcement agencies to the National Crime Information Center. The center consists of separate computerized files on stolen property, including vehicles and firearms, and on individuals who have either committed (computerized criminal history file) or are suspected of having committed (wanted persons file) a crime.

The Stop Index was used exclusively by the FBI. The index was not disclosed to the Justice Department; to the National Policy Advisory Board, responsible for establishing the National Crime Information Center operating policy; or to other law enforcement agencies. The Manual of Instructions contained a passing reference to the Stop Index. We obtained a detailed description of the program by reviewing communications to the field.

FBI field offices submitted recommendations to headquarters of names of individuals to be included on the Stop Index. Entries were made only at headquarters.

Considerable travel, active participation in subversive or extremist activities, and a strong propensity for violence were the criteria used to include names of individuals in the Stop Index. These criteria specifically applied to category I ADEX subjects, Venceremos Brigade members, and Weatherman suspects.

Law enforcement officials' questions to the National Crime Information Center relating to individuals or things in specified locations were compared each day with the Stop Index to determine if a question had been asked about an index subject. In the event of a "hit," the FBI office in

that locality was notified to locate the subject for questioning or to monitor the individual's activities. The office primarily responsible for the individual was also notified so it could record the subject's presence in a specific location. The inquiring law enforcement agency was not informed of the FBI's domestic intelligence interest in the subject.

When the Stop Index was discontinued in February 1974, nearly 4,300 names were recorded. FBI officials told us the program was discontinued because (1) it failed to achieve results commensurate with the costs and (2) it was counter to the tone of legislation being considered by the Congress to guarantee the security and privacy of criminal history information (by strictly controlling the kinds of information that could be computerized and how it could be disseminated). The program was terminated despite overwhelming objections from the field offices.

Foreign travel of extremists and other subversives

The Manual of Instructions, both currently and previously, has instructed field agents to be alert to foreign travel of subjects and to report instances of moral and financial aid provided by foreign sources. The violence and disorder of the 1960s and early 1970s, coupled with the widespread foreign travel of new left radicals and black extremists, intensified this interest. The FBI was particularly concerned when the travel was to Communist countries, such as Cuba, or to areas suspected of being guerilla training sites.

To analyze the travel patterns of the many subversives and extremists traveling abroad, the Bureau maintained a computerized file on foreign travel from July 1972 through September 1973. FBI officials believed this would provide readily retrievable information and eliminate time consuming file reviews. Field agents were to submit information to the Bureau in the course of normal investigative duties.

The project was initially begun on a 6-month trial basis. It was started without valid estimates of the number of subjects traveling abroad and, therefore, without valid estimates of the financial viability of the project. The project was discontinued in 1973 because the small number of submissions from field offices made the program financially inefficient. FBI documents also indicated that the field agents and offices did not always develop or provide, respectively, appropriate data to headquarters.

Despite the FBI interest in the foreign contacts of extremist groups, an FBI official in the Intelligence Division said FBI investigations have established no direct indication that domestic extremist groups are controlled or directed by hostile foreign governments or movements. FBI investigations have generally shown that some extremists have received moral and ideological support from abroad, as well as occasional funding.

Computerized Telephone Number File

The Computerized Telephone Number File, created in 1969 for use in criminal investigations, was expanded for use in domestic intelligence investigations on February 26, 1971. The file was designed to facilitate field efforts to locate persons classified by the FBI as extremist or revolutionary. In particular, the FBI viewed the file as a way of reducing the time required to cover leads. The computer was to more extensively analyze the interrelationships of new left extremists and to point out areas for intensified investigation. FBI documents indicate that particular attention was given to key extremists and the Weather Underground.

Field agents submitted telephone numbers shown by investigations to be used by extremists and revolutionaries. These numbers were entered into the FBI headquarters computer. Other telephone numbers discovered during investigations were matched against the number already in the computer. Possible connections with extremists and revolutionaries could be determined by analyzing the frequency of calls made between the numbers. This information was gathered from telephone company toll records.

The program also involved a 90-day supplemental file. This file was composed of telephone numbers that were called long distance from numbers already listed in the computer. Field agents obtained these supplemental numbers from the billing statements and toll records of listed telephone numbers. If a telephone number on the supplemental list received a certain number of calls from a number already listed in the file during the 3-month period, the appropriate field office was directed to determine the subscriber, check the FBI field office indexes, and make a preliminary inquiry. Beginning an inquiry was not mandatory. When conducted, the preliminary inquiry was to determine the association of the subscriber to the individual at the number on file and to assess the subscriber's potential as an informant.

Between April 1971 and July 1973, 83,913 telephone numbers were processed through the Computerized Telephone Number File. This process linked 6,401 numbers to

revolutionary and extremist groups. The transience of these groups meant that extremists kept the same telephone numbers only a short time. This led to constant additions and deletions from the file. Consequently, the file was composed of approximately 2,000 to 2,500 telephone numbers at any one time.

The domestic intelligence phase of the Computerized Telephone Number File was discontinued in February 1975. A lack of notable accomplishments, action by the American Telephone and Telegraph Company restricting the availability of telephone records, plus increasing public sensitivity to individuals' privacy were factors in the decision to terminate the program.

LIAISON PROGRAMS

The False Identities Program and the program to monitor Extremist, Revolutionary, Terrorist, and Subversive Activities in Penal Institutions are two ongoing programs to direct attention, both within the FBI and among interested agencies, at current problems. The FBI initiated both and has interested other agencies in participation. The Attorney General was advised of both programs, although not about a part of the False Identities Program, the thumbprint program, which was conducted in one State to help identify the false identities of the Weathermar and other extremists. The False Identities Program and the penal institutions program are conducted as part of the FBI's investigations of extremist and subversive groups.

False Identities Program

The FBI, along with other governmental agencies and private businesses, is increasingly concerned with the illegal use of false identification papers. Narcotics dealers, fraudulent check passers, illegal aliens, food stamp cheats, and criminal fugitives regularly use false identification papers. The FBI investigation focused initially on the Weatherman organization's use of false identity papers to stay "underground."

No one knows how extensively false identities are used. As an initial step toward solving the false identity problem, the FBI sponsored a conference on false identification on May 10, 1974. As a result of the recommendations of that conference, the Federal Advisory Committee on False Identification was formed in September 1974 to assess the breadth of the false identity problem and to propose remedies.

The FBI established its False Identities Program to highlight the problem within the FBI. Reports are routinely submitted from the field to the headquarters supervisor for the False Identities Program when information is developed concerning strategies used by individuals to obtain false identities. The Bureau supervisor insures that such information is brought to the attention of all FBI field offices and interested Government agencies.

In an effort to link false identities to subversives or extremists, the Sacramento FBI field office conducted a thumbprint program from March 1973 until September 1975. The program, suggested by the San Francisco field office, involved preliminary inquiries of persons who did not submit a thumbprint when obtaining a California driver's license. Thumbprints have been optional on California license applications since 1937.

The program was begun on a trial basis to locate Weatherman fugitives. The FBI had determined that Weatherman fugitives had applied for California drivers' licenses under fictitious names and had refused to submit thumbprints. The FBI requested the driver's license section of the California Department of Motor Vehicles to review license applications without thumbprints for persons meeting certain racial, age, and driving history characteristics. The FBI began preliminary investigations on persons whose names had been provided by the Motor Vehicle Department.

The trial program resulted in 427 investigations of subversives. The FBI determined that in 108 cases (25 percent) the subject was using a false name. The false identities were being used by persons attempting to hide bad driving records or involved in fraudulent transactions, narcotics, passport violations, fugitive matters or extremist activities.

Due to its success, the program was expanded in late 1973. Not only Weatherman fugitives, but also extremists or subversives of any kind, were subjects of investigations. The names of persons refusing to provide a thumbprint were submitted if they

- were born between 1933 and 1953,
- had no driver's license before January 1, 1970,
- had no prior driver's license with a thumbprint, or
- had not turned in an out-of-State driver's license
- with the application for a California driver's license.

To conform with FBI policy, the FBI prepared the following predication for use with each thumbprint investigation.

"This investigation is based on information which indicates that the captioned UNSUB [unknown subject] may be engaged in activities which could involve a violation of Title 18, U.S. Code, Section 545 (smuggling goods into the U.S.), Section 1073 (fugitives from justice), Section 1342 (mail fraud--fictitious name), Section 1542 (passports--false statement in application), Section 2384 (sedition and subversive activities); Title 21, U.S. Code, Section 174 (Narcotic Drug Import and Export Act); or Title 42, U.S. Code, Section 408 (Social Security Accounts--false statement in application)."

In September 1975, the new director of the driver's license division of the California Department of Motor Vehicles stopped the program in the State. The program came to the division director's attention when he received a memorandum to department offices instructing them to stop advising applicants that having a thumbprint on the license was voluntary. This memorandum would have countermanded a recently issued Department of Motor Vehicles directive emphasizing that thumbprinting was strictly optional, which resulted in about 10 to 15 percent of license applicants declining to provide thumbprints. Consequently, and unknown to the new director, the Sacramento FBI field office was deluged with the names of persons meeting the criteria it supplied to the motor vehicle department. During 1975, the Sacramento office opened about 80 cases a month as a result of the program.

Discussions with officials of the FBI and California Department of Motor Vehicles officials indicated that the program was conducted without formal agreement and apparently without the knowledge of upper management within the motor vehicles department, let alone other State officials. Names were furnished through the routine liaison contacts the FBI maintains within the driver's license division.

The thumbprint program did not lead to the capture of any Weatherman fugitives. Some information was developed concerning extremists or subversives. Of the 20 thumbprint cases in our random sample of cases in the Sacramento field office, none resulted in the subject being identified as a leader or member of a subversive or extremist group. FBI officials said the program developed useful information in approximately 25 percent of the cases. However, most of the information concerned violations of State or local laws and was forwarded to authorities for resolution.

Despite public statements by the Sacramento FBI field office of the FBI that the program did not prove effective and was to be abandoned, our discussions with FBI officials indicate that they believe the program was useful and acceptable. Until the recent action by State officials ending cooperation with the FBI, the only reservation within the FBI against continuing the program was the high volume of names furnished by the driver's license division.

Extremist, Revolutionary, Terrorist, and Subversive Activities in Penal Institutions

Extremist and revolutionary groups have posed threats within the Nation's prison system. In the early 1970s, extremist groups in prisons, through activities such as extortion, blackmail, and taking and holding hostages, threatened to undermine prison authority.

By August 1970, the FBI was alerting field offices that black extremist groups were recruiting members within the prisons. According to the FBI, such groups outside the prison looked upon the prisons as sources of recruits to engage in urban guerilla warfare. The FBI was also aware of similar efforts made by new left organizations.

In an August 21, 1970, communication, FBI headquarters instructed field offices to develop information on black extremist groups being formed in Federal, State, county, and municipal penal institutions. Such information was to be obtained through prison officials. Field offices were also to determine the identities of prisoners involved in extremist activities to permit the Bureau to follow their activities upon release. The Bureau noted that such prisoners also were potential informants.

Responding to continued activities of black extremist groups in prisons, a letter to all field offices on August 26, 1971, reiterated the instructions in the August 21, 1970, communication which directed that particular attention be given to black extremist group involvement in educational or other programs, and extremist literature circulating within prisons.

Despite these early directives to the field offices, the FBI headquarters thought field office efforts were inadequate. The belief that greater attention must be given to extremist activities within prisons was, in part, prompted by other events.

On December 18, 1973, the House Committee on Internal Security released a report entitled "Revolutionary Target: The American Penal System." The report showed that

organizations such as the Black Panther Party and the Venceremos Organization function within prisons and that considerable prison violence can be traced to individuals belonging to such organizations. The Committee also produced evidence of attempts by Marxist revolutionary groups to encourage prison disruption. The report concluded that some prison officers were not sufficiently aware of the threat posed by revolutionary groups.

In February 1974, the alleged kidnapping of Patricia Hearst by members of the Symbionese Liberation Army resulted in giving more urgent attention to extremist activities in prisons. The Symbionese Liberation Army was a violent group formed in prison. The FBI had no knowledge of it before the November 1973 murder of an Oakland, California, School Superintendent. In a February 26, 1974, memorandum to the Director of the FBI, the Assistant Attorney General, Criminal Division, expressed strong interest in receiving any information developed regarding activities by groups outside the prisons which resulted in prison disorders.

Responding to this, the FBI sponsored the "National Symposium on Penal Institutions as a Revolutionary Target" in June 1974. The conference was attended by prison officials from around the country. The consensus of that symposium was that a formal liaison program between the FBI and prison officials would be useful.

As a result of the conference, the FBI initiated the Extremist, Revolutionary, Terrorist, and Subversive Activities in Penal Institutions program in July 1974. The objective of the program is to increase liaison with local, State, and Federal prison officials to heighten their awareness of organized efforts to subvert prison authority. Another program objective is developing information on extremist groups in prisons to supplement FBI investigations of these groups outside prison. The program specifically precludes using prison informants, except in unusual circumstances and with the prior knowledge of "appropriate penal authority." Neither does it levy investigative requirements on the field. Rather, by requiring each field office to report quarterly on contacts with prison officials, it requires the field offices to consider prison problems.

The FBI has kept Justice Department officials informed of this program. By a July 11, 1974, letter, the FBI advised the Attorney General of its intention to establish the program. By memorandum of July 18, 1974, the FBI advised the Assistant Attorney General, Criminal Division, of the program. The history and functions of the program were outlined for the Attorney General in a letter of July 9, 1975.

COUNTERINTELLIGENCE PROGRAM

The FBI's COINTELPRO activities have been subjected to review by the Justice Department and extensive hearings by the Congress. Consequently, we have not looked into this program in detail.

The FBI has acknowledged the existence of 12 counter-intelligence programs. Five were targeted against foreign subjects as part of FBI counterespionage operations; seven were directed against domestic groups. Targets of these programs were: the Communist Party, USA; the Socialist Workers Party; white hate groups, such as the Ku Klux Klan; black extremists, such as the Black Panther Party; new left groups, such as the Students for a Democratic Society; militant Puerto Rican nationalist groups; and a program which attempted to pit organized crime against the Communist Party, USA, called "Operation Hoodwink." According to the FBI, the programs were terminated in 1971.

The objective of the programs was to use the FBI's resources to disrupt the groups and to counter perceived threats to the national security.

The first domestic program, launched in 1956 against the Communist Party, USA, responded to concern regarding the ability of Communists to achieve their goals within the United States by subversion, sabotage, and espionage. Most other programs responded to widespread violence in the South, in the cities, and on the campuses.

Some methods used to accomplish the objective were summarized in a Department of Justice press release of November 18, 1974, summarizing a report by Assistant Attorney General Peterson. Mr. Peterson was directed to review FBI COINTELPRO activities by Attorney General William B. Saxbe. The Peterson report characterized FBI COINTELPRO activities as:

1. Sending anonymous or fictitious materials to groups or members.
2. Disseminating public information to media sources.
3. Leaking informant-based or nonpublic information to media sources to expose the nature, aims, and membership of the various groups.
4. Advising local, State, and Federal authorities of civil and criminal violations by group members.

5. Using informants to disrupt a group's activities by causing dissension or exploiting disputes.
6. Informing employees, credit bureaus, and creditors of members' activities, to adversely affect subjects' credit standings or employment status.
7. Informing businesses and persons with whom members had economic dealings of members' activities, to adversely affect their economic interests.
8. Interviewing members to let them know that the FBI was aware of their activities and to develop them as informants.
9. Attempting to use religious and civil leaders and organizations in disruptive activities.
10. Acting in the political or judicial processes, usually involving release of FBI file information.
11. Establishing sham organizations for disruptive purposes.
12. Informing subjects' families or others of radical or immoral activity.

Ideas for COINTELPRO actions could originate with field agents or headquarters agents. The project was emphasized by the fact that field offices regularly had to report suggestions to headquarters. At headquarters, the suggestions were reviewed by the supervisor responsible for each program. Most COINTELPRO actions were either approved or disapproved at the Assistant Director level or above. In total, approximately 3,300 COINTELPRO proposals were made, 2,411 of which were approved.

All 12 programs implemented under COINTELPRO were approved by the former FBI Director without specific Justice Department involvement. The Peterson committee concluded that the Attorneys General who served between 1956 and 1971 were never made fully aware of the program. However, the Peterson report indicated that certain aspects of the FBI's attempts to penetrate and disrupt the Communist Party, USA, and white hate groups were reported to at least three Attorneys General and key White House staff between 1958 and 1969. The Peterson report emphasized that none of the activities reported were conducted improperly. Finally, the Peterson committee found documents indicating a House Appropriations Subcommittee was briefed on the Bureau's counterintelligence programs and given examples of specific activities undertaken within COINTELPRO as early as 1958.

Various groups being investigated by the FBI continue to charge that the FBI disrupts their activities. The FBI continues to interview persons associated with groups being investigated, ostensibly to develop intelligence and informants. Those who do not cooperate are at least made aware of the FBI's interest in their activities. Investigations of persons classified as extremists or subversives do increase the likelihood that violations of State, local, or Federal criminal or civil statutes will be detected. The Peterson report concluded that

"* * * the overwhelming bulk of the activities carried out under the program were legitimate and proper intelligence and investigative practices and techniques. What was new in the COINTELPRO effort was primarily the targeting of these activities against one specified group or category of organizations."

Despite this conclusion, some activities did raise legal questions, and Justice Department attorneys are reviewing these circumstances to determine if any laws had been violated.

SPECIAL REPORTING PROGRAMS

The urban riots and campus disorders of the 1960s and early 1970s presented unique problems for the FBI. FBI investigations normally focus on the activities of specific groups, such as the Communist Party, USA, or the Ku Klux Klan. However, the violence in the cities and on campuses could seldom be linked directly to a particular group being investigated. The disturbances were caused by persons or ad hoc groups working on their own or in coalition.

During the 1960s, some Government officials suspected that a conspiracy was instigating the nationwide disturbances. In two letters from the Justice Department, the FBI was specifically directed to investigate the possible existence of such a conspiracy. The first, signed by the Attorney General on September 14, 1967, urged the Bureau to investigate the possible existence of a conspiracy underlying the urban riots. Then, in a February 18, 1969, letter to the FBI, the Assistant Attorney General, Internal Security Division, asked the FBI to investigate the possible existence of a conspiracy underlying the campus disorders.

The FBI had anticipated these formal requests from the Justice Department. Thus, by the time these requests were made, the FBI was receiving routine reports from the field offices summarizing racial conditions and the activities of new left groups.

Civil disturbance reporting

In the summer of 1964, FBI officials were concerned with what they saw as "mounting racial tension throughout the nation * * *." Riots in Harlem and Rochester, New York, were viewed as harbingers of future racial violence. These concerns resulted in an August 3, 1964, directive to the field offices. It stressed the FBI responsibility for developing advance knowledge of potential trouble spots in race relations. Such foreknowledge could only be obtained by accurately assessing the overall racial situation in each field office division.

To insure that such assessments were made, bimonthly reports were submitted to headquarters covering the following items: (1) the name of the community, with population figures, (2) a description of the general racial condition, (3) a current evaluation of its potential for violence, (4) the identities of organizations involved in the local racial situation, (5) the identities of leaders and individuals involved, (6) a description of the channels of communication between minority leaders and local officials, (7) the objectives sought by the minority community and possible points of contention, and (8) the reaction of leaders and members of the community to minority demands.

The directive instructed field offices to be particularly alert to attempts by subversive, extremist, or criminal groups to influence local racial conditions by infiltrating local organizations or by associating with local leaders.

Finally, the directive noted that reporting requirements could only be fulfilled if field offices diligently developed informants and sources in urban areas and in extremist and subversive groups. The progress of field office informant development intensely interested headquarters.

Reporting requirements outlined in the August 3, 1964, communication have remained essentially the same.

These reporting requirements were developed within the FBI. Not until November 1974 did the Justice Department provide any formal guidelines on what information on civil unrest it was interested in. Responding to a request by the FBI seeking reporting guidance, the Department expressed its interest in information on situations in which: (1) extremist or subversive groups or individuals were involved; (2) disorders might develop into major disturbances; (3) disturbances might become a matter of national attention; (4) intelligence would obviously interest the President, Attorney General, or the Department; and (5) the incident would be of

particular interest to the Secret Service in fulfilling its protective function.

Presently the FBI furnishes the Department with teletype summaries of such situations. The field offices continue to compile semiannual assessments of the potential for civil unrest, but these have not been disseminated since November 1973. Within the FBI, these assessments are used as planning documents, to formulate responses to such situations as the conflict over school busing in Boston.

New left movement reporting

By October 1968, the FBI was treating new left groups as revolutionary groups. Original interest in new left groups (as targets for infiltration by old line Communists) gave way to the view that the militant activities of new leftists justified investigating them in their own right. In an effort to anticipate planned violent activities by new left groups, field offices had recently been instructed to divert informants from old left Communist organizations to new left activities.

With this as background, the FBI initiated the new left movement reporting program by a directive to the field offices on October 28, 1968. Noting that the field was already investigating new left groups, the FBI said the new left reports would provide a comprehensive picture of the movement, alerting Government officials to the nature and extent of its subversive activities.

In describing what was to be included in the reports, the Bureau described the new left as a movement providing ideologies and platforms alternate to those of old left Communist organizations. Groups characterized by the FBI as new left were the Students for a Democratic Society, and the

* * * more extreme and militant anti-Vietnam war and antidraft protest organizations * * * [whose] militant leadership * * * appears determined to continue to stage militant demonstration activities designed primarily to effect confrontation with authority, particularly with the Federal Government.

The new left reports included information on:

1. Organizations--Identifying new left organizations in the field office jurisdiction, background on organization founding, objectives and relationships with national organizations, identities of leaders with past or present subversive connections.

2. Membership--Ascertaining the size of the membership and the number of sympathizers, with particular interest in the organization's success in expanding.
3. Finances--Developing complete financial information to determine the existence of funding from known subversive groups, financial "angels," 1/ or foreign sources.
4. Communist Influence--Determining the existence of ties with revolutionary groups in the United States or abroad or with hostile foreign governments.
5. Publications--Developing full details on the modus operandi and editorial line of new left publications.
6. Violence--Reporting on actions and statements of new leftists supporting violence.
7. Religion--Reporting on new left attitudes toward religion and support of the movement by religious groups or individuals.
8. Race Relations--Reporting on new left activities in racial disturbances or cooperation with militant racial groups.
9. Political Activities--Including efforts to influence public opinion, the electorate, and government bodies.
10. Ideology--Developing any information indicating new left groups share the aims of revolutionary groups.
11. Education--Developing information that members were being given formalized ideological instruction or material advocating the use of violence to obtain objectives.
12. Social Reform--Reporting organizational policies and activities aimed at achieving social reform.
13. Labor--Reporting activities in the labor field.
14. Public Appearances of Leaders--Reporting on the circumstances surrounding public appearances of new leftists, including a summary of speeches.

1/Nonsubversive domestic groups or individuals that contribute large sums of money to subversive (or extremist) causes.

15. Factionalism--Developing any information indicating disputes within new left groups.
16. Security Measures--Reporting on measures taken to protect the identities of leaders and members.
17. International Relations--Developing any information indicating new leftist contacts with foreign countries or new left statements or actions supporting Soviet and satellite foreign policy.
18. Mass Media--Indicating new left influence in the mass media or support of the new left by the mass media.

The reports from the field offices were routinely disseminated to other Federal agencies. An FBI official said these reports provided a more comprehensive picture of new left activities than was available from the regular dissemination (teletypes from FBI field offices regarding campus disturbances and antiwar demonstrations) to the same agencies.

Additionally, the reports facilitated headquarters review of field office investigations. As investigations of the new left intensified, field offices had to summarize the number of investigations initiated, the number of investigations pending, and the specific steps taken to develop informants.

In February 1974, following the Vietnam peace accords and the evolution of the new left movement into more definitive subversive groups, FBI field offices were relieved of the responsibility of regular reporting, and the new left reporting program was terminated.

INVESTIGATIVE TECHNIQUES

When deemed necessary, use of investigative techniques is approved at the highest management levels within the FBI, often personally by the Director. Use of techniques such as electronic surveillance, mail covers, or access to Federal tax returns must be approved by the Department of Justice or the Postal Service and the Internal Revenue Service, respectively. However, mail openings and surreptitious entries were conducted only when approved by the Director.

Electronic surveillance

The FBI conducts electronic surveillance without a search warrant in accordance with the responsibility vested in the Attorney General by Presidential directive. According

to the FBI, warrantless surveillance is supported by historical practice and judicial decisions over the course of more than 30 years.

In the Keith decision (United States v. United States District Court, 407 U.S. 297 (1972)) the Supreme Court ruled that electronic surveillance to gather domestic intelligence conducted solely as an exercise of executive discretion, without reference to the warrant requirement of the fourth amendment violated that amendment. The Court did not address the issue of using warrantless surveillance for counterespionage purposes.

Currently, warrantless surveillances are conducted only when foreign involvement is so substantial that acts inimical to the national security might be committed. These are conducted only with the personal approval of the Attorney General after review of the FBI Director's written request justifying, with facts, the proposed surveillance.

All surveillances are currently authorized for a maximum of 90 days, and any extensions require the specific approval of the Attorney General.

Mail covers

The FBI uses mail covers because discovering an individual's contacts provides knowledge of the individual's actions and indicates other ways to obtain knowledge of the individual. Using mail covers (looking at the envelopes to determine addresses and addressors) in domestic intelligence investigations helps the FBI develop intelligence regarding the organizational structures and membership of revolutionary groups.

Mail covers are categorized according to the guidelines in section 861 of the U.S. Postal Service Manual. Three categories of mail covers are available to law enforcement agencies: fugitive, criminal, and national security.

The following procedures and policies of the FBI relative to mail covers have been in effect since 1971:

1. All requests for mail covers in national security cases are approved by the Chief Postal Inspector. Mail covers in fugitive or criminal investigations may be approved by regional Postal Inspectors in Charge.
2. All requests are kept to an absolute minimum, and the SAC approves all requests submitted for FBI

headquarters approval. In approving these requests, he or she considers: necessity, desirability, possibility of exposure, and productivity. The final decision is made at the Deputy Associate Director level or higher.

3. Mail covers in fugitive and criminal cases may be used for 30 days and may be continued on request by Postal Inspectors in Charge for additional 30-day periods up to 120 days; in national security cases, mail covers can be initially approved for a maximum of 120 days.

In testimony before a subcommittee of the House Committee on Post Office and the Civil Service on October 1, 1975, the FBI Deputy Associate Director for Investigations stated that, as of September 26, 1975, the FBI had requested or was maintaining 79 mail covers. Sixty-one mail covers were associated with national security investigations; 18, with fugitive investigations. No mail covers were maintained in criminal investigations.

Mail openings

In the same testimony, the FBI Deputy Associate Director revealed that the FBI had conducted eight mail survey programs, all of which were terminated by 1966. These surveys involved opening mail which contained certain indicators. These had led the FBI to believe that opening the mail could result in detecting an illegal foreign agent or a person cooperating with a hostile foreign power. All surveys were conducted as part of counterespionage investigations. None were conducted in the course of FBI domestic intelligence investigations.

All mail surveys were approved by the Director. Except for certain Post Office officials, no one outside the FBI knew about the surveys. Neither Attorney General nor Presidential approval was sought. The Chief Postal Inspector approved access to the mail. However, Post Office officials were not told that the mail was being opened.

FBI officials told us each survey was also subject to annual rejustification, in the light of accomplishments attained, within the FBI. FBI officials, in describing these accomplishments to us, would only specify that some illegal foreign agents were detected.

Durations of the Eight Mail Surveys

- | | |
|------------|------------|
| 1. 1940-66 | 5. 1963-66 |
| 2. 1956-66 | 6. 1963-66 |
| 3. 1959-66 | 7. 1964-66 |
| 4. 1961-62 | 8. 1961 |

FBI participation in CIA mail interceptions

In the previously mentioned testimony of October 1, 1975, the FBI Deputy Associate Director stated that the FBI was advised in January 1958 that the CIA was intercepting mail between the United States and the Soviet Union. The intercept program first merely involved photographing the envelopes but later resulted in opening mail.

With the approval of the FBI Director, the FBI asked the CIA to advise it of any information from the mail which would be valuable in discharging FBI national security responsibilities. Between December 1962 and March 1963, the FBI received information from the CIA from mail intercepted between the United States and Cuba. The CIA program provided the FBI with information on domestic intelligence and counterespionage subjects.

The FBI received the last data from the CIA program in May 1973.

Surreptitious entries

The FBI Director has acknowledged that FBI agents made surreptitious entries without court orders during national security investigations. Little additional information has been made public. Since the Director's public announcement on July 14, 1975, the Justice Department has been reviewing the history of surreptitious entries to determine if legal proceedings against the FBI are warranted.

However, on the basis of our findings (see p. 111) it is clear that surreptitious entries were made relatively frequently, compared to other FBI offices, for domestic intelligence purposes against a limited number of Communist-related groups, at least in the New York field office. The practice was officially used until 1966. At that time, the FBI Director decided that surreptitious entries would be discontinued. But, in fact, at least one surreptitious entry

was made after 1966, in direct contradiction of the Director's order prohibiting use of this technique for domestic intelligence purposes.

The Director approved all surreptitious entries up to 1966, although not always in writing. The FBI never sought outside approval to conduct surreptitious entries.

Access to Federal income tax returns

Instructions to the field offices concerning the Key Activist and Key Extremist programs directed that individuals' tax returns be investigated when information was developed warranting such review. Two basic reasons appear to have prompted interest in tax returns.

First, the Manual of Instructions calls for developing full information on the sources of organizational funding. Review of tax returns was a means of determining sources of funding. Tax returns of selected key activists were requested in 1968. About that time the White House was quite interested in the sources of funds available to new left groups and individuals. These groups and individuals were suspected of receiving foreign funds. Beyond that, an interest existed in identifying any individuals within the United States providing funds to the groups.

Second, tax returns offered one possible means to neutralize key extremists or activists. These persons were suspected of failing to report income received from honorariums, failing to file tax returns at all, or having obtained income illegally. Additionally, since these individuals traveled widely with little visible financial means, the individuals were suspected of engaging in fraudulent credit transactions. Review of tax returns, coupled with information on the financial arrangements for travel, were used to determine if reportable income was commensurate with incurred expenses. Information developed indicating possible tax violations was submitted to the Internal Revenue Service.

The FBI is not authorized to obtain tax returns by directly applying to IRS. Title 26, Code of Federal Regulations, section 301.6103(a)-1 authorizes a U.S. attorney or an Assistant Attorney General to request individual tax returns from the Commissioner of IRS. The Bureau submitted requests for tax returns to an Assistant Attorney General. Copies of tax returns were provided by IRS to the Assistant Attorney General and then to the FBI.

CONCLUSIONS

The FBI conducted domestic intelligence programs to adequately fulfill its investigative responsibilities as it saw them. They were developed in response to perceived threats to the Nation's security and involved close monitoring of Communists, new left radicals, racial extremists and attempts to locate terrorist and espionage suspects.

To a large extent, the FBI's greatest consideration in developing domestic intelligence programs appears to have been the efficiency and effectiveness of the programs rather than their propriety. When individuals' civil liberties are at issue, propriety should perhaps be more important a consideration than efficiency and effectiveness. While the programs were not formally approved by the Attorney General, they largely coincided with Justice Department investigative interests. The indexes, the liaison programs, and the special reporting programs were conducted with Justice Department awareness, if not formal approval, since they received investigative results. Intelligence gathering techniques used by the FBI against the new left and racial extremists were later acknowledged, and continued reporting was requested by the Department.

The decision regarding the need for and propriety of such efforts should not merely be left to Justice Department and FBI officials. Such decisions will, of necessity, be subjective, based on perceptions of domestic tranquility at the time they have to be made. Appropriate congressional committees should, therefore, periodically be advised of such decisions. In this way, more views could be considered in deciding the extent to which certain domestic intelligence efforts are needed.

CHAPTER 7

HOW THE FBI INITIATES AND

CONDUCTS DOMESTIC INTELLIGENCE OPERATIONS

The FBI's domestic intelligence operations are excessive. Too many people are investigated. Even at the preliminary stage, investigations often cover a broad range of sources and techniques. Too many preliminary inquiries are made.

FBI field offices generally complied with the Manual of Instructions and other FBI headquarters guidelines when initiating domestic intelligence investigations. However, the focus on investigating organizations and the general nature of FBI policies and procedures caused them to be broadly interpreted by FBI field offices. This contributed to initiating and conducting too many domestic intelligence investigations.

The FBI, under the overall guidance of the Department of Justice, needs to develop and more closely monitor guidelines for its field offices. Guidelines should clearly define the purpose and scope of domestic intelligence investigations and set forth specific standards for initiating and conducting both preliminary and full-scale investigations. Also, with certain exceptions, the FBI should be more selective in initiating active investigations, even at the preliminary level. More emphasis should be placed on developing, through passive means, a firm basis for investigations before cases are opened.

DOMESTIC INTELLIGENCE INVESTIGATIONS: ORGANIZATION ORIENTED

Of the 898 subversive and extremist cases reviewed, the subjects in 85 percent of the cases (767) were local and national organizations or groups which the FBI believed to be involved in subversive or extremist activities or were individuals believed to be affiliated with those organizations or groups. The remaining cases either involved individuals not affiliated with any particular subversive or extremist organizations or represented control or miscellaneous case files. Examples of the latter cases are field office control files for the Computerized Telephone Number File or Key Extremist programs and one-time investigations of demonstrations or rallies.

Some of the 767 organization or group-related cases involved organizations whose initial rhetoric and/or actions prompted the FBI to initiate at least a preliminary investigation but whose aims and objectives the FBI later found not to

be subversive or extremist. Most cases, however, involved organizations which the FBI determined to be subversive or extremist. They were continuously investigated because of their stated aims, objectives, and activities.

FBI Intelligence Division officials provided us information that showed that the FBI had 157 organizations it characterized as subversive or extremist and was actively investigating during calendar year 1974.

The following table shows the total cases we reviewed in each FBI field office by the type of subject investigated and with an extremist-subversive breakdown of the totals.

<u>Field office</u>	<u>Total cases</u>	<u>Individual cases (note a)</u>		<u>Organization cases</u>	<u>Control-other cases</u>
		<u>Affiliates</u>	<u>Nonaffiliates</u>		
Atlanta	81	65	4	8	4
Buffalo	89	71	5	9	4
Chicago	100	84	7	7	2
Columbia	79	64	4	10	1
Los Angeles	100	76	15	6	3
New York	100	82	5	8	5
Sacramento	80	41	30	6	3
San Diego	80	63	12	4	1
San Francisco	100	80	10	8	2
Springfield	89	67	12	8	2
Total	898	693	104	74	27

(Total extremist- subversive cases)	(459/439)	(363/330)	(36/68)	(41/33)	(19/8)
--	-----------	-----------	---------	---------	--------

a/ Affiliated individuals are those investigated because they are known to have or suspected of having some affiliation with a subversive or extremist organization or group under investigation by the FBI. Nonaffiliated individuals are those who, although not affiliated with any particular organization or group, are investigated because of known or suspected involvement in subversive or extremist activities.

Unless otherwise noted, our evaluation and discussion is based on the 797 cases--693 organization affiliates and 104 nonaffiliates--in which the subjects were individuals. We confined our detailed analysis to those cases because, essentially, investigations affect individuals and because the case files on organizations were primarily of a control nature, with the material related to specific individuals crossfiled to their specific cases. Specific data from cases on organizations, however, was included in our analysis of the FBI's use of certain questionable techniques--electronic surveillance, COINTELPRO, and surreptitious entries--and in its investigative results and accomplishments.

On the basis of our random sample, we estimate that 89.2 percent of the 19,659 domestic intelligence cases the 10 FBI field offices were responsible for investigating in 1974 were on individuals; 7.8 percent were on organizations; and 3.1 percent were control or other types. ¹/ Therefore, we estimate that the 10 offices had 17,528 cases on individuals in the universe from which we drew our sample.

INITIATION OF DOMESTIC INTELLIGENCE
INVESTIGATIONS COULD BE MORE SELECTIVE

FBI field offices generally become aware of a subversive or extremist organization, and individuals connected with them, through their extensive network of informants, confidential sources, State and local law enforcement contacts, and other means, such as the publications or public announcements of the organizations or groups.

Based upon the available information and circumstances concerning the reported activities of a particular organization or individual, a field supervisor can: (1) open and assign a new preliminary inquiry or full-scale investigation on the individual or group, (2) reopen a former investigation, (3) open an "index" or "dead" file on the individual or group, or (4) assign a copy of the reference to the individual or group to a general file on subversives or extremists. At a minimum, the name of the group or individual would be entered in the field office general indexes for future reference.

A dead file is a noninvestigative file opened on a specific individual or group which the field supervisor believes does not warrant a preliminary inquiry or full-scale investigation at that time but on which he expects to receive additional information in the near future. The general file, one which usually exists for each type of investigation, contains an accumulation of references to and allegations regarding various individuals and groups which, in the supervisor's judgment, are not worthy of present or future investigation.

¹/Sampling errors for estimated percentages: 89.2% + 2.4%; 7.8% + 2.1%; 3.1% + 1.4%. All projections in this report are at the 95% confidence level.

Basis for initiating investigations

The Manual of Instructions is very vague about the amount and type of information or the type of evidence needed to open an investigation. With respect to full-scale investigations, the sections of the manual concerning subversives and extremists provide only a few examples 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."

The manual is even less clear about the amount and type of information required to initiate a preliminary inquiry. It provides no examples; it only states that "in all cases, of course, investigations [whether preliminary or full-scale] must be based on indications that the subject may be engaged in subversive extremist activity." (Underscoring supplied.) This is important since the FBI field offices made no real distinction between preliminary and full-scale investigations.

Various supplementary investigative instructions which FBI headquarters issues to its field offices, such as suggested predications for the investigation of specific groups and affiliated individuals, also provide little guidance on the amount and type of information to be used to initiate an investigation.

Although the FBI does not categorize the type of information or evidence needed to initiate an investigation, we determined that the 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 willing to commit violence for a subversive or extremist cause. Examples would include (1) information from an informant that the subject "is a member" and (2) the subject's name listed on a group's official membership roster.

Medium evidence indicated that the subject was associated with a group but that the association was less than definite membership. Examples would include information that the subject (1) attended one or more group meetings, (2) was seen with a known leader, or (3) had been included on a group's mailing list or contributor's list.

Soft evidence indicated that the subject may have had some connection with a group but that no definite link between the subject and membership was evident. Examples would include information that the subject's (1) name was included in the personal address book of a group member or (2) phone number was called by a group member.

Our analysis of the 797 cases showed that 33 percent were started on the basis of hard evidence, 33 percent were started on medium evidence, and 34 percent on soft evidence.

<u>Degree of evidence</u>	<u>Cases initiated</u>	
	<u>Number</u>	<u>Percent</u>
Hard	263	33
Medium	263	33
Soft	<u>271</u>	<u>34</u>
	<u>797</u>	<u>100</u>

On the basis of these sample results, we estimate that 32.3 percent of the estimated 17,528 individual cases were begun on the basis of hard evidence; 31.4 percent, on the basis of medium evidence; and 36.3 percent, on the basis of soft evidence. 1/

A correlation also existed between the degree of initiating evidence and the final results of the investigation. To make this determination, we classified the results of each investigation into the following three categories, representing the level of the subject's involvement with a subversive or extremist organization or in such activities.

- Leader, member, or violence prone individual (for a cause).
- Association, but less than membership.
- No association found.

As shown in the table below, when the FBI initiated cases on the basis of hard evidence, it established that the subject was either a leader, member, or violence prone

1/ Sampling errors for estimated percentages: 32.3% \pm 3.8%; 31.4% \pm 3.8%; 36.3% \pm 4.0%.

individual in 81 percent of the cases. When it initiated cases on the basis of soft evidence, it established the same in only 12 percent of the cases and found no association in 86 percent.

Degree of evidence	Type of association established							
	Leader, member, or violence prone individual		Less than membership		None determined or found		Total cases	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Hard	212	81	3	1	48	18	263	100
Medium	129	49	40	15	94	36	263	100
Soft	<u>33</u>	<u>12</u>	<u>6</u>	<u>2</u>	<u>232</u>	<u>86</u>	<u>271</u>	<u>100</u>
Total cases	<u>374</u>	47	<u>49</u>	6	<u>374</u>	47	<u>797</u>	100

The following are typical examples of sampled cases initiated by the 10 field offices on the basis of hard, medium, and soft evidence and the investigative results in terms of the subject's involvement in subversive or extremist activities.

Hard evidence

- An investigation of a suspected subversive was opened when an informant reported the subject was a member of the publications committee of a front group for a subversive organization, was extremely political, and was injecting herself into a leadership position. During the investigation the subject was active in the group and, at one time, visited the People's Republic of China as a delegate of the group.
- The local police furnished the FBI with the identity of the subject who was one of eight persons arrested and charged with intent to commit murder after a shootout between a well-known black extremist group and the police. An intelligence investigation was opened to obtain background information on and follow the trial of the subject, who was convicted. FBI field office officials stated that the investigation would be reopened when the subject is released from prison.
- An investigation of a suspected subversive was opened when an airline passenger manifest showed the subject departed for Cuba with a subversive group. Later, the

subject became a member of another well-known subversive organization and later became a local leader. The subject was on ADEX because of her activities and leadership in a subversive organization.

- An investigation of a suspected extremist was opened when the local police furnished information that the subject was a member of a white extremist group. The subject was found to be active in the group.
- A confidential source provided information that the subject was a member of a well-known black extremist organization. An investigation established that he was a leader of the organization.

Medium evidence

- An informant reported the subject attended a meeting of a black extremist group. An investigation found the subject was not known to be an active or recent member of the group.
- An informant indicated that the subject made out an application to join an Indian extremist group. An investigation established that the subject was a member of the group.
- The local police obtained from an arrested person a list of names indicating possible membership in a black extremist organization. An extremist investigation of one subject whose name was on the list established that he was a member of the organization.
- A source reported that the subject was on a mailing or membership list of a subversive group and had participated in a demonstration sponsored by the group. An investigation was opened but no direct association with the group was established.
- An informant reported that the subject had attended an affair sponsored by a nationally known black extremist group and had participated in a demonstration sponsored by the group. An investigation established that the subject attended organization meetings but was not a member.

Soft evidence

- The local police furnished the name of a member of a nationally known black extremist organization. An investigation was opened to determine if the subject was married and if so to investigate her husband as well. The investigation failed to locate a husband for the subject.
- The FBI identified and initiated an investigation on the subject because his license plate was cited during a physical surveillance of a subversive group's celebration. A separate case was started on the subject's wife who also attended the function. No information was developed to indicate that either the subject or his wife was involved with the group.
- Through its Computerized Telephone Number File the FBI identified the subject as the subscriber to a telephone number which had been called by the subject of another ongoing investigation. An investigation established no extremist activity on the part of the subject or association with such a group.
- The local police reported that during a visit to a secluded residence, the looks of the individuals, their living quarters, and their reactions caused the police to believe the individuals were involved in "illegal or radical activity." A subversive investigation revealed no illegal or subversive activity on the part of the subjects.
- An investigation was opened on a subject because his automobile was observed parked in the vicinity of a white extremist group meeting. They established no association on the part of the subject. He resided near the meeting place.

Sources of initiating information

The information or evidence which the FBI uses as a basis for initiating domestic intelligence investigations comes from many different sources. The sources and the extent to which they are used are generally the same among FBI field offices. However, the sources vary greatly with respect to the type of evidence they provide.

The most common source is the informant 1/ or potential informant. Such a person, who can be paid or unpaid, should be a member or attend the meetings of the organization or be in a position to provide current, valuable information about the organization.

About 48 percent of the 797 cases were opened because of information received from an FBI informant usually indicating that the subject was affiliated or associated with a predicated organization. Although the percentage of cases initiated by informants varied among the 10 field offices from 33 percent in San Francisco to 75 percent in Columbia, they were the primary source used by each office. This is not surprising in view of the FBI's general instructions to aggressively develop informants and to even consider the subjects of investigations as potential informants.

Information received from other FBI field office sources and from other ongoing FBI investigations was the second most common basis for starting cases. These sources were used to begin 134 cases (17 percent). The information which one FBI field office receives from another could, in many cases, have been generated by an informant or the local police within the sending office's jurisdiction. Also included in this category would be information gathered from other domestic intelligence investigations within the same office, since often one investigation will lead to another. For example, investigations are often opened on (1) associates of individuals under investigation, (2) owners of vehicles parked near the location of an organization the FBI is interested in, and (3) individuals who correspond with individuals the FBI is interested in.

State and local police, the principal outside sources used by the FBI to initiate investigations, were used in 96 cases (12 percent). Generally, FBI field office officials said State and local police are in a unique position to furnish information. They are interested in the criminal activities of members of organizations that the FBI is interested in from a domestic intelligence standpoint. Field offices generally tell local police what organizations and individuals and what activities they are interested in investigating. The police, in turn, provide the FBI field offices

1/ Defined by the FBI as "an individual actively engaged in obtaining and furnishing current information on security or intelligence matters * * *."

with two general types of information: (1) names of members of organizations or groups of interest to the FBI and (2) name lists involving known or suspected subversives or extremists found in the course of an arrest or a search.

The remaining 23 percent of the cases were initiated on the basis of information received from confidential sources, other State and local agencies, miscellaneous sources, and other Federal agencies.

<u>Source</u>	<u>Number</u>	<u>Percent</u>
Informants	385	48
Other FBI offices- investigations	134	17
Police	96	12
Confidential sources	62	8
Other State-local agencies	52	6
Miscellaneous sources	48	6
Other Federal agencies	<u>20</u>	<u>3</u>
Total	<u>797</u>	<u>100</u>

Confidential sources include almost any sources which ordinarily would be identified, except that in a given situation or on a continuous basis the sources request anonymity. ^{1/} Such sources include bankers, telephone company employees, landlords, and police officers. Unlike informants, they make no concerted, continuous efforts on behalf of the FBI to seek out information but merely obtain and furnish information readily available to them.

To protect the identity of the confidential sources used in the cases we reviewed, FBI officials either would not identify the confidential sources or would describe the sources generically. Therefore, we were not able to compile complete information on the types of confidential sources who provided information used to initiate and conduct investigations. Generically, confidential sources which provided information used to initiate the cases we reviewed included employees of public utilities, educational institutions, and State employment services.

^{1/} The FBI defines "confidential source" as an individual who, on a confidential basis, furnishes information available to him or her through his or her present position.

The primary State and local agencies which provided information were voter registration units and departments of correction. Common miscellaneous sources included newspaper articles, citizen's allegations, and subversive and extremist publications. The principal Federal agencies which provided information were various military agencies.

As shown in the table below, the information provided by each type of source varied greatly. The strongest evidence by far was provided by the most common source--FBI informants. Eighty-three percent of the cases initiated on the basis of informant information were opened with either hard or medium evidence while only 17 percent were opened with soft evidence.

Degree of evidence	Type of source												Total cases		
	Informants		Other Federal agencies		Miscellaneous sources		Other FBI offices-investigations		Confidential sources		Police			Other State-Local agencies	
	No.	Per-cent	No.	Per-cent	No.	Per-cent	No.	Per-cent	No.	Per-cent	No.	Per-cent		No.	Per-cent
Hard	149	39	8	40	17	35	40	30	17	28	25	26	7	13	263
Medium	171	44	6	30	13	27	33	25	15	24	19	20	6	12	263
Soft	65	17	6	30	18	38	61	45	30	48	52	54	39	75	271
Total	385	100	20	100	48	100	134	100	62	100	96	100	52	100	797

SOURCES AND TECHNIQUES USED DURING INVESTIGATIONS

The FBI's domestic intelligence investigations are generally "passive" but all encompassing. Information is gathered from other sources, rather than being developed originally by the FBI. The FBI first contacts a vast variety of routine, established sources to identify the subject and determine his or her activities. If those sources are unable to completely provide the information required, then the FBI uses interviews and other investigative techniques. With the exception of using certain minor investigative techniques to identify a subject, special investigative techniques and programs were used infrequently, and this use seemed to depend on the results of a case. They were usually used once a subject's involvement in subversive or extremist activities was confirmed.

Our analysis of the number of cases in which the various

investigative resources were used at least once showed, from a percentage standpoint, that established sources, interviews, and other techniques were used most frequently in that order.

<u>Source</u>	<u>Technique used at least once</u>	
	<u>Number</u>	<u>Percent</u>
Informants	659	83
State-local police	611	77
Confidential sources	430	54
State divisions of motor vehicles	411	52
Other FBI offices-investigations	394	49
Other State-local agencies	332	42
FBI headquarters indexes	314	39
Credit bureaus	313	39
Other Federal agencies	312	39
Other private sources	266	33
Educational institutions	169	21
Bureau of vital statistics	161	20
State computers	144	18
Utilities	143	18
Military records	52	7
Banks/other financial institutions	31	4

Note: Percentages are based on 797 cases and are independent, since more than 1 source could have been used in each case.

Informants and State and local police were by far the most common sources contacted during an investigation. The FBI relies heavily on its informants during an investigation, since they are generally in the best position to know if and to what extent a subject is involved in subversive or extremist activities. The police, on the other hand, are the most familiar with any criminal activities by the subjects.

Unlike the initiation of investigations, confidential sources were used more often once they were opened. To the extent identifiable, generally those confidential sources

used most frequently during investigations included employees at utilities, educational institutions, and State employment agencies.

The various State divisions of motor vehicles were frequent sources for the pictures of investigative subjects and for other identifying information, such as date of birth and residence.

Other FBI offices were contacted in almost 50 percent of the cases while four other frequently used sources--FBI headquarters indexes, other Federal agencies, other State and local agencies, and credit bureaus--were contacted in about 40 percent of the cases. FBI officials said their headquarters indexes were not checked frequently, because substantial identification information must exist on the subject for the check to be useful and accurate.

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

Those commonly used State and local agencies were voter registration units, departments of corrections, and court records. FBI field offices located in one State frequently used the State's Firearms Owners Identification Division. Most cases listed under State computers were attributable to field offices located in another State which frequently used the State-owned law enforcement information system. All these sources, together with credit bureaus, were used primarily to obtain and/or verify identification and background information on a subject.

Some commonly used other private sources included newspapers, telephone directories, as well as other scattered sources--rental agencies, airlines, insurance companies, bonding companies, and realtors.

Interviews were conducted by the FBI one or more times in about 42 percent of the 797 cases. The subjects of the cases were interviewed in about 22 percent of the cases. The FBI also interviewed, in a smaller percentage of cases,

persons associated or affiliated in various ways with the subjects. These included friends or associates, neighbors, employees, and relatives. The remaining group of persons interviewed which we called "others" included landlords, attorneys, businessmen, and school officials. Following is the number and percentage of cases in which the various groups of persons were interviewed one or more times.

<u>Person interviewed</u>	<u>Person interviewed at least once</u>	
	<u>Number</u>	<u>Percent</u>
Any of the below	334	42
Subjects	172	22
Friends-associates	96	12
Neighbors	87	11
Employers	75	9
Relatives	68	9
Others	121	15

Note: Percentages are based on 797 cases and are independent, since more than one interview could have been conducted in each case.

The most commonly used investigative techniques were pretext contacts 1/ and physical surveillance. The former was used in 155 cases (20 percent of the 797), while the latter was used in 149 cases (19 percent).

Pretext contacts were used mostly for identifying and locating the subject. These included (1) active pretext contacts, in which an agent posed as someone else, such as a building inspector, a lawyer, or a potential client and (2) passive pretext contacts, in which an agent, either by telephone or in person, obtained information, such as confirmation of employment, without identifying himself or herself as an FBI agent. Although the propriety of this technique may be questionable, some FBI officials viewed it as a way to obtain information on a subject without unnecessarily revealing that he or she is the subject of an FBI investigation.

Physical surveillances ranged from "spot checks" of a residence to observations of several hours. This technique, particularly the spot check, was often used for identifying subjects. It might also be used to observe the subject's individual activities--particularly if he or she were on ADEX or were part of a special investigation program--or his or her activities as part of a subversive or extremist group.

1/Seeking information without officially identifying the FBI as the inquirer.

Photo surveillances were used in 30 of the cases (about 4 percent). Most of these involved one-time surveillances of group gatherings. In one case, a 6-month surveillance was used because no informants were involved and because foreign influence on an organization was suspected. Generally, the target of photo surveillance was the organization with which the subject was associated, not the subject.

Mail covers, listing the return addresses of individuals who correspond with the target of the cover--usually an organization--occurred in only 8 of the cases (about 1 percent). In all cases, the subject was an individual who was identified as corresponding with a subversive or extremist organization against which the mail cover was targeted.

Information obtained from electronic surveillances was used in 69 cases (about 8 percent). ^{1/} The information in the cases was obtained from 1 or more of 41 different surveillances (4 of which were microphones), only 2 of which were specifically targeted against a subject of the cases we sampled. Thus, information in 67 of the 69 cases was obtained as the result of "overhears" on surveillances targeted against the subjects of cases not included in our sample.

Of the 41 electronic surveillances from which information in our sample cases was obtained, 24 were targeted at the headquarters or chapters of subversive or extremist organizations under investigation, 9 were targeted against individuals, and 8 involved foreign intelligence targets. All 41 surveillances were approved by the Attorney General, and all were used before the June 1972 Keith decision.

The subjects of only 6 cases ^{1/} were the targets of neutralizing or disruptive actions under the FBI's Counter-intelligence Programs. Three of the cases were being conducted by the New York FBI field office, two by the San Francisco office, and one by the Atlanta office. All subjects were subversive or extremist organizations or key leaders or activists in such organizations. Only about two COINTELPRO-type actions were taken in each case, and all were taken before April 1971 when the program was officially terminated. The actions consisted primarily of sending anonymous materials to the subjects and leaking nonpublic or disseminating public information to media sources.

^{1/}Because of the sensitivity of electronic surveillances and the questionable propriety of COINTELPRO, surreptitious entries, and mail openings, our analysis of the use of these investigative programs and techniques covered all 898 in our sample cases, including organization and control cases.

Surreptitious entries were used by the FBI in nine of the cases we sampled; 1/ mail openings, in one of the nine cases. Eight of the nine cases, all of which involved subversives, were conducted by the New York FBI field office and accounted for 16 percent of the 50 subversive cases we randomly sampled there. One was done by the Chicago office.

In two of the nine cases, the surreptitious entries were directed against organizations which were the case subjects. The subjects of the other seven cases were not the targets of surreptitious entries, but information obtained in entries targeted against subversive organizations (not sampled) was used in the subjects' cases. The one mail opening involved an organization. All instances of surreptitious entry or mail opening associated with the nine cases occurred before 1967.

DISTINCTION BETWEEN PRELIMINARY AND
FULL-SCALE INVESTIGATIONS NOT IMPLEMENTED

The distinction between and the limitations on preliminary inquiries and full-scale investigations were imposed to greater restrict the field offices. This was to give headquarters greater control over domestic intelligence investigations.

In practice, FBI field offices have not adequately distinguished between the investigations or limited the frequency, length, and scope of preliminary inquiries. As a result, FBI headquarters is unaware of many domestic intelligence investigations being conducted and only has limited control--mostly through the Inspection Division--over such investigations.

The Manual of Instructions is oriented toward the full-scale investigation. It only mentions the preliminary inquiry briefly and makes it the exception rather than the rule.

The manual states that all investigations must be based on statutes, but that there "may be occasions" when a preliminary inquiry is needed to determine whether a statutory basis exists for an investigation.

With respect to scope and length of investigation, the manual states that a preliminary investigation must be "undertaken thru [sic] established sources, for a period not to exceed 90 days." The manual does not define or explain

1/See footnote 1 on p. 110.

"established sources" or give any other information regarding what can or cannot be done during a preliminary inquiry. It does indicate, however, that at the conclusion of 90 days a field office must either (1) close the investigation, without informing headquarters, if a statutory basis for a full-scale investigation could not be established or (2) provide a summary of the investigation to FBI headquarters, recommending either continuing the preliminary inquiry if further inquiry is needed or converting it to a full-scale investigation.

As a basis for reviewing how the distinction between preliminary inquiries and full-scale investigations were implemented, we used 391 of the 797 cases which were started after December 31, 1973 (since the distinction was not made official until September 1973). About 89 percent were initiated and conducted as preliminary inquiries. Another 3 percent of the cases started as preliminary inquiries and became full-scale investigations, apparently after a sufficient statutory basis had been established. Only 8 percent were initiated and conducted as full-scale investigations.

On the basis of our sample results, we estimate that 7,562 of the estimated 8,392 cases (90.1 percent) opened after December 31, 1973, were opened as preliminary inquiries (with a sampling error of \pm 3.7 percent).

These results indicate not only that preliminary inquiries were a common practice, as opposed to an occasional instance, but also that only a small percentage of them sufficiently concerned the FBI to warrant full-scale investigations.

The high percentage of cases begun as preliminary inquiries seems to further substantiate the fact that many cases are opened on the basis of weak or minimal evidence. (Having preliminary and full-scale investigations presupposes that strong evidence of subversive or extremist activity should warrant a full-scale investigation.) It also shows that FBI field office officials saw little or no difference between preliminary and full-scale investigations. Even the information used to initiate some full-scale investigations was similar or equivalent to information used to initiate preliminary inquiries.

The various field offices interpreted differently the idea of preliminary inquiries and full-scale investigations. FBI officials in 2 of the 10 offices we reviewed referred to preliminary inquiries as all those cases in which the subject has neither been recommended for nor included on the FBI Administrative Index. Officials in another field

office saw no difference between the two types of investigations with respect to investigative techniques or reporting procedures. Still another office indicated that the objectives of the two types of investigations were the same.

Although the Manual of Instructions confines the scope of preliminary inquiries to the use of established sources, the 10 FBI field offices generally used the same sources in preliminary inquiries and in full-scale investigations.

The following table shows the various sources used in the 391 cases initiated after December 31, 1973, by the type of investigation initiated.

Source	Cases initiated after 12-31-73			
	Preliminary inquiries		Full-scale investigations	
	Number	Percent (note a)	Number	Percent (note a)
Informants	271	76	29	91
State-local police	228	64	24	75
State divisions of motor vehicles	145	40	20	63
Confidential sources	141	39	10	31
Other FBI sources	97	27	16	50
Other State and local agencies	93	26	13	41
Credit bureaus	74	21	7	22
FBI headquarters indexes	70	20	14	44
Other private sources	70	20	8	25
Other Federal agencies	67	19	10	31
State computers	51	14	12	38
Utilities	40	11	7	22
Educational institutions	33	9	5	16
Bureaus of vital statistics	26	7	10	31
Military records	4	1	4	13
Banks, other financial institutions	3	1	2	6

a/Percentages are based on 359 cases initiated as preliminary inquiries and 32 initiated as full-scale investigations. They are independent since more than one source could have been used in each case.

Most of the FBI field offices interpreted "established sources" broadly and did not believe the type of investigation restricted who was contacted. An established source was generally described by the field offices as any source

previously used by the FBI. Some field offices indicated that information could come from whatever source--established or otherwise--necessary to establish a subject's identity and subversive or extremist affiliation.

Field offices also went beyond established sources and conducted interviews in 15 percent of the preliminary inquiries. In contrast, the FBI conducted interviews in 44 percent of the 32 cases initiated as full-scale investigations after December 31, 1973.

<u>Person interviewed</u>	<u>Cases in which interview held at least once</u>	
	<u>Number</u>	<u>Percent</u>
Any of the below	55	15
Subject	26	7
Miscellaneous	16	5
Employers	10	3
Friends-associates	8	2
Neighbors	7	2
Relatives	5	1

Note: Percentages are based on 359 cases initiated as preliminary inquiries and are independent, since more than one type of person could have been interviewed in each case.

Interviewing a subject's close affiliates at the preliminary stage of an investigation is extremely questionable.

Despite the specific emphasis placed on the 90-day time limit by the Manual of Instructions and by the Inspection Division during its review, most of the preliminary inquiries we reviewed lasted over 90 days. Most of these were not brought to the attention of FBI headquarters. Of the 359 cases which were either initiated and conducted as preliminary inquiries only or initiated as preliminary inquiries and advanced to full-scale investigations, 73 percent lasted more than 90 days. We estimate that 72.5 percent of the estimated 7,562 preliminary inquiries opened in the 10 FBI field offices since 1974 lasted more than 90 days (with a sampling error of \pm 5.4 percent).

The average length of overextended preliminary inquiries we sampled was 154 days.

<u>Case length (in days)</u>	<u>Cases over 90 days</u>	
	<u>Number</u>	<u>Percent</u>
91-120	109	42
121-180	86	33
181-365	60	23
Over 365	<u>6</u>	<u>2</u>
Total	<u>261</u>	<u>100</u>

In the 261 cases over 90 days, the field offices notified FBI headquarters in only 33 percent of the cases.

On the basis of our sample results we estimate that in 64.6 percent of the estimated 5,481 cases that went over 90 days, FBI headquarters was unaware of the extension (with a sampling error of \pm 6.2 percent).

Thus, headquarters had no opportunity to review and possibly terminate the inquiries if unwarranted. In one field office, for example, preliminary inquiries were opened on 14 individuals who attended one or more meetings of a local college campus group. All inquiries exceeded 90 days and were not reported to FBI headquarters. As a result, FBI headquarters had no opportunity to decide whether the inquiries should have been continued or whether they should have even been opened (thus affecting the extent to which similar inquiries are opened).

In the 261 preliminary inquiries that went over 90 days, the FBI was not able to establish the individual's association with a subversive or extremist group in 65 percent of the cases.

The FBI Inspection Division had little effect on how often the 90-day limitation and reporting requirements for preliminary inquiries were carried out. What effect it did have was limited primarily to cases on subversives, since the Division was not required to check cases on extremists for the requirements.

In January 1974, the Inspection Division began reviewing at least 20 percent of closed cases on subversives (compared to the normal 10 percent review of case files) during field office inspections, to insure that field offices were complying with the 90-day limitation and reporting requirements. The same review was apparently not applied to extremist cases, since the Manual of Instructions did not officially make the 90-day requirement applicable to those cases (even though, according to FBI officials, it has always applied to both subversive and extremist investigations).

In the five FBI field offices included in our review that were inspected in calendar year 1974 (between March and July), the percentage of cases on subversives in which preliminary inquiries extended over 90 days during 1974 as well as those overextended and not reported to FBI headquarters was still very high. However, as shown below, the percentages were generally lower than the corresponding percentages for cases on extremists.

<u>Field office</u>	<u>Percentage of preliminary inquiries initiated after December 31, 1973</u>			
	<u>Extended over 90 days</u>		<u>Extended over 90 days without notification</u>	
	<u>Extremist</u>	<u>Subversive</u>	<u>Extremist</u>	<u>Subversive</u>
Chicago	75	67	100	70
Los Angeles	83	71	58	27
Sacramento	67	56	100	80
San Diego	67	64	50	67
Springfield	79	86	100	28

As such, the Inspection Division may have had some positive influence on the extent to which the 90-day rule was complied with, at least regarding investigations of subversives. However, the effect has not been universal or significant in terms of major reductions in the percentage of preliminary inquiries lasting more than 90 days or improvements in reporting extensions to FBI headquarters.

In commenting on our report, the Justice Department stated that in December 1975 the FBI revised its policy regarding preliminary inquiries. (See app. V.) Field offices must now advise FBI headquarters when such inquiries are initiated and the scope of contacts. The FBI believes such actions will insure adequate headquarters control over the duration and scope of preliminary inquiries.

CONCLUSIONS

The results of our analysis raise several issues regarding the extent of FBI investigations and when and on what basis investigations should be initiated.

Generally, as soon as the FBI received an allegation or other information associating a person in some way with a known or suspected subversive or extremist organization or individual, it would initiate an active investigation to fully identify and determine the nature and extent of the person's association and activities, if any. Once open, all available sources as well as interviews were

used to identify the subject and determine his or her activities. This approach was used regardless of the nature and extent of the information used to open the case or the investigative level at which the case was opened.

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

Just what is the urgency and necessity of initiating contacts outside the FBI on the basis of evidence indicating a minor or unknown role in subversive or extremist activities? Often stronger additional evidence might later become available--particularly through informants--indicating that an individual is contemplating committing a specific violent act. At that time an active investigation could be initiated to assess the threat involved. In some instances, particularly with respect to new organizations or those groups difficult to penetrate, informants might be inadequate and outside sources would have to be used. However, these situations should be treated as exceptions, depending on the potential threat involved.

Having preliminary inquiries and full-scale investigations, if properly implemented, could be an effective administrative aid. The FBI could control investigations. This concept together with stricter, more specific requirements for opening investigations would help to limit the scope and conduct of domestic intelligence operations. However, FBI field offices have not yet effectively distinguished between preliminary and full-scale investigations nor have they emphasized the type of evidence used to open a case.

The December 1975 FBI policy revision providing headquarters more information about preliminary inquiries should result in better controls of such activities than existed previously.

CHAPTER 8

HOW THE FBI MAINTAINS AND DISSEMINATES

DOMESTIC INTELLIGENCE INFORMATION

How the FBI maintains and disseminates information is of great concern. To what extent are an individual's civil liberties protected? The FBI appears to have adequately controlled the dissemination of investigative information; however, it has not adequately examined its procedures for maintaining information. The FBI attitude is basically that it should retain all information collected during intelligence investigations because of its possible use in future investigations. But, neither the FBI nor the Justice Department has adequately determined the frequency and purposes of using investigative information after a case is closed.

In 47 percent of the cases on individuals we examined, the FBI could not establish any associations on the part of the subjects with subversive or extremist groups. Yet, in 21 percent of those cases, the FBI disseminated reports identifying the individuals to other Federal, State, or local law enforcement agencies.

We estimate that 21.6 percent of the cases (1,927 of 8,931 based on a sampling error of + 4.9 percent) in which information was disseminated concerned individuals whom the FBI had determined were not associated with a group.

The FBI disseminated information in about half of the cases on individuals we sampled. Information was disseminated through written reports in 79 percent of these cases. We also estimate (based on a sampling error of + 4.1 percent) that dissemination was made in 51 percent of the estimated 17,528 cases on individuals investigated. In 71 percent of the 102 cases opened during 1974 in which information was disseminated, it was done during the preliminary inquiry stage.

The Secret Service was the agency that received most FBI information--89 percent of the total cases in which information was disseminated. Yet, the Secret Service had intelligence files on the subjects of only about 4 percent of the cases we followed up with them.

FBI FILES--WHERE THEY ARE, WHAT IS IN THEM

The FBI generally maintains its most complete domestic intelligence files at the FBI field office within whose territory the subject resides. Included in these files are

all correspondence, reports, and other investigative materials, such as interviews, informant reports, or police record checks, collected during an investigation. Files on the same individual or organization may also be located at FBI headquarters if the investigation was full scale, concluded with a report, or if FBI headquarters was consulted or notified during the inquiry or investigation. Material included in headquarters files generally consists of reports from field offices and of correspondence to and from field offices concerning the subject. Files may also be located at any FBI field office of which assistance was requested during an investigation. Information included in these files is generally limited to specifics needed to obtain the desired information and the results of the assisting office's investigation.

According to the Manual of Instructions, field offices should provide FBI headquarters with reports concerning all pertinent information developed during investigations. Reports should be submitted to provide timely and important information regarding the subjects' current activities. Reports should be submitted on the results of extended inquiries, such as summaries of subjects' activities, or when recommending subjects for ADEX.

The Manual of Instructions indicates reports should be limited to information regarding (1) the subject's subversive activities, sympathies, and affiliations, (2) the backgrounds of other subversive groups or individuals the subject may be connected with, and (3) the essential background of the subject. Similar reporting requirements exist for subjects classified as extremists. These reports will be maintained at FBI headquarters indefinitely because information contained in the files might be useful in future investigations. FBI officials indicated this applies to all intelligence files, including those in which the subject of the case was found by the FBI not to have any association with a subversive or extremist group.

As noted in chapter 10, in 374 (47 percent) of the 797 individual cases, the subjects of cases we sampled had no associations with subversive or extremist groups. Cases falling into this category include those initiated on the basis of soft evidence (such as a vehicle parked in the vicinity of a meeting place or a toll record indicating the subject had been called by a subversive or extremist).

According to FBI headquarters officials, they normally do not destroy headquarters intelligence files. They stated that although they had requested approval from the National Archives and Records Service to destroy certain intelligence-

related information at least 25 years old, they have not sought approval for regularly destroying investigative files on subversives or extremists maintained at headquarters. The FBI has periodically sought and received approval for destroying files on criminals.

Because headquarters retains pertinent file information, field offices operate a limited destruction program. The program allows field offices with major responsibility in the cases to destroy files 10 years after they have been closed, if it is determined the files will no longer be valuable. Assisting offices may completely destroy their files 5 years after they are closed.

Although headquarters' files on subversives and extremists are retained, the FBI has no data available to measure (1) how often closed files are requested, (2) what specific information is actually needed, and (3) what effect a destruction program would have on the efficiency of FBI operations.

Collection of personal data

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 actual case files, we cannot comment on the personal data obtained or included in them. This information would probably not be the major subject of a report and, therefore, would not be included in a summary prepared for us.

While we found no indication that the collection of personal data is widespread, in a few examples this occurred. Agents generally indicated that such information was unsolicited but included in the file because it was provided by an informant or obtained through electronic surveillance. Agents do not analyze information obtained through electronic surveillance but simply include such information in the case file. FBI agents generally said informants are instructed to provide as much information as they know about a particular subject. In one field office, agents stated they do not restrict informants by advising them not to report certain types of social or personal data, because they do not want to "inhibit informants."

Information on pregnancies, according to some agents, is obtained because it relates to the health of subjects; information on unmarried individuals living together is obtained because it relates to the subjects' associates. The

following are examples of personal or social data that was included in our randomly selected cases.

1. A telephone tap at an organizational headquarters recorded a conversation in which two women "discussed various men that they would like to have sexual relations with." In the same case, information concerning the subject's hospitalization for a possible miscarriage was also obtained through the tap.

2. In two different cases informants' reports discussed the subjects' pregnancies and the women's efforts in determining paternity.

3. Information was obtained that a male subject associated with homosexuals and was involved with an adolescent female.

Continuous nature of investigations

Domestic intelligence investigations and files are closed by the SACs of field offices when they determine that no further investigation is warranted. Although files might be closed, the FBI will continue to place information in the file. (In effect, domestic intelligence files are never closed if one defines closed as "no longer gathering and retaining solicited or unsolicited information about the individual.")

The FBI believes such a procedure is needed because such information might be useful in the future. This includes informant reports which mention participants at various activities or meetings without regard to whether the individual is a subject of an FBI investigation or if the investigation is current.

Our review showed that of the 729 of the 797 cases on individuals which had been closed at least once, the field offices continued to add information to 326 cases (about 45 percent of the cases). The number of serials added varied from 1 to 774. In 65 percent of the cases, 10 serials or less were added to the case; in 23 percent, between 11 and 50 serials were added; in 6 percent, 51 to 100 were added; and in 6 percent, more than 100 were added.

INVESTIGATIVE INFORMATION--WHO RECEIVES IT, WHEN, AND HOW

The FBI's Manual of Instructions indicates that pertinent investigative information is to be furnished by headquarters and field offices to other executive agencies and

to State and local law enforcement agencies that have a legitimate interest in the information.

Some information was distributed in about half (399) of the 797 individual cases we reviewed. We estimate (with a sampling error of + 4.1 percent) dissemination was made in 51 percent (8,931) of the 17,528 cases involving individuals. Dissemination by field offices varied greatly from a high of 63 percent in the Buffalo field office to a low of 19 percent in the Columbia field office. More cases on subversives (60 percent) than cases on extremists (40 percent) contained information which was disseminated. The large variations could be attributed to the types of the cases and their respective reporting procedures.

Guidelines on subversives indicate that members of subversive groups should be investigated and reports forwarded to headquarters. Guidelines on extremists do not indicate that members of extremist groups need to be investigated, and, therefore, reports are not submitted to headquarters. Since reports are usually disseminated to the U.S. Secret Service and the Department of Justice, the greater availability of reports on subversives might account for the larger dissemination of information on them.

Dissemination agreements

The Manual of Instructions indicates the following agencies may receive FBI reports: Department of Justice, U.S. Secret Service, military intelligence agencies within the Department of Defense, State and local law enforcement agencies, and other executive agencies.

Department of Justice

Although no specific agreements exist between the Department of Justice and the FBI concerning specific dissemination of FBI reports on organizations and individuals, FBI instructions to field offices indicate that two copies of all reports or letterhead memorandums on organizations are sent to the Department. Only one copy is sent when the subject of the investigation is an individual.

The major recipient of FBI reports in the Department of Justice is the Internal Security Section of the Criminal Division. The section was organized in March 1973 (it had previously been a division) and has continued to be responsible for prosecuting violations of 18 U.S.C. 2383-85. Because the Department brings suit under these sections, the FBI disseminates one copy of all reports on all individual and organizational investigations to the Internal Security Section. Section officials indicated that, when they receive

an FBI report, it is reviewed primarily from a prosecutive standpoint.

The second major recipient of the FBI reports within the Department of Justice is the General Crimes Section of the Criminal Division. The Prosecution Unit within the General Crimes Section is primarily responsible, in the internal security field, for prosecuting cases involving violent acts committed by extremist or terrorist groups. The section prosecutes groups for specific acts of violence; it does not monitor groups' activities. Since November 1974, the section has attempted to reduce the normal flow of information from the FBI to only those reports dealing with criminal acts rather than reports containing only intelligence information. In the first 6 months of 1975, however, the Prosecution Unit received over 24,000 items of mail from the FBI. They are trying to reduce this even more.

The Analysis and Evaluation Unit in the Office of the Deputy Attorney General receives reports and teletypes from the FBI concerning any civil disturbances which could develop into situations requiring Federal intervention. We were told that on an average day the unit receives about 25 reports and teletypes from the FBI.

U.S. Secret Service

According to Secret Service officials, the Warren Commission Report on the assassination of President Kennedy reviewed the exchange of information between the FBI and the Secret Service and recommended that the two agencies cooperate more. In response to that recommendation, the FBI and Secret Service adopted specific written guidelines concerning the exchange of information. The agreement states:

"The FBI will inform the U.S. Secret Service of the identity of individuals or organizations who come to the attention of the FBI as knowingly and willingly advocating, abetting, advising, or teaching the duty, necessity, or propriety of overthrowing or destroying the government of the United States or the government of any State, territory, or possession or political subdivision therein, by force or violence or by the assassination of any officer of any such government."

According to the FBI Manual of Instructions, virtually all reports on individuals should be disseminated to the Secret Service when any substantive information shows that the subject participated in or was sympathetic to subversive activities. In practice, copies of all reports are generally

forwarded to both U.S. Secret Service headquarters and to field offices. In addition, changes in addresses or employment for certain individuals, such as those listed on ADEX, are forwarded to Secret Service headquarters and field offices as they are updated.

Military intelligence agencies

Various agreements between the FBI and military intelligence agencies require that these agencies freely exchange all information of mutual interest. FBI instructions state that any derogatory or possibly significant information developed concerning members of the Armed Forces, including reports of contacts with individuals or groups of security interest, be sent to the military services responsible for the members.

As interpreted by the FBI, this policy indicates that dissemination be made to one or more military intelligence agencies when it is determined that the subject is

- an active member of the Armed Forces,
- a member of a military reserve branch or the National Guard,
- an individual employed in certain "key military facilities,"
- an employee of an approved contractor of the Armed Forces,
- a seaman or other individual employed in the maritime industry, including longshoremen and other waterfront employees,
- an employee of a public utility (including State and municipal employees),
- an individual who owns property on, or resides in the immediate vicinity of, an Armed Forces installation, or
- an individual who has close relatives in the Armed Forces.

The present agreements also state that the FBI will stop any investigations of extremist or subversive individuals when it is determined that the subjects are active members of the military. This information will then be turned over to the proper military intelligence agency which will continue the investigation.

Other Federal agencies

The Manual of Instructions generally indicates that interested agencies should be notified in any instance in which information is received concerning possible subversive actions of employees of executive agencies. The following other Federal agencies will be notified in any case involving the following situations:

- Immigration and Naturalization Service--should be furnished, at the local level, any information relating to a subject's deportation or denaturalization.
- Federal Aviation Administration--should be furnished information, at the headquarters level, on airmen who are licensed by the Federal Aviation Administration. This includes airmen issued certificates (pilots, mechanics, or members of a crew); individuals directly in charge of inspection, maintenance, overhauling, or repair of aircraft; and aircraft dispatchers or other individuals involved in air traffic control tower operations.
- Central Intelligence Agency and Department of State--will be furnished information on any individual who is the subject of a security investigation and is traveling abroad (except such travel as a vacation).

Recipients of FBI reports

Our review indicated that the Secret Service received most of the FBI reports. In 89 percent of the cases in which information was disseminated (357 of 399) either FBI field offices or headquarters sent information to the Secret Service. This varied, however, according to field office and type of investigation. For example, the New York, Chicago, Columbia, and Atlanta offices sent the Secret Service all cases on subversives in which information was disseminated. In Sacramento, on the other hand, the Secret Service was sent only 57 percent of the cases on subversives that involved dissemination.

Although the Secret Service received much information from the FBI, very little was retained. According to Secret Service officials we interviewed in Washington, D.C., the Service generally incorporated into its intelligence files less than 6 percent of the information it received from the FBI. The officials stated that they destroyed the FBI information which they did not place in their files. We were able to follow up, with appropriate Secret Service field offices, 294 of the 357 cases that the FBI disseminated to the Secret Service. Those field offices had intelligence

files on the subjects of only about 4 percent of the 294 cases.

Because of the disparity between the amount of information provided by the FBI and that of actual use to the Secret Service, we questioned both FBI and Secret Service officials about the utility of the present agreement for disseminating information between the two agencies. Officials of both agencies recognized that the FBI provided too much, not always useful information to the Secret Service, but no official wanted to change the arrangement. FBI officials believed they were bound by duty to provide the Secret Service with as much information as possible, so that if an individual under FBI investigation met Secret Service criteria (see p. 123), the Secret Service would be aware of it. Similarly, Secret Service officials stated that they wanted to judge what FBI-provided information was useful to them.

The Department of Justice received FBI reports in 80 percent of the 399 cases disseminated. Included in this percentage are all reports sent to Internal Security Section, General Crimes Section, Civil Rights Division, Analysis and Evaluation Unit, and prior Department entities, such as the Interdepartmental Intelligence Unit, and reports sent to local U.S. attorneys. In all cases, FBI headquarters disseminated the reports to a Department division or section.

Various military intelligence units received reports in 31 percent of the cases. Before 1973, the Manual of Instructions indicated that certain types of information on white hate groups and members of such groups were to be sent to various military branches, even if none of the criteria listed earlier existed. Since the manual was revised, such dissemination has ceased.

Dissemination to the CIA and the State Department was done through FBI headquarters. The CIA received information in 15 percent of the cases because the subjects of these investigations were traveling abroad. Information was sent to the CIA almost twice as often in cases on subversives as in cases on extremists (19 percent versus 10 percent). This was primarily due to the greater foreign travel of members of certain subversive groups. Dissemination to the State Department occurred in 17 percent of the cases in which information was disseminated (23 percent in cases on subversives and 6 percent on cases on extremists).

The following are some of the 25 other Federal agencies that received information or reports from the FBI, including the number of cases in which information was received.

<u>Agency</u>	<u>Cases</u>
Alcohol, Tobacco and Firearms	20
Internal Revenue Service	20
Immigration and Naturalization Service	10
Civil Service Commission	6
Drug Enforcement Administration	6

In addition, information from cases was also disseminated to three intelligence agencies of foreign governments (via FBI foreign liaison posts); a local State's District Attorney; a Governor's office; a State university security officer; a private bonding company; and in one instance, to the subject, under a Freedom of Information Act suit.

Exchange of information with State and local law enforcement agencies

We discussed with various State and local law enforcement officials their relationships with the FBI. They generally emphasized their respect for and good relations with the FBI. They stressed that their intelligence gathering is aimed at criminal rather than domestic activities. State and local officials generally indicated that the information exchanged between the FBI and them is not governed by written agreement. The exchange is informal--usually a verbal exchange between agents. For example, officials in nine agencies said they could not cite a specific instance in which they had received a written intelligence report from the FBI.

For the most part, State and local officials we interviewed did not consider FBI intelligence more valuable than information they collected. However, they emphasized the FBI's ability, because of its size and geographic coverage, to get a comprehensive look at subversive and extremist activities.

Most officials did not believe the FBI had failed to pass along valuable domestic intelligence data. In their opinions, FBI data is generally factual and provides as complete a picture as possible. Sometimes the FBI provides data that has already been provided by another source, but officials stated duplication could be considered good, because it corroborates other information.

Some State and local agency officials stated they normally provide any information an FBI agent asks for, but do not give FBI agents free, direct access to their intelligence files. Neither the FBI nor State or local officials reveal

their sources of information; informants must be protected. These officials believed it possible that they and the FBI occasionally use the same informants. But, they did not believe the FBI had ever "stolen" their informants. In domestic intelligence operations, State and local officials said they use informants, as opposed to undercover agents, almost exclusively.

The FBI Manual of Instructions contains no specific written agreements between the FBI and State and local law enforcement agencies on disseminating information. However, field offices and agents are advised to maintain close liaisons with State and local law enforcement agencies. According to the Manual of Instructions, agents should furnish promptly to local law enforcement agencies any information regarding local criminal matters which falls within their jurisdiction. This particularly applies to investigations affecting urban guerilla warfare, civil unrest, and local criminal matters. The manual also states that, upon the specific request of a local law enforcement agency which has a legitimate interest in file information, field offices may disseminate public source materials in a "blind memorandum." A "blind memorandum" is defined as "information gathered from public sources, as well as other sources, and disseminated on plain stationery (without FBI letterhead or watermark)." We found only a few instances where blind memorandums were used.

In 18 percent of the cases in which information was disseminated, it was given to State and local law enforcement agencies. This varied considerably among field offices and case classifications. Dissemination was more than three times greater (30 percent versus 9 percent) to State and local agencies for cases on extremists than for cases on subversives. In Springfield, State and local officials received information in 47 percent of the cases on extremists with dissemination. The field office did not send State or local officials information on the 24 cases on subversives that were disseminated.

State and local law enforcement agencies provided the FBI with information a great deal more often than the FBI provided the agencies with information. The FBI distributed information to State and local police officials in 70 cases but received information from them in 611 cases.

Method of dissemination

The FBI disseminates most information as written reports to other agencies, such as the Secret Service and Department of Justice. The Manual of Rules and Regulations, however,

indicates FBI field offices may also disseminate information orally. According to the manual, whenever oral transmission is made it should be noted in the case file. When field offices orally give information to Federal agencies, they are instructed to confirm this in writing.

The FBI disseminated written information in 79 percent of the 399 cases selected in which dissemination was made. Dissemination was made orally in 6 percent of the cases and both orally and in writing in 15 percent of the cases. In all cases, oral dissemination was done by the FBI field offices. In addition, local law enforcement officials generally received information orally.

When dissemination is made

Although preliminary inquiries were mentioned in the guidelines before January 1, 1974, we analyzed cases opened after that date to determine how much information from preliminary inquiries was disseminated. Since January 1974, information was disseminated from 102 cases. In 71 percent of the 102 cases opened in calendar year 1974 from which information was disseminated, the dissemination was made during preliminary inquiries or during the preliminary stage of full-scale investigations.

The FBI also disseminated information in a smaller percentage of cases in which the subject's association with a subversive or extremist group was not established. The FBI disseminated information in 21 percent of the 374 (of 797) cases on individuals in which no association was established. On the basis of these results, we estimate (with a sampling error of + 4.9 percent) that 21.6 percent of the cases in which dissemination was made (1,927 of 8,931) involved individuals whom the FBI determined were not associated with a group.

Although information was given out in cases where the individual was not associated with a group, certain characteristics of the cases might account for the dissemination. In some cases for instance, State and local law enforcement agencies were notified because they provided the triggering information for opening the case or because they specifically requested information on the subject.

CONCLUSIONS

We believe FBI and Secret Service officials need to meet and discuss the language of the present agreement for

disseminating information because the Secret Service may be unable to adequately evaluate the voluminous FBI-provided information.

We question the need for disseminating information on individuals whom the FBI has not determined to be leaders, active members, or violence prone individuals in support of subversive or extremist causes. The FBI should be especially cautious in disseminating information developed during preliminary inquiries because (1) certain information may be gathered in the early stages of an investigation and later found to be inaccurate and (2) once information is disseminated the FBI loses control over how the information is used, interpreted, and how long it is retained.

CHAPTER 9

FBI RESOURCES APPLIED TO

DOMESTIC INTELLIGENCE ACTIVITIES

Overall, about 19 percent of the matters the FBI investigated related to intelligence--domestic and foreign--from fiscal years 1965 through 1975. The exact breakdown of resources devoted to domestic and foreign activities is classified information, primarily because of the need to prevent hostile foreign intelligence sources from obtaining information about the size of the FBI's counterespionage effort. However, the percentage has not varied greatly over the last decade despite the increased emphasis given to domestic intelligence operations from fiscal years 1967 through 1972. The level of domestic intelligence operations in fiscal year 1975 was generally below that of fiscal year 1965.

The FBI did not have a system to regularly identify the time special agents spent on various types of cases. Beginning in 1972, at the urging of the Department, the General Accounting Office (GAO), and the Office of Management and Budget, the FBI began to develop the accounting system necessary to obtain the data. The first phases should be implemented in 1976.

In the absence of such a system, the FBI undertook a periodic 2-week, staff-resource study to determine how much time agents spend on specific types of investigations. On the basis of the 2-week study, the FBI estimated the percentage of its resources applied to specific investigative and administrative areas. Four surveys have been done since 1972.

The following discussion is based on the results of those staff surveys and as such may be imprecise, but it is the best information available.

MONEY SPENT

In August 1975 Justice Department and FBI officials testified before the House Select Committee on Intelligence that the FBI spent about \$82.5 million on general intelligence gathering in fiscal year 1975. However, the estimated amount includes money spent on FBI staff involved in criminal, domestic, and foreign intelligence operations, as well as payments made to informants in such operations. It

does not include all funds spent on certain technical support associated with intelligence operations. Further breakdown of the amount is classified information.

INVESTIGATIVE TRENDS

Information relating to FBI investigative trends in domestic intelligence over the years provides another--if still imprecise--basis for assessing the FBI emphasis in this area. Although intelligence matters reached a high of 21 percent in fiscal years 1972-74, the overall workload in this area has not varied greatly.

Percentage Breakdown of FBI Investigative Matters

<u>FY</u>	<u>Total investi- gations opened</u>	<u>Percent in- telligence investiga- tions</u>	<u>Percent criminal investiga- tions</u>	<u>Percent applicant and other</u>
1965	710,682	19	67	14
1966	734,518	19	66	15
1967	786,786	17	69	14
1968	836,085	19	68	13
1969	873,381	18	68	14
1970	903,393	16	66	18
1971	855,031	19	62	19
1972	837,356	21	63	16
1973	790,241	21	63	16
1974	764,558	21	67	12
1975	693,894	19	69	12

Note: "Investigative matter" is an administrative term used by the FBI to measure workload. It should not be confused with a case or investigation. One case may entail many investigative matters.

For example, a field office may initiate a case on an individual. As part of the investigation, it may furnish leads to three other FBI field offices, so they can make investigations. The results of this work will be provided to the initiating office. The originating office may cover all logical leads and close the case.

In November 1975 testimony before the House Select Committee on Intelligence, the FBI Assistant Director of the Intelligence Division stated that, according to the FBI's March 1975 staff study, 788 special agents were doing domestic intelligence investigations. He stated that this level had been and was continuing to decline. Earlier surveys have resulted in estimates that 1,264 special

agents were doing domestic intelligence investigations in November 1972; 1,034 agents, in April 1973; and 861 agents, in February and March 1974.

Domestic intelligence trends

Although security classifications preclude us from revealing more specific details in a public report, we can discuss the trends in investigations on subversives and extremists.

Percent Changes in Domestic Intelligence Investigative Matters Initiated From Fiscal Years 1965-75

<u>Investigations</u>	<u>1965 (Base year)</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>
Subversives	100	95	89	100	94	97	127	142	100	69	52
Extremists	100	109	93	138	190	207	261	227	222	228	121
Subversive informants and counter- intelligence informants	100	104	109	99	101	88	117	93	99	88	70
Extremist informants	100	152	114	590	518	356	355	399	231	124	80

Investigations on subversives

From fiscal years 1965 through 1970, the number of FBI investigations of subversives (such as old line Communists and student radicals) remained relatively constant. However, the FBI initiated 30 percent more investigations of subversives in fiscal year 1971 than in fiscal year 1970. In fiscal year 1972, 45 percent more investigations were initiated than in fiscal year 1970. Investigations of subversives declined considerably in fiscal year 1973--to only 3 percent above the fiscal year 1970 level. The sharp decline continued in fiscal year 1975; investigations dropped to a level 45 percent below that of fiscal year 1970.

FBI officials attributed the rise in investigations on subversives between fiscal years 1970 and 1972 to the increasing number of radical new left groups associated with militant demonstrations and either involved or suspected of involvement in arson, bombings, and destruction of Government property.

The increase also reflects the FBI policy decision, made during calendar year 1970, to intensively investigate the new left, particularly the Weatherman. Responding to the violence

associated with these groups, the FBI completed a staff survey in April 1970 to ascertain the distribution and use of its agents in security-type investigations. As a result, staff was shifted to domestic intelligence activities with a corresponding staff reduction in other areas.

FBI officials attributed the sharp decline in investigations of subversives in fiscal years 1973 through 1975 to the reduced violence attributable to the new left (following the conclusion of the Vietnam War). As this major issue disappeared, many new left groups lost their followings and the FBI's investigative attention was focused on the groups which remained.

Additional reasons advanced by FBI officials for the reduced workload were (1) the tightened criteria for initiating investigations, resulting from the statutory basis for investigation adopted in August 1973, and (2) the more stringent criteria for including names on ADEX, which reduced the index's size from over 12,000 names to 1,250 in November 1975.

Investigations on extremists

The FBI's investigations of extremists increased notably in fiscal year 1968. The summer of 1967 was marked by race riots across the Nation.

Responding to the violence and the pressures to develop intelligence regarding the causes of the violence, the FBI created a Racial Intelligence Section in the Intelligence Division in September 1967. The section, which later became known as the Extremist Section, was responsible for investigating black and white hate groups. It was later responsible for investigating some other ethnic Americans due to their groups' increased militancy.

Relative to fiscal year 1965, investigations on extremists rose nearly 38 percent in fiscal year 1968. The fiscal year 1969 investigations almost doubled the number of those in fiscal year 1965, and, by fiscal year 1971, the number of investigations was 161 percent greater than in fiscal year 1965. Investigations dropped in fiscal year 1972 down to 127 percent of fiscal year 1965 and remained relatively constant through fiscal year 1974. Investigations dropped noticeably in fiscal year 1975.

The intensity of the attention devoted to extremist intelligence gathering is reflected by the trend in opening investigations to develop extremist informants. Compared with fiscal year 1965, fiscal year 1968 showed a 490 percent

increase in the FBI investigations started to develop more informants for monitoring the racial situation.

In October 1967 the FBI initiated the ghetto informant program to anticipate violence and to monitor the activities of militant black groups. The effort devoted to developing extremist informants has dropped markedly since fiscal year 1972. The drop occurred because on July 31, 1973, the FBI terminated the ghetto informant program. The most useful informants were retained, but the field offices were directed to critically review informants and drop those not providing useful intelligence.

The overall buildup in gathering intelligence on extremists to fiscal year 1971 can be attributed to FBI efforts to monitor the activities of black militant groups, particularly the Black Panther Party. Investigations on extremists dropped in 1972 and remained level for 3 years. An FBI official attributed this to a rise in violence associated with American Indians, which balanced a decline in activity by black militants. The official stated that the sharp drop in investigations between 1974 and 1975 was due to less civil disturbances plus further tightening of the criteria for investigating extremists. As with subversives, the tightened criteria for initiating investigations and including subjects on ADEX were the reasons for the reduced caseload.

Informants

The FBI places great importance on using informants to provide valuable investigative information. Consequently, reviewing the trends in informant development will indicate the Bureau's investigative emphasis. Because of the sensitive nature of the FBI's informant program, informant trends will be discussed only in terms of percentage changes.

The FBI has released to the public some indicators of the present size of its informant program. In testimony before the House Select Committee on Intelligence on November 18, 1975, the Assistant Director of the Intelligence Division stated that the total FBI informants for domestic intelligence were less than 1,100. During September 1975 another FBI official stated publicly that payments to all FBI informants totaled \$3.5 million in fiscal year 1975.

**Percent Changes in Domestic Intelligence Informants and
Informant Payments From Fiscal Years 1965 through 1975 (note a)**

	1965 (Base year subversive)			1968 (Base year extremist)							
	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	
Subversive and counterintelligence:											
Approved informants	100	109	107	98	103	100	102	109	104	102	89
Potential informants	100	112	106	112	142	146	178	200	177	160	226
TOTAL Informants	100	110	107	102	114	114	124	135	125	119	129
Payments to informants	100	109	119	108	111	110	126	131	145	139	138
Extremist (note b):											
Approved informants	-	-	-	100	102	92	101	110	97	104	96
Potential informants	-	-	-	100	132	c/13	13	12	11	24	10
Ghetto informants	-	-	-	100	140	139	219	263	173	0	0
Total Informants	-	-	-	100	134	c/90	108	127	87	29	21
Payments to informants	-	-	-	100	120	108	122	112	103	105	88

a/The FBI has traditionally aggregated subversive and counterintelligence informants. FBI officials said a further subdivision is not possible for years before 1975.

b/Extremist informant statistics were compiled beginning in fiscal year 1968 with the formation of the Racial Intelligence Section.

c/This drop reflects an FBI decision to drastically reduce the number of potential extremist informants.

The notable characteristic of the percent changes for security and extremist informants is the stability in the number of approved FBI informants. Throughout the intensification of FBI investigations of black, extremist, and new left groups, the number of approved informants actively obtaining intelligence for the FBI remained relatively constant.

The tables indicate the intensified FBI effort to improve its sources of intelligence. From fiscal years 1970 to 1972 the total extremist informants increased as a result of the FBI ghetto informant 1/ program. Informants also increased in fiscal year 1971 as a result of directives, such as the one of July 30, 1970, in which Director Hoover said:

"The necessity for in-depth quality informants in the racial and security field is more imperative than ever under present conditions in view of the upsurge in violence. I will not tolerate complacency or backsliding in informant coverage."

By November 28, 1972, the ghetto informant program had been reevaluated at headquarters, with the result that FBI field offices were permitted to use their discretion in the number of ghetto informants contacted.

1/ A ghetto informant resided or worked in an area described as a ghetto and could furnish general information on extremist activity.

Field offices were instructed to operate only essential ghetto informants. This marked a deemphasis in the program. The program was discontinued on July 31, 1973. The reevaluation in November 1972 marked the beginning of the sharp decline in total extremist informants.

The FBI's subversive and counterespionage informant programs were not equivalent to the ghetto extremist effort. However, the FBI's intensified effort to use more subversive informants began in fiscal year 1969 with the increase in the number of potential informants. A "potential informant" is described by the FBI as a person in a position to become closely connected with a subversive or extremist organization or to provide intelligence of interest to the FBI. While the potential informant is providing some information, the Bureau reviews his or her emotional stability and reliability before approving him or her as an informant.

Potential informants increased 88 percent, between fiscal years 1968-72, indicative of the effort to develop better intelligence sources. Potential informants dropped considerably by fiscal year 1974. The increase in fiscal year 1975 is attributable to increased emphasis given counterespionage investigations.

CHAPTER 10

RESULTS AND ACCOMPLISHMENTS OF

FBI DOMESTIC INTELLIGENCE INVESTIGATIONS

The FBI has devoted considerable resources to domestic intelligence investigations and carried out an extensive program in terms of caseload. Few tangible results are evident. This is particularly true with respect to its stated purpose of identifying internal security violations.

Few cases have produced foreknowledge of violence or other events which might represent a threat to the national security. The FBI cannot now systematically evaluate and make maximum use of such information. This is not to say, however, that domestic intelligence is unnecessary or of no value.

The purposes of the FBI's domestic intelligence investigations are to (1) prosecute and convict subjects for violating appropriate statutes, (2) continuously keep apprised of the strength, danger, and activities of subversive and extremist groups, and (3) provide information to assist executive branch officials in making decisions affecting national security.

PROSECUTIONS AND CONVICTIONS

The cases we reviewed resulted in few prosecutions or convictions or even in referrals by the FBI--to appropriate authorities--for prosecution. Of the 797 cases sampled in which the subject was an individual, only 24 cases (about 3 percent) resulted in referrals by the FBI to a local U.S. attorney or to local authorities for possible prosecution. All of these were for violations of various criminal statutes which perhaps could have been investigated as criminal matters. None involved any of the internal security statutes under which the subject was being investigated. Twenty-four cases were referred for prosecution; 10 were prosecuted and 8 were convicted.

<u>Field office</u>	<u>Total cases in which subject was individual</u>	<u>Referrals for Prosecution</u>		<u>Prosecutions</u>		<u>Convictions</u>	
		<u>Cases</u>	<u>Percent</u>	<u>Cases</u>	<u>Percent</u>	<u>Cases</u>	<u>Percent</u>
Atlanta	69	1	1	0	0	0	0
Buffalo	76	0	0	0	0	0	0
Chicago	91	2	2	0	0	0	0
Columbia	68	0	0	0	0	0	0
Los Angeles	91	6	7	5	5	4	4
New York	87	2	1	1	1	1	1
Sacramento	71	1	1	0	0	0	0
San Diego	75	10	13	4	5	3	4
San Francisco	90	1	1	0	0	0	0
Springfield	79	1	1	0	0	0	0
Total	<u>797</u>	<u>24</u>	<u>3</u>	<u>10</u>	<u>1</u>	<u>8</u>	<u>1</u>

As shown in the above table, most referrals for prosecution and consequent prosecutions and convictions were attributable to 2 of the 10 FBI field offices. The violations and circumstances of the 10 cases involving prosecutions and/or convictions are:

- A white extremist was prosecuted and convicted for bombing a theater. Information leading to the arrest was provided by the FBI.
- The suspected subversive was found to have used a false identification to apply for a passport. FBI referred the case to Department of State which prosecuted it. Results are unknown.
- While the subject was being investigated for a subversive matter he became a fugitive. The FBI located him and helped return him to local authorities for prosecution and conviction. The violation was assault with a deadly weapon.
- FBI learned of black extremist involvement in the armed robbery of a U.S. Post Office and the attempted shooting of police officers. The subject was prosecuted and convicted by local authorities.
- The suspected subversive was prosecuted and convicted for making false statements while applying for a passport application.
- FBI advised a local U.S. attorney that the subject violated the law in connection with a black extremist organization shootout. The U.S. attorney declined prosecution pending local prosecution. The subject was ultimately convicted by local authorities for conspiracy to possess illegal weapons. The subject was also referred to the U.S. attorney for violation of title 18, United States Code, section 922 (firearms--unlawful acts) for which he was prosecuted and acquitted.
- The subject used false identifications in connection with bunko 1/ and forgery operations. The FBI referred the case to local authorities who arrested, prosecuted, and convicted him.

1/A swindle in which a person is cheated at gambling, persuaded to buy a nonexistent, unsalable, or worthless object, or otherwise victimized.

- A white extremist was arrested by local police for possessing weapons and stolen firearms as a result of information furnished by FBI. The subject was prosecuted and convicted by local authorities.
- An Indian extremist was prosecuted with the help of FBI information and convicted by local authorities for assault with a deadly weapon.
- The subject used a false identity but was not associated with any subversive activities. The FBI referred the case to local authorities for prosecution relating to the false identification. Prosecution was planned, but results are unknown.

On the basis of our random sample, we estimate that, of the estimated 17,528 individual cases

- 3 percent (533) were referred for prosecution,
- 1.6 percent (281) were prosecuted, and
- 1.3 percent (231) were convicted. 1/

ADVANCE KNOWLEDGE OF PLANNED ACTIVITIES

The cases we reviewed also showed little evidence of advance knowledge of planned subversive or extremist acts or activities, particularly violent acts. Of the 797 cases sampled in which the subjects were individuals, the FBI obtained advance knowledge of planned subversive or extremist activities in only 29 instances in 17 cases (about 2 percent of the total cases). At least fifteen of the instances involved apparent illegal and/or violent activities. In all instances the FBI advised appropriate State or local authorities, so preventive measures could be taken. However, with the exception of four instances, we could not determine from the case files or from talking to FBI agents (1) whether the acts or activities took place or (2) whether or what preventive or followup actions had been taken by authorities.

A synopsis of the instances in the 17 cases follows.

1/Sampling errors for estimated percentages: 3% \pm 1.4%;
1.6% \pm 1.1%; 1.3% \pm 1%.

<u>Activity</u>	<u>Results</u>
Case 1--Possible demonstration at State prison.	Unknown.
Case 2--Plans to enter an area experiencing racial disturbances to distribute black nationalist material.	Unknown.
Case 3--Alleged conspiracy to blow up a bridge in a large metropolitan area.	The bridge is still standing.
Case 4--Alleged transportation of a handgun to Chicago to be used in demonstrations.	Unknown.
--Alleged plan to bomb local Selective Service office.	Unknown.
Case 5--Plans by a subversive group to hold a demonstration at the United Nations to coincide with the visit of President Nixon.	Unknown.
Case 6--Plans by a subversive group to engage in disruptive picketing against a department store for alleged hiring discrimination.	Police increased controls. No violence resulted.
Case 7--Planned takeover of a newspaper office.	Unknown.
Case 8--Planned busing demonstration.	Unknown.
Case 9--Plans to embarrass a foreign ambassador by asking questions during the ambassador's visit to a college campus.	Unknown.

<u>Activity</u>	<u>Results</u>
Case 10-- <u>Seven</u> protest demonstrations, some against prominent political figures.	Unknown.
Case 11--Plans to engineer a prison escape.	Did not materialize.
Case 12--An individual's plans to attend a meeting to plan a demonstration.	Unknown.
Case 13--Possible demonstration at subject's trial.	Unknown.
Case 14--Information concerning fortification of black extremist headquarters.	Local police, acting on FBI information, raided headquarters of black extremist group.
--Possible takeover of community center.	Unknown.
--Information regarding location of weapons.	Unknown.
--Information regarding possible attempt on subject's life.	Unknown.
Case 15-- <u>Two</u> instances in which a youth gang planned to attack police.	Unknown.
Case 16--Plans to ambush police.	Unknown.
Case 17--Information concerning a planned prison escape.	Unknown.
--Planned demonstration at a trial.	Unknown.

On the basis of our sample results, we estimate (with a sampling error of + 1.5 percent) that of the 17,528 individual cases investigated by the 10 FBI field offices, 2.7 percent (476) resulted in the FBI obtaining advance knowledge of planned activities.

In commenting on our report, the Justice Department noted that the FBI stated that in several of the instances previously cited, human lives may have been saved. The FBI asked, "How does one place a value on this type of information?" The FBI stated that, "Percentages do not appear to be an adequate measurement." (See app. V.)

Because the FBI's domestic intelligence investigations are organization or group oriented and because many subversive and extremist activities are sponsored and carried out by groups, we also examined the remaining 101 cases (74 organization cases and 27 control and miscellaneous cases) to determine whether the FBI obtained advance knowledge of planned activities in any of them. Twenty-one cases contained specific instances of advance knowledge. The number of instances in each case varied from 1 to 51. Most instances involved advance knowledge of activities such as speeches by organization leaders, of organization conferences, and of demonstrations. Generally, it was normal for FBI field offices to advise local or State authorities and other FBI field offices, where appropriate, of planned activities by subjects being investigated. However, the outcome of the planned events and the extent to which preventive measures were taken were usually not available in the case files nor from FBI agents. Examples of some of the more important cases in which the FBI obtained knowledge are summarized below.

- The case on a black extremist organization produced information of a planned demonstration against local authorities which was to include violence and assault. The FBI advised State and local police and military authorities of the demonstration. The demonstration was nonviolent.
- FBI learned and advised authorities that a black extremist group being investigated planned to disrupt a State prison. Several of the group's leaders who were prisoners were transferred temporarily to another prison. No disruptions were reported. In addition, the FBI developed information concerning plans by the group to commit murder and to engage in a massive kidnapping campaign. Proper authorities were notified, but we do not know whether the plans were implemented.

- FBI learned that a subversive group being investigated planned activities to disrupt the 1968 Democratic National Convention. General disruptions took place, but the extent to which the group was involved is unknown. Some key leaders were involved.
- A case on a peace coalition to end the Vietnam War produced evidence of the plans of a subversive organization to infiltrate the coalition. However, what action the FBI took and whether the infiltration took place were unknown.
- FBI learned and advised local police that the members of a white extremist organization were monitoring police radio frequencies. Action taken by local authorities is unknown.

Naturally, since the 101 cases were intelligence-type cases, many of them--particularly organization cases--contained extensive information about the nature, capability, and mood of the organization. For example, one case on a subversive front group contained information about the front group's subversive affiliations and source of funding. Another case contained information that leaders of an extremist organization had been in contact with representatives of four foreign countries hostile to the United States.

In commenting on the report, the Justice Department stated that the FBI believed that our sample of individual cases did not fully indicate the extent to which the FBI obtains advance knowledge of events. The FBI stated that most of such information would be in organization files. We believe that our sample of organization and control files was sufficient to determine that generally the FBI does not obtain advance knowledge of planned violence. For example, our analysis of the nature of the planned activities in those files we sampled showed that 14 of 119 instances or about 12 percent could be considered to be of a potentially violent nature. The rest were just advance knowledge about such activities as speeches, demonstrations, or meetings--all essentially nonviolent.

However, the FBI, without any adequate justification denied us access to annual and other periodic investigative reports on organizations that might have contained more information relating to advance knowledge of violent events. If the FBI believes such files could have put our findings in a better perspective, it should have provided them to us so we could analyze them.

EXTENT OF ASSOCIATION ESTABLISHED

The FBI has stressed the need, from a national security standpoint, to identify and be aware of the nature and capabilities of groups and individuals which espouse and carry out subversive and extremist aims and activities. How much effort and how much coverage are needed to adequately identify and measure the threat of such groups and individuals? Many of the 797 cases on individuals were initiated because of the subjects' known or suspected involvements with organizations and groups which the FBI had been investigating for several years and on which the FBI already had extensive information.

In 374 cases (47 percent), the FBI could establish that the subject was a leader, rank-and-file member, or a violence prone member of a subversive or extremist organization. In another 374 cases (47 percent), however, the FBI could not establish any association between the subject and an organization or its activities. In the remaining 49 cases (6 percent), the FBI could establish only a minor association between a subject and an organization or its activities.

On the basis of our sample results, we estimate that:

- In half of the 17,528 individual cases investigated by the 10 field offices, the FBI could not establish the individual's association with a group or its activities.
- In 44 percent (7,772 cases), the FBI established that the individual was a leader, member of an organization, or a violence prone individual. 1/

In a high percentage of cases, no association or only minor association was established. How much of the information collected on individuals contributed to the FBI's awareness and assessment of an organizations' or groups' threat to the national security?

In commenting on our report, the Justice Department pointed out the FBI's position that even when the FBI is unable to establish any association of an individual with an extremist or subversive organization, such an investigation is viewed as having a positive result. (See app. V.) Such a position has some merit, but the large percentage of

1/Sampling error for estimated percentages: 50% ± 4.1%;
44% ± 4.1%.

cases we sampled that resulted in a determination of no association raises questions as to whether the FBI exercised adequate judgment in opening the cases in the first place.

INTELLIGENCE EVALUATION CAPABILITY

The FBI had no evaluation and analysis capability in connection with its domestic intelligence operations. This makes the Bureau's domestic intelligence gathering operations incomplete. Can the Department of Justice and the FBI effectively use the information which the FBI gathers? Of what value is such information to executive branch officials in making decisions concerning national security?

The Rockefeller Commission in its June 1975 report on CIA activities within the United States emphasized the importance of evaluating, analyzing, and coordinating domestic intelligence information. It recommended developing an evaluative capability within the FBI, or elsewhere in the Department of Justice. FBI officials said evaluating domestic intelligence has never been its responsibility. 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 reports from an "intelligence" standpoint. They review the reports primarily to determine whether to prosecute a case.

In response to the Rockefeller Commission's recommendation, the Attorney General advised the President in September 1975:

"As a matter of course the Department of Justice and FBI make certain evaluative judgments, based on such intelligence, necessary to prevent illegal use of force and necessary to counter foreign intelligence activities. Evaluation and analysis of facts and information gathered, which is limited to these objectives, are within the scope of the Department's and Bureau's law enforcement and counterintelligence responsibilities. To the extent the recommendation suggests this capacity be improved, the Department has no objection. But to the extent it means the Department or the Bureau should develop the capacity to do speculative research and analysis regarding the implications of political activities, or the likely results of hypothetical events, it has no place within the government's principal law enforcement agencies."

In its comments on the report, the Justice Department noted that the FBI pointed out that it has not been assigned responsibility for analysis of the results of domestic intelligence investigations.

CONCLUSIONS

Other than effectively identifying and gathering information on groups and individuals affiliated with groups that espouse and carry out subversive and extremist activities, the FBI's domestic intelligence operations do not appear to have had much impact. However, this may be sufficient. Who is to say that the Bureau's continuous coverage of 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.

CHAPTER 11

CURRENT PROPOSALS FOR CHANGE, OVERALL

CONCLUSIONS, RECOMMENDATIONS, AND AGENCY COMMENTS

On the basis of the results of our review, it is clear that changes are needed in the FBI's domestic intelligence operations. 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 some elements or groups within our Nation pose threats to our domestic tranquility. But differences begin to surface on questions of the exact natures, intents, and threats of certain groups; the techniques used to identify and monitor them; and the scope of coverage applied to specific investigations.

We believe the results of our review show that there is a need for a clear statement from the Congress as to what the objectives of the FBI's domestic intelligence operations should be, what functions they should include, and what their scope should be.

As the Attorney General said in a December 1975 speech, the issue of the proper jurisdictional scope and base and the procedure to be used by the FBI is not an adversary matter between the Congress and the executive branch. It is a matter of deep concern to the security of our country and to the liberty of our citizens. Only through public debate, inherent in the legislative process, can the issues be adequately addressed.

ATTORNEY GENERAL'S DRAFT OF DOMESTIC INTELLIGENCE GUIDELINES

The Attorney General released to the public, in December 1975, his draft guidelines for controlling the FBI's domestic intelligence operations. The Attorney General stated that he does not view the guidelines as a final pronouncement on the issue, but as a basis from which the Congress and executive branch can initiate a dialogue on how best to control domestic intelligence operations.

The draft guidelines will be one of the bases used to determine the extent and form of legislation needed in this area. They must be reviewed to see how they would change current FBI domestic intelligence policies. Bear in mind that nowhere do the draft guidelines address the administrative mechanisms that must be established to assure

compliance with any new laws and regulations that might be enforced. The question of the need for independently overseeing and auditing FBI and Justice Department operations under any new criteria is a critical one which the Congress must consider.

Implementing the draft guidelines would result in two major changes in FBI domestic intelligence operations:

- Calling for more and continuous involvement of the Justice Department in deciding the need to continue full-scale investigations.
- Limiting the type of preventive actions the FBI can take and involving the Attorney General in such decisions.

As such, they are a step in the right direction and indicate a firm commitment to begin exercising proper departmental control of FBI operations. In certain areas, however, the December 1975 guidelines closely reflected current FBI policy, which we believe needs changing.

After receiving our report for comment on January 20, 1976, the Justice Department provided us with a January 1976 draft of the guidelines which improve on the December 1975 draft. Appropriate changes made in the January 1976 guidelines are discussed below.

Basis for initiating cases

When should an investigation be opened? This is one of the most critical issues in the domestic intelligence area. The current FBI Manual of Instructions notes that subversive and extremist

"investigations conducted under this section are to be directed to the gathering of material pertinent to a determination whether or not the subject has violated, or is engaged in activities which may result in a violation of, one or more of the statutes enumerated below; or in fulfillment of Departmental instructions."

The policy assumes that groups' or individuals' activities may involve either imminent or future use of force or violence in violation of Federal law.

The Attorney General's December 1975 draft guidelines stated that such investigations be made to ascertain information only

"* * * when there is a likelihood the activities of individuals or groups involve or will involve the use of force or violence in violation of Federal law by conduct intended to * * * [violate essentially the Rebellion or Insurrection, Seditious Conspiracy, Advocating Overthrow of the Government, or Civil Rights Act of 1968 Statutes]."

No substantive difference existed between the draft guidelines and current FBI policy. Both emphasized that some evidence must, at least, show a likelihood that violence will be used as a means to an end. As noted in chapter 7, the FBI justified many investigations under its current policy because the group the individual was associated with might use violence in the future. The language in the draft guidelines would not cause any substantive change in the number and type of domestic intelligence investigations initiated.

To be effective, the Attorney General's guidelines must specifically define what is meant by such terms as "likelihood" and "will involve." The December draft guidelines did not define those terms. The FBI and the Justice Department, on the basis of previous FBI investigations, should be able to spell out what types of situations could be interpreted as indicating a "likelihood" that actions "will involve" violence. For example, we noted in chapter 4 that the FBI considers groups to be of priority interest if they buy and store arms, engage in organized firearms practice, or purchase survival equipment. These types of situations should be used to define "a likelihood" that violence may be used.

The need to specify when to open investigations is even more important, because under the draft guidelines the FBI can open preliminary inquiries to determine whether individuals acting alone or in concert may be engaged in activities in which a likelihood exists that their actions will involve the use of violence.

The January 1976 draft guidelines better address the above-mentioned problems. Domestic intelligence investigations are to be related to the probability, not merely the possibility, that violence will occur. The new draft states that domestic intelligence investigations are conducted

"* * * to ascertain information on the activities of individuals, or individuals acting in concert, which involves or will involve the use of force or violence and the violation of federal law * * *."

In addition, the January draft somewhat clarifies the circumstances that must be considered when initiating full-scale investigations. The guidelines state:

"In addition the following factors must be considered in determining whether a full investigation should be undertaken:

- (1) the magnitude of the threatened harm;
- (2) the likelihood it will occur;
- (3) the immediacy of the threat; and
- (4) the danger to privacy and free expression posed by a full investigation."

Under current FBI policies, preliminary inquiries are to be opened to determine basically what is noted in the draft guidelines. But, as shown in chapter 7, many such inquiries did not positively determine that the individual was in any way likely to use violence, or in fact, that he or she even was associated with subversive or extremist groups. In addition, we showed that almost 90 percent of the cases opened during calendar year 1974 were preliminary inquiries.

Should the FBI even be investigating such individuals? The draft guidelines do not, in our opinion, adequately resolve the problem. They still leave it up to the FBI to judge whether to initiate preliminary inquiries and, on the basis of past experiences, that judgment has resulted in initiating more investigations and in contacting too many and too varied sources.

The guidelines would change the scope of domestic intelligence operations. Investigations would be limited to groups or individuals whose activities were not directed by, subsidized by, or otherwise undertaken in active collaboration with foreign powers or foreign-based political groups. In those instances we assumed the FBI would investigate the groups as part of its counterespionage effort.

Extent of preliminary inquiries

The purpose of preliminary inquiries has not changed. Current FBI policy states that preliminary inquiries should

be limited to reviewing public source documents, record checks, and contacts with FBI-established sources. The draft guidelines limit such inquiries to FBI index and files; Federal, State, and local records; public records and other public sources of information; and existing informants and sources of information. The draft guidelines are a start, but formalized Justice Department administrative procedures are also needed, to set up independent reviews by the Department determining how much such policies are adhered to.

Similarly, time frames for such inquiries have not changed. Preliminary inquiries now are conducted for 90 days, after which time the field office must seek headquarters approval to continue the investigation. Approval could be granted for any length of time. The draft guidelines state that preliminary inquiries should be closed within 90 days but that headquarters could approve one 90-day extension. Thus, the draft guidelines note that if, within 6 months, the FBI has not been able to fully justify investigating a group or individual, it should stop the investigation.

Use of investigative techniques

Techniques include use of informants, mail covers, and electronic surveillance. Electronic surveillances are to be done in accordance with title III of the Omnibus Crime Control and Safe Streets Act of 1968 and Supreme Court decisions. This is similar to current policy and would reaffirm what we believe to be a correct policy.

Similarly, policies pertaining to use and control of informants are, we believe, correct. Current FBI policy requires that all intelligence informants be approved by headquarters. The draft guidelines provide the same. FBI policy also requires that all field offices submit quarterly reports detailing informant coverage of groups so headquarters can assess the adequacy of the coverage. The draft guidelines state that informants are subject to review at 90-day intervals.

The draft guidelines note that informants are not to be used to obtain "privileged information." The term is not defined, but the requirement appears to be no different than current FBI instructions.

For example, on March 2, 1971, the FBI Director advised all SACs that

"* * * should the occasion arise when the informant is present in conversation between an attorney and individual under criminal indictment, he should immediately leave. If he is unable to do so, he is not to report the substance of any such conversation to the FBI."

On January 10, 1974, the FBI Director again advised all SACs:

"Additionally, you should assure that all informants clearly understand that they are not to seek or report on any matters involving trial strategy in connection with defendants on whom they may be reporting."

The draft guidelines would change procedures relating to use of mail covers. Currently, the FBI directly requests approval for mail covers from the Chief Postal Inspector; the guidelines would require the FBI to first seek the Attorney General's approval.

Terminating investigations

The draft guidelines propose a necessary change in the way the Justice Department would participate in decisions to continue investigations. As noted in chapters 5 and 6, the Justice Department's previous involvement in such decisions was ad hoc. The draft guidelines would change that. They state that:

"The Department of Justice shall review the results of full domestic intelligence investigations at least annually, and determine if continued investigation is warranted. Full investigations shall not continue beyond one year without the written approval of the Department."

We fully support this concept, but as noted in our September 1975 testimony, we are concerned with the way this would be implemented. Our concern in September was that Justice Department officials gave the impression the divisions responsible for investigating and prosecuting certain statutory crimes would be solely responsible for reviewing and approving appropriate full-scale domestic intelligence investigations.

We noted in our September testimony that the Attorney General or Deputy Attorney General (1) should be ultimately responsible for such decisions and (2) should establish a regular review process at their level 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. Those divisions responsible for monitoring the crime being investigated should not be primarily responsible for decisions relating to the propriety of certain operations.

Subsequent discussions with the Deputy Assistant Attorney General responsible for drafting the guidelines indicate that the Department agrees with our position. While the appropriate Justice Department divisions, primarily the Civil Rights and Criminal Divisions, will be initially responsible for judging the need to continue investigations, the Attorney General or his Deputy will ultimately be responsible for the decisions.

Reporting requirements

Similarly, the reporting requirements proposed in the draft guidelines will result in more systematic involvement of the Justice Department in domestic intelligence operations. The pertinent section of the January 1976 draft guidelines follows:

"A. Reporting

- (1) Preliminary investigations which involve a 90-day extension under [section] IIF, or interviews or surveillance under [section] IIF (2), shall be reported periodically to the Department of Justice. Reports of preliminary investigations shall include the identity of the subject of the investigation, the identity of the person interviewed or the person or place surveilled, and shall indicate which preliminary investigations involved a 90-day extension. FBI headquarters shall maintain, and provide to the Department of Justice upon request, statistics on the number of preliminary investigations instituted by each field office, the number of preliminary investigations which involved interviews or surveillance under [section] IIF (2), the number of preliminary investigations that involved 90-day extensions

under [section] IHH, and the number of preliminary investigations that resulted in the opening of a full investigation.

- (2) upon opening a full domestic security investigation the FBI shall, within one (1) week, advise the Attorney General or his designee thereof, setting forth the basis for undertaking the investigation.
- (3) the FBI shall report the results of full domestic security investigations to the Department of Justice not later than ninety (90) days after the initiation thereof, and at the end of each year the investigation continues.
- (4) where the identity of the source of information is not disclosed in a domestic security report, an assessment of the reliability of the source shall be provided.
- (5) the FBI shall promptly notify the Attorney General when preventive action is undertaken, and shall report the results thereof within thirty (30) days of initiation, or earlier as required by the Attorney General.
- (6) the Attorney General shall report to Congress, at least annually, on the use of preventive action by the FBI."

Preventive action

To control the type of COINTELPRO actions previously discussed, the January 1976 draft guidelines state:

- "A. Upon authorization of the Attorney General, the FBI may undertake non-violent emergency measures to obstruct or prevent the use of force or violence in violation of federal law only when there is probable cause to believe:
- (1) that an individual, or individuals acting in concert, is preparing to use force or violence for purposes described in paragraph IB or IC; and

- (2) such force and violence poses a real and immediate threat to life, or to property the impairment of which would interfere substantially with the essential functioning of government as described in paragraph IB or IC.

And such non-violent, emergency measures are necessary to minimize the danger to life and property.

- B. In the course of domestic security investigations preventive action by the FBI may include objectives such as:

- (1) disrupting plans for using force or violence; or
- (2) preventing access to or rendering inoperative weapons, explosives, or other instrumentalities of planned violence.

- C. Preventive actions shall not include:

- (1) committing or instigating criminal acts;
- (2) disseminating information for the purpose of holding an individual or group up to scorn, ridicule, or disgrace;
- (3) disseminating information anonymously or under a false identity;
- (4) inciting violence.

- D. Preventive action by the FBI, short of prosecution, to obstruct the use of force or violence shall:

- (1) be undertaken only with the express written approval of the Attorney General, based upon a written request describing the force or violence to be prevented, the preventive action to be undertaken (which shall be the minimum necessary to obstruct the force and violence), and the justification for the preventive action;

provided that, in circumstances of immediate danger, preventive action may be taken by the FBI upon the oral approval of the Attorney General or his designee for a period of 24 hours, within which period written justification must be submitted to the Attorney General, and provided further that the preventive action shall be discontinued immediately upon declination by the Attorney General, or discontinued after 24 hours if written authorization is not obtained.

- (2) not be authorized for any period longer than is necessary to achieve the objective of the authorization, nor in any case longer than thirty days. Extensions of an authorization may be granted by the Attorney General for an additional thirty (30) days, when he deems it necessary to achieve the purposes for which the original authorization was granted.
- (3) be designed and conducted so as not to limit the full exercise of rights protected by the Constitution and laws of the United States."

This proposal and the proposed requirement that the Attorney General report at least annually to the Congress on such actions appear to be reasonable.

Dissemination and retention of records

Criteria regarding dissemination of information remains essentially unchanged. The draft guidelines do change procedures for retaining information by noting that, within a yet unspecified number of years after closing domestic intelligence investigations, all information obtained during the investigations, as well as all pertinent index references, either be destroyed or transferred to the National Archives and Records Service.

OVERALL CONCLUSIONS

An essential difficulty with the domestic intelligence investigations has been the FBI's failure (1) to adequately

distinguish the extent to which groups are likely to use violence to achieve their goals and (2) to investigate and use certain investigative techniques accordingly. Priorities for such investigations are not systematically determined. Moreover, no outside organization has effectively held the FBI accountable for such decisions.

- Violent groups, such as the present-day Weatherman, and previously the Ku Klux Klan, warrant the full attention of the FBI. But, we question whether the FBI has a systematic way to allocate its resources where the needs are greatest. Rather than concentrating on the groups most prone to violence, the FBI has diffused its domestic intelligence investigative coverage to the point where many investigations do not lead to positive results. Perhaps if the FBI concentrated its efforts on those groups and individuals who really represent the greatest threats to national security, as determined by the Attorney General and the FBI, the domestic intelligence program would be more productive.

The problem, of course, is that no one can say with assurance what might happen were the scope of the FBI's domestic intelligence operations changed; or, even if it were, whether a direct causal relationship would exist between a change in the scope of such operations and future actions by so-called radical groups. We can say that changes are needed in the way domestic intelligence operations are currently conducted, to make them more effective. We believe the Nation should be willing to accept a certain amount of risk inherent in any decision to reduce the scope of domestic intelligence operations to better assure that the FBI directs its investigative effort toward those groups and individuals who truly warrant it.

Changes in laws or regulations, however, are not the only needed actions. There must be continuous and conscientious oversight of domestic intelligence operations by the Justice Department and the Congress to help assure that the FBI's investigations are consistent with any legislative or administrative changes.

We assume that in any intelligence-type investigation one objective must be to merely gather information. Such an objective is appropriate, but only within the confines of a clearly defined policy setting out the nature of groups and individuals to be investigated. The key decision must be that of deciding when to investigate a group or individual.

No groups or individuals should be investigated merely because of their beliefs. Evidence should show that the groups or individuals have used violence or are truly likely to use it to achieve their ends. Moreover, a distinction should be made as to the type of investigative coverage given to groups, depending on their propensity for using violence. The FBI should investigate those groups that pose the greatest threats, as periodically determined by the Attorney General or Deputy Attorney General in consultation with the FBI. Such investigations should endeavor to prevent the use of violence and, if it occurs, to successfully prosecute those who broke the law. If followed, the recommendations that follow should further this endeavor.

The above discussion assumes the continued existence of domestic intelligence operations within the FBI. While we believe such operations are needed, albeit in a changed form, we do not mean to imply that the Congress should not deliberate the need for the entire effort. Once agreement is reached on the need for such a program, it will be useful to consider our specific recommendations for changing the scope of the FBI's domestic intelligence operations.

RECOMMENDATIONS FOR DOMESTIC INTELLIGENCE OPERATIONS

Our recommendations are directed toward resolving problems in five main areas:

- Authority for domestic intelligence operations.
- Initiating and continuing investigations.
- Use of sources and techniques.
- Collection, dissemination, and retention of investigative information.
- Oversight and control.

We have recommended that the Congress enact legislation to correct certain problems. In other instances we have made recommendations to the Attorney General.

Authority

We recommend that the Congress enact legislation to clarify the FBI's authority to initiate and conduct domestic intelligence operations. In doing this, we recommend that

the Congress (1) define the extent to which domestic intelligence investigations should be predicated on existing criminal statutes relating to the overthrow or advocating the overthrow of the Government and (2) specify the activities that should be investigated solely so appropriate Government officials can be aware of them.

Initiating and continuing investigations

We recommend that the Congress enact legislation so that:

--Only those groups involved in activities that have resulted, or are likely to result, in use of violence could properly be investigated as part of domestic intelligence operations.

--A determination regarding the likelihood that a group's activities could result in the use of violence be made at least annually by the Attorney General or Deputy Attorney General on the basis of evidence presented by the FBI and in accordance with specific criteria promulgated by the Attorney General for making such judgments.

--No individual who is merely a member of a group properly classified as warranting domestic intelligence investigation, but which has only shown a likelihood of violence, be investigated unless the FBI receives information that that individual has committed or is likely to commit specific acts involving violence.

--With respect to properly classified groups which have evidenced a likelihood of using, or have used violence, the FBI will be allowed to use certain investigative procedures, so that the FBI may continually assess the extent to which individuals in the groups might be involved in criminal conspiracies or acts involving use of violence. Allowable procedures would be:

1. Establishing and using informants or other confidential sources which could penetrate the groups to report on the groups' activities.

2. Investigating leaders of groups or potential groups to determine their identities, the extent of their followings, and their propensities for violence.

--The FBI could conduct yearlong, extensive investigations of individuals associated with or suspected of associating with groups that have proven abilities to commit violent acts and, on this basis, have been classified by the Attorney General or Deputy Attorney General, at least yearly on the basis of evidence presented by the FBI, as being grave threats to the public well-being. In enacting this recommendation, the Congress may want to discuss with Justice Department and FBI officials the feasibility of defining "proven ability to commit violent acts" by frequency of acts and the time periods in which they were committed.

Sources and techniques

We recommend that the Congress enact legislation limiting the extent to which the Attorney General may authorize the FBI to take nonviolent emergency measures to prevent the use of violence in violation of Federal law. The limitations proposed in the Attorney General's January 1976 draft guidelines appear to us to be a reasonable basis for such legislation.

We recommend that the Attorney General direct the FBI to enforce its current requirements until further legislative changes are enacted, so that (1) only established sources--those sources already used frequently by the FBI as opposed to new ones--be contacted during preliminary inquiries and (2) preliminary inquiries be completed within the required 90-day time frame or FBI headquarters approve an extension for such investigations.

Dissemination and retention of investigative information

We recommend that the Attorney General direct the FBI to:

- Limit the type of information that can be collected by any source to that relevant to the case. Information about things such as an individual's sex life

or drinking habits should not be collected unless the FBI special agent responsible for the case can justify directly to the SAC of the field office that such information is pertinent and necessary to the investigation.

- Only disseminate information relevant to an appropriate agency's organizational interest in the case and, in usual circumstances, disseminate no information on individuals whose associations with properly classified groups or propensities for violence have not been established.
- Establish a time limit for retaining all information obtained in domestic intelligence investigations, after completing a comprehensive study showing how information in investigative files is to be used in subsequent investigations; the type of information to be used; and the frequency, in terms of times used, and relevancy, in terms of age, of the information to be used.
- Review, with appropriate agencies, current agreements regarding the dissemination and exchange of information, to assess the usefulness of FBI-provided information and if possible, to reduce the amount of information exchanged.

Oversight and control

We recommend that the Congress enact legislation:

- Requiring the Attorney General to periodically advise and report to the appropriate committee(s) on (1) the focus of current domestic intelligence operations, (2) the groups under investigation, (3) the anticipated actions of various extremist or subversive groups and how such actions would affect policy decisions regarding the possible changes in emphasis of domestic intelligence operations, and (4) the extent to which certain sensitive techniques, such as mail covers and preventive action, were approved and used in domestic intelligence investigations.

We recommend that the Attorney General promulgate rules and regulations establishing a systematic process for providing proper departmental control and oversight of

FBI operations. Such rules and regulations should cover such issues as (1) the type of communications the FBI must provide to the Department describing the existence of certain programs or indexes resulting in intensified investigations of certain individuals, (2) the nature of FBI activities that must be approved by the Attorney General or Deputy Attorney General, (3) how often the FBI must report to Justice officials on specified matters, and (4) the extent to which the Department of Justice internal auditors will be responsible for providing the Attorney General information on how the FBI is carrying out departmental policies and procedures.

AGENCY COMMENTS

By a February 10, 1976, letter, the Justice Department advised us of its and the FBI's comments on our report. We have recognized their comments dealing with specifics of our report in the appropriate sections of the report. Their general comments on our recommendations are briefly summarized below. (See app. V for details.)

The FBI took exception with our finding that the Bureau was not granted investigative authority by the President in 1936, or by subsequent Presidential directives, to conduct domestic intelligence investigations. But, the FBI agreed with our recommendation that legislation is needed to clarify its authority to conduct domestic intelligence investigations. The FBI stated that it has no vested interest in the status quo. It stated that intelligence collection with responsible oversight is continually needed but with sufficient flexibility to be able to respond to changing conditions and needs. To preserve this flexibility, the FBI believes any statute should clearly set forth FBI responsibility in the area but "provide that the administration of our investigative effort should be placed in the hands of the FBI Director and the Attorney General."

The FBI took exception with our recommendation that domestic intelligence operations be directed only to those groups engaged in or likely to engage in force or violence. The FBI stated that it believes "that government has a legitimate interest in collecting information to assess the extent to which" certain Marxist-Leninist organizations may contribute to future crises which affect its ability to function, even if the organizations do not express the desire to imminently use violence.

The FBI believes that such a limitation would:

"* * * protect from governmental inquiry those plotting to undermine our institutions during their preliminary stages of organization and preparation and thus inhibit the development of an intelligence collage upon which to base meaningful analyses and predictions as to future threats to the stability of our society."

The FBI stated that the issue whether such investigations should be confined to anticipating violence should be considered by the Congress and the Attorney General.

We agree. One important issue to address in deciding whether the FBI should be allowed to continually investigate groups that may possibly use violence, regardless of the probability that they will use it, is the extent to which such groups have engaged in acts resulting in violations of Federal statutes relating to overthrowing the Government, to civil rights, and to voting. Our results, cited in chapter 10, show that this was not the case in any of our sampled cases, and provide some basis with which to address the issue.

We believe that if the FBI is allowed to continue to investigate groups merely because they might use violence, without assessing the probability for violence, no significant change would result in the number of individuals investigated or the scope of such investigations.

Our view is apparently shared by the Justice Department committee drafting the Attorney General's guidelines for the FBI's domestic intelligence operations. As noted previously, the committee's January 1976 draft guidelines state that domestic intelligence investigations are conducted primarily on individuals, or individuals in concert, whose activities involve, or will involve, use of force or violence and violation of Federal law.

The FBI also noted that we did not specifically address the need to investigate individuals unaffiliated with groups. The FBI characterized such individuals as anarchists or potential terrorists. It cited the more infamous acts of recent violence perpetrated by people such as Lee Harvey Oswald, Sirhan Sirhan, Arthur Bremer, James Earl Ray, and Mark Essex, as, we assume, the types of unaffiliated individuals the FBI should be allowed to investigate.

Nothing in our recommendations would preclude the FBI from initiating an investigation of any individual whom the FBI learns may be plotting the imminent use of force or violence in a specific criminal act. Moreover, we question how the FBI presumes it could effectively obtain such knowledge of violent acts planned by individuals affiliated with no group when our results showed that the FBI obtained advance knowledge of actions--violent or otherwise--in few of the affiliated cases we sampled.

CHAPTER 12

SCOPE OF REVIEW AND PROBLEMS ENCOUNTERED

SCOPE AND APPROACH

The findings and conclusions in this report are based on (1) our review and analysis of 898 randomly selected domestic intelligence cases in the 10 FBI field offices cited in chapter 1, (2) discussions with FBI officials at FBI headquarters and field offices, and (3) discussions with other Federal, State, and local law enforcement officials.

Field work on the review was done between December 1974 and November 1975.

We selected the field offices for review by ranking the FBI's 59 offices by the total cases on subversives and extremists initiated by each office in fiscal year 1974 for which it was primarily responsible for investigating. We did not include, as part of the total, cases in which a field office only provided assistance to another office, because assisting offices generally investigate only parts of a case.

We selected offices in varying locations and with varying caseload levels to determine whether any differences existed in the way FBI field offices initiate and conduct domestic intelligence investigations.

Upon initiating review work in the 10 field offices, we were given by each office a listing by case file number of all the cases on subversives and extremists which they actively investigated as office with prime responsibility between January 1, 1974, and December 31, 1974. This included (1) initially opened cases on new subjects, (2) reopened cases on subjects already investigated, and (3) ongoing investigations opened before 1974.

The total domestic intelligence cases which the 10 field offices actively investigated during calendar year 1974 were approximately 19,659 (10,505 subversives and 9,154 extremists). This represents 35 percent of the approximately 55,500 investigative matters (27,400 subversives and 28,100 extremists) which all 59 FBI field offices opened and/or reopened as the responsible offices during calendar year 1974.

The total cases on subversives and extremists investigated by each of the 10 field offices, as responsible offices, during calendar year 1974 are:

<u>FBI field office</u>	<u>Subversive</u>	<u>Extremist</u>	<u>Total</u>
San Francisco	2,943	1,938	4,881
Los Angeles	2,312	1,714	4,026
New York	2,130	1,858	3,988
Chicago	1,137	658	1,795
Columbia	140	822	962
Buffalo	603	280	883
Sacramento	400	442	842
San Diego	498	292	790
Springfield	159	613	772
Atlanta	183	537	720
Total	<u>10,505</u>	<u>9,154</u>	<u>19,659</u>

From this universe, we randomly selected between 79 and 100 cases to review in each field office, divided approximately equally between cases on subversives and extremists.

Our sample covered the cases initiated and/or closed during calendar year 1974 and the cases initiated before 1974. The number of sample cases initially opened before 1965 and in each year since 1965 are shown below.

<u>Year initially opened</u>	<u>Cases opened</u>
Before 1965	30
1965	11
1966	5
1967	10
1968	29
1969	29
1970	65
1971	57
1972	62
1973	181
1974	<u>419</u>
Total	<u>898</u>

Since we included in our analysis all investigative activity up to the time we reviewed a specific case, our sample also covered some activity in calendar year 1975.

ACCESS TO RECORDS AND OTHER RELATED PROBLEMS

Since this was the first review of FBI operations by an outside agency, we encountered various problems which hindered our ability to completely and independently review the FBI's domestic intelligence operations.

The major problem was the Attorney General's and FBI Director's refusal to allow us proper access to investigative files or documents from the files. This included the refusal of the FBI and the Attorney General to allow us to verify FBI-prepared summaries of the investigative files. Lack of free access to information, in general, led to other related lesser problems. These problems were discussed briefly in chapter 1.

Inability to review investigative files or verify FBI-prepared summaries of files

We believed it essential that we have access to information in the FBI's investigative files, to determine how and to what extent FBI policies and procedures were being implemented. However, we were willing to do so in such a way that would enable certain information in those files to be protected.

For example, we suggested to 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 FBI, however, would not permit us access to the raw investigative files or to summary reports from the files. They maintained that regardless of any precautions taken, public knowledge that the files or documents from the files were released for our review would hinder the FBI's ability to retain and develop informants and confidential sources and, thus, to carry out its investigative responsibilities. In addition, the FBI was concerned that allowing us to review the files or documents from the files would set a precedent (the files had never been released to the legislative branch of the Government or its representatives) and that even within the executive branch only summary reports prepared for outside dissemination were generally released. After we were denied access, however, the Attorney General allowed staff of the Senate Select Committee on Intelligence Operations access to raw files, exclusive of informants' names.

Therefore, as discussed in chapter 1, we requested that the FBI prepare summaries of each randomly sampled case.

However, to assure the Congress that the FBI-prepared summaries were accurate and complete, we believed it necessary to randomly select certain documents from the FBI case files and compare them to their summaries.

We submitted our proposal for verifying the summaries to the FBI on February 4, 1975. (See app. II.) Essentially, the proposal allowed the FBI to retain physical possession of these documents randomly selected for verification and to excise names of informants and/or sources' names in them. We, in turn, would be able to take notes only on matters relating to incompleteness or discrepancies in the summaries and would treat those notes in the same confidence as the case summaries, themselves.

As noted in chapter 1, the Attorney General and FBI Director rejected our verification proposal on the grounds that it would involve our having access to raw investigative files. In a June 17, 1975, letter to the Chairman, House Committee on the Judiciary, the Attorney General cited as reasons for rejecting our proposal (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. As a compromise, he proposed to nominate to the Chairman, House Committee on the Judiciary, six members of the Department from which the Committee might select three to examine the FBI files to see whether the summaries were accurate.

In his response to the Attorney General on June 25, 1975, the Chairman, House Committee on the Judiciary, noted that GAO's proposed verification procedure presented none of the dangers expressed by the Attorney General because of the way in which the verification would be done. The Chairman pointed out, for example, that the information GAO 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), title 31, United States 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 the need for and the 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 makes its own investigation to the exclusion of an independent body.

The Attorney General also maintained 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, 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 investigate all matters relating to the receipt, disbursement, and application of public funds and that he or she 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.

We have had such broad access and investigative authority since 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 made 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 the Congress and the executive branch in Federal assistance programs for State and local governments. 1/

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

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

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

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

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 makes the Comptroller General responsible for reviewing and analyzing results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his or her 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. Thus, we must, as a matter of fundamental policy, insist upon access to those basic files necessary for our work. Otherwise, we cannot independently verify our findings and the Congress cannot have adequate assurance as to the completeness of our work.

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 GAO. Basic to our review was that we were able to verify, using 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 complicated. Executive agencies must be concerned with protecting such sensitive information. However, executive agencies such as Justice and the FBI must also be more forthcoming with information if congressional committees are to properly carry out their oversight functions.

The conflict between the need to know and the need to protect exists. An arrangement is needed that accomodates both. Certainly, GAO could assist the Congress to exercise its oversight responsibilities as suggested by the Chairman, House Committee on the Judiciary, in his June 1974 letter requesting that we do this and future reviews of FBI operations. However, unless our right of access to necessary information is clarified, we cannot adequately do this.

Other problems encountered

We were able to determine how the FBI establishes and carries out its policies in the domestic intelligence area by using FBI-prepared summaries of case files and discussions with FBI officials and agents. However, we were inhibited in evaluating the efficiency and effectiveness of all of the FBI's domestic intelligence operations because of lack of access to (1) annual and other periodic investigative reports on the various organizations and groups investigated by the FBI detailing those groups' violent tendencies and citing reasons for the investigations, (2) field office files containing allegations of subversive or extremist activities not investigated, (3) information on informant coverage of organizations, and (4) complete inspection reports on the Intelligence Division and 10 field offices included in our review. The FBI, without any justification, refused to allow us access to those documents.

As indicated previously, the FBI's domestic intelligence investigations are organization oriented and an individual is usually investigated because of his or her association with an organization or group which the FBI has determined to be subversive or extremist. The organizations, according to the FBI, are investigated generally because of their efforts to overthrow the Government or to deprive others of their rights through the use of violence. Thus, access to annual and other periodic investigative reports, particularly on organizations and groups covered in the cases we selected, could have given us a better understanding of the reasons for and scope of those investigations. The annual reports could also have provided the best evidence of activities warranting investigation and of FBI investigative accomplishments, if any.

According to the FBI, not all allegations regarding an individual's or organization's involvement in subversive or extremist activities are investigated. Those not requiring investigation are kept by each field office in a general file under each investigative classification. Access to or summaries of those files for the subversive and extremist classifications would have helped us evaluate the consistency among and within the 10 field offices in applying the criteria for opening investigations.

As shown earlier, the FBI's informant network is an essential part of its domestic intelligence operations. The FBI would not provide us information on the number and payments to informants used by field office and the number and payments to informants targeted against each organization or group. We did not have access to the type and extent of

information provided by specific informants. Therefore, we could not determine and evaluate the sufficiency of the FBI's informant coverage in terms of number and quality, the contribution informants make toward investigative accomplishments, and the FBI's efficiency and effectiveness in developing, managing, paying, and targeting informants.

Although we requested the complete annual inspection reports since 1970 for each of the 10 field offices and for the Intelligence Division, the FBI only provided those sections dealing solely with domestic intelligence. They did not, for example, provide those sections dealing with the management of overall field office or division operations, including financial and staff resources, of which domestic intelligence is a part. In addition, the FBI only provided the most current inspection reports for each field office. We could not, therefore, completely determine what impact, if any, the Inspection Division may have had on controlling the nature and scope of the FBI's domestic intelligence activities and the resources assigned to those activities.

Finally, although the FBI-prepared summaries of selected domestic intelligence cases served as an adequate means of review, they were not detailed enough--despite their length and scope--for us to evaluate the impact of intelligence investigations on the individual rights of the subjects. Also, with some exceptions we could not determine the specific nature of the information collected, maintained, and disseminated by the FBI since the FBI refused to let us see interview writeups or reports disseminated to other executive agencies.

NINETY-THIRD CONGRESS

PETER W. RODINO, JR. (R-I)

HAROLD G. BORGES, MASS.
 JACK BROOKS, TEX.
 ROBERT W. CASTLE, W. VA.
 DON EDWARDS, CALIF.
 WILLIAM L. MARBLE, W. VA.
 JOHN CONYERS, JR., MICH.
 JOSHUA COLEMAN, PA.
 JEROME R. WALDIE, CALIF.
 WALTER FLOWERS, ALA.
 JAMES B. MANN, S.C.
 PAUL S. RABINOFF, MD.
 JOHN F. ROSENBERG, MISS.
 GEORGE B. DANIELSON, CALIF.
 ROBERT F. SIEMAN, MASS.
 CHARLES B. RANDOL, N.Y.
 BARBARA JORGAN, TEX.
 BAY THURSTON, IOWA
 ELIZABETH HOLTMAN, N.Y.
 WAYNE OWENS, UTAH
 EDWARD HEWITT, IOWA

B-179296

The Honorable Elmer B. Staats
 Comptroller General of the United States
 General Accounting Office
 Washington, D. C. 20548

Dear Mr. Staats:

As part of this Committee's responsibility to oversee the operations of the Department of Justice, we are beginning to review the operations of the Federal Bureau of Investigation (FBI). The Committee believes it is necessary to initiate such an effort so it can more effectively carry out its legislative responsibilities, but recognizes that it is essential to thoroughly plan such an effort before beginning any detailed reviews or holding oversight hearings.

The Committee believes your Office could be of continual assistance to us by providing information on the efficiency, economy and effectiveness of the FBI's operations. Your efforts would become the primary basis for decisions the Committee would make in determining how to exercise our legislative oversight responsibilities.

Accordingly, I am requesting the General Accounting Office to begin reviewing the operations of the FBI.

In that regard, the Committee's initial concern is with the Bureau's domestic intelligence operation. Therefore, I request that you first focus on policies, procedures and criteria used by the Bureau to identify and select areas which are to be investigated by its domestic intelligence section and on how funds and resources are applied to such

Congress of the United States
 Committee on the Judiciary
 House of Representatives
 Washington, D.C. 20515

June 3, 1974

GENERAL COUNSEL
 JEROME M. ZEPHAN
 ASSOCIATE GENERAL COUNSEL
 BARNER A. CLINE
 COUNSEL
 HERBERT PUCH
 HERBERT E. HOFFMAN
 WILLIAM P. SHATTUCK
 M. CHRISTOPHER HOLDE
 ALAN J. PARKER
 JAMES F. PALLO
 LAURENCE A. SAMBOLA
 FRANKLIN B. POLK
 THOMAS E. MOONEY
 MICHAEL W. BLUMBERG
 ALEXANDER B. COOK
 CONNOR HAYTHE J. BEKAR
 ALAN P. COFFEY

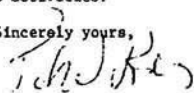
The Honorable Elmer B. Staats
Page 2
June 3, 1974

operations. The Subcommittee on Civil Rights and Constitutional Rights, chaired by Representative Don Edwards, will have responsibility for this area and I trust you will work closely with and keep the chairman of the subcommittee continuously apprised of your activities and progress.

Subsequent to your efforts to review domestic intelligence activities, the Committee would appreciate receiving further suggestions from your Office on how it can exercise efficient oversight over the activities of the FBI.

You may be assured that in your efforts you will have the strong endorsement of this Committee so that you are able to undertake meaningful reviews and issue substantive reports to the Congress on the FBI's activities.

Sincerely yours,



PETER W. RODINO, JR.
CHAIRMAN

PWR:pj

VERIFICATION PROPOSALFebruary 4, 1975

In accordance with Chairman Rodino's June 3, 1974, request, GAO is reviewing the FBI's domestic intelligence operations. The FBI was concerned that GAO's having complete, free access to its domestic intelligence files could negatively affect its capability to develop informants and conduct intelligence investigations. Accordingly, GAO worked out a procedure whereby the FBI will prepare special summaries of the case files randomly selected by GAO for review.

These summaries and follow-up interviews with appropriate FBI personnel associated with the sampled cases will provide GAO adequate information to assess the FBI's policies and procedures used to conduct domestic intelligence operations. However, to effectively carry out its review, GAO believes it is essential to independently verify the accuracy of the information provided to it in summary form by the FBI. A description of GAO's planned verification process follows.

GAO is presently testing its review approach on 100 randomly selected cases (10 from each of the 10 FBI field offices where it is working) before requesting the FBI to provide information on the remainder of the selected cases. Accordingly, with respect to the 100 cases, it will verify the adequacy of each summary. Depending on how the verification process works on these cases, GAO will determine the scope of verification to be completed on the remaining cases.

Since the FBI case files are comprised of specific documents, such as criminal records and dissemination forms which are controlled through the assignment of consecutive serial numbers, GAO believes the serial numbers would serve as a good basis for verification. Through the use of random numbers ranging from 0 to 9, GAO would select such a number for each case summary to be verified and verify all those serials in the particular case file ending in the number selected. For example, if the number "5" were selected, GAO would examine all those documents in the particular case file which have serial numbers ending with the number "5" such as 5, 15, 25, etc. This system would be applied to all cases selected for review. Not all cases would necessarily be verified since some would not have a sufficient number of serials, such as those with less than 5 if that random number were selected.

The verification would be done in the presence of an FBI representative who would pull, one at a time, documents which GAO randomly selects. The GAO representative would

then review the document to determine whether its contents were essentially and accurately synopsisized in the corresponding summary. GAO would not obtain a copy of the document and only notes related to any discrepancies or incompleteness in the summary would be taken. In addition, any notes and un-written observations made in connection with the verification process would be treated in the same confidence and in accordance with FBI security standards as previously agreed to in connection with the summaries themselves.

GAO recognizes that prior to its verifying any documents, the FBI may want to expunge all names of informants and/or sources from FBI documents; however, such essentials as the nature, purpose, and general contents of the documents must be discernible. Also, if GAO should select for verification a document which the FBI considers to be highly sensitive and does not want to release or one which first may require the approval of another agency under a "third party agreement" the issues will be resolved at appropriate supervisory levels of the FBI and GAO and, if necessary, by the FBI Director and Comptroller General.

For purposes of audit objectivity, GAO believes that the random approach to verification is essential. However, GAO must have the option of verifying other than randomly selected serials if, in the course of its audit, a major question or discrepancy arises with respect to any information provided by the FBI on any summaries for the randomly selected cases. In addition, since GAO does not presently have access to the files, GAO would want to verify any situation related to the misplacement or destruction of file material.

May 13, 1975

The Honorable Edward H. Levi
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

Congressman Edwards and I are most appreciative of your attendance at our meeting last April 17, at which we discussed the verification procedures of the General Accounting Office audit presently underway on the Federal Bureau of Investigation's domestic intelligence operations. The meeting concluded with all the parties agreeing, as we understand it, to do some more thinking on the positions expressed that afternoon.

Upon reflection of that day's meeting, Congressman Edwards and I have concluded that you and Director Kelley have assumed a posture of rejection of the verification procedure proposed by the GAO. At the present time, we are allowing the GAO audit to proceed, using the summaries furnished by the FBI, with no independent verification of any kind. Having failed to reach a workable agreement, the GAO is forced to carry out an in-depth audit of the FBI with no verification process whatsoever.

If this is a correct statement of the position of the Department of Justice, we believe it would be helpful to have you outline for us the reasons for this rejection and the legal foundation upon which your position is based.

I would like to again take this opportunity to point out that the entire process of using the GAO and devising this elaborate

The Honorable Edward H. Levi
May 13, 1975
Page 2

system of audit and verification procedures was carefully constructed to meet the objections and fears regarding confidentiality which you have expressed by avoiding direct access by Members of Congress and their staffs.

By stringently limiting the random selection process, we have eliminated any potential abuse of FBI "raw files" and have provided the Department of Justice and the Bureau with a format which we feel protects the integrity of the Department's files, yet meets the legislative oversight responsibilities of the House Committee on the Judiciary.

We would appreciate hearing from you at your earliest convenience.

With kind regards,

Sincerely,

PETER W. RODINO, JR.
CHAIRMAN

PWR:ps

cc: The Honorable Elmer B. Staats
Comptroller General of the United States



Office of the Attorney General

Washington, D. C. 20530

JUN 17 1975

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives
2137 House Office Building
Washington, D.C. 20515

Dear Chairman Rodino:

This is in response to your letter of May 13, 1975 relating to verification procedures for the current General Accounting Office audit of the Federal Bureau of Investigation's domestic intelligence operations.

The Department cannot help but have strong objections to the verification procedure proposed by GAO, since this would permit GAO employees access to randomly selected raw files for the purpose of confirming the accuracy of FBI summaries. We proposed instead several alternative verification devices including, a requirement of affidavit by the Special Agent preparing each summary, attesting to its accuracy, and a requirement of affidavit by the FBI's separate Inspection Staff attesting to the accuracy of certain summaries which GAO might select.

Your letter asks for an explanation of the reason for our inability to accept the GAO proposal and the legal foundation upon which our position is based.

Investigative material in the possession of the government has traditionally occupied a special status in our legal system and has been accorded careful protection against unnecessary dissemination. The principal reasons for this status are the need to avoid disclosing to prospective defendants the nature and product of the government's investigative activities; the need to protect the subjects of the files from publication of unevaluated data, sometimes including erroneous statements by misinformed or malicious individuals; the need to protect the identity and testimony of informants, without which protection future law enforcement efforts would be significantly impaired; and the need to preserve the secrecy of intelligence data, sources and methods. At least the first three of these considerations underlie the long-established common law rule, now embodied in Rule 6(e) of the Federal Rules of Criminal Procedure, that the proceedings of grand juries must be kept secret. They likewise

underlie a long tradition, in both Federal and State law enforcement agencies, of affording the contents of investigative files special protection against disclosure. It has been the policy of the FBI that its raw investigative files will not be made available to any individual outside the Department of Justice.

The provision of law presumably supporting the present request for GAO access to investigative files is 31 U.S.C. 1154(a),*/ which reads as follows:

(a) The Comptroller General shall review and analyze the results of Government programs and activities carried on under existing law, including the making of cost benefit studies, when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs and activities.

In light of the well-established and well-justified tradition described above, it seems to me unreasonable to interpret this general authority to "review and analyze the results of Government programs and activities" as conferring the power to obtain investigative files for that purpose. The statute leaves it to reasonable inference what specific steps the authorized review and analysis will permit. They clearly do not include, for example, examination of individual census reports in disregard of 13 U.S.C. 9. Just as

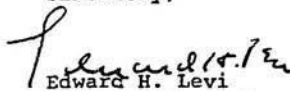
*/ 31 U.S.C. 54, which gives the Comptroller General specific authority to obtain "access to and the right to examine any books, documents, papers or records of any . . . department or establishment", is, as indicated by the text's last sentence, by its enactment in conjunction with the preceding section 31 U.S.C. 53, and by its legislative history, limited to access for the purpose of conducting financial audits. Such an audit is not involved in the present case, and it is indeed difficult to see how the contents of investigative files could ever be relevant to such an inquiry. In any event, I would consider the general grant of authority conferred by 31 U.S.C. 54 subject to the same implicit limitations which the following discussion asserts with respect to 31 U.S.C. 1154.

the vague and general powers to be inferred from GAO's charter can not reasonably be thought to override strong and specific policies expressed elsewhere in Federal legislation, so also they can not reasonably be thought to set aside a strong and specific policy well established by common law tradition and honored not only by the Executive but by the courts. In short, it is my view of the law that powers implicit in GAO's charter do not include the examination of investigative files by non-law enforcement personnel.

As you know, I am eager to assist in your Committee's investigation, within the bounds of my obligation to protect investigative material. I have attempted to think of various procedures which might accomplish this. It occurs to me that one approach which might work to give the necessary assurance and yet protect the inviolability of the raw files would be for me to nominate to you a panel of six members of the Department of Justice staff from which you might select three to examine the files from the standpoint of seeing whether the summaries were accurate. The members I would nominate would not be members of the Bureau but would be lawyers of ability and reputation from the divisions of the Department.

My hope is that some such arrangement may be satisfactory to you, and that it will enable an accommodation of the important interests involved on both sides of this issue.

Sincerely,



Edward H. Levi
Attorney General

June 25, 1975

The Honorable Edward H. Levi
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I have received your recent letter in which you explained the reasons behind your rejection of the verification procedure proposed by the General Accounting Office for the audit, our Committee requested, now underway of the Federal Bureau of Investigation's domestic intelligence activities. I am sympathetic with, and indeed share, the concerns you have for the protection of the Bureau's confidential files for all the reasons you enumerated. However, those reasons fail to address the true nature of our request.

First, you cited the Government's strong need to avoid disclosure to prospective defendants of the information that the Government has compiled in their individual cases, to protect its informants, and to prevent the release of unevaluated, unverified data. The proposed GAO verification procedure presents none of those dangers. Under the suggested procedure, the GAO investigators will look only at randomly selected documents in randomly selected files -- hardly giving them a complete picture of any single case or file. The GAO's record of past investigations of other Executive agencies, investigations that involved highly sensitive material, assures that the information the investigators receive while reading the selected documents will go no further, not even to myself or any other Member of Congress, and will be used for no other purpose than the verification of the accuracy and completeness of the summaries. In fact, the

The Honorable Edward H. Levi
June 25, 1975
Page 2

verification process indicates the only writing that the investigators will do is when a summary inaccurately or incompletely reflects the contents of a document -- a situation neither you nor I expect to occur frequently, if at all. A Special Agent of the Bureau will accompany the investigators at all times, to prevent their rummaging through files or documents that are not within the scope of the verification procedure. Finally, and most importantly, the GAO has recognized that the Bureau may wish to expunge the names of informants or other sources from any document that is to be examined, and could even devise a method whereby the Bureau would refer to files by numbers only, thus preventing access to the names of potential defendants. Under these restraints, it is impossible to discern how any of the potential dangers which you envisage could come to pass.

Second, you referred to the GAO's charter as a limitation on the investigations it may undertake. The Comptroller General is authorized to "review and analyze" Government programs and activities. Without the authority to determine exactly what an agency has done, through some sort of verification procedure independent of the agency, it is difficult to imagine how the GAO can effectively perform this review function. I do not mean to suggest that 31 U.S.C. Sec. 1154(a) gives the GAO carte blanche to examine any FBI documents. In this case, the GAO proposes to look only at a very select number of documents, under full Bureau supervision. Surely such a limited review is within the scope of the charter. Moreover, as I have explained above, the exercise of these powers of review contemplated here would not, as you have suggested, violate any Federal or common law policy.

One need look no further than the paragraph following the one you have quoted in your letter to find the authority for the investigation and verification procedure proposed here. Section 1154(b) requires the Comptroller General, upon the request of any committee to

assist such committee . . . in developing a statement of legislative objectives and goals and methods for assessing and reporting actual program performance in relation to such legislative objectives and goals.

The Honorable Edward H. Levi

June 25, 1975

Page 3

The Comptroller General has indicated to us that the only feasible means to accomplish the review of the Bureau's activities that the Committee contemplates involves the independent verification of the FBI's files. Under this subsection, it is clearly within the GAO's authority to do so.

Should there be any doubt as to the Committee's authority to conduct this investigation and examine the files in question, I refer you to the case of McGrain v. Daugherty, 273 U.S. 135 (1927). The subject of the Congressional investigation in that case was alleged abuses within the Department of Justice. The Court recognized that Congress had authority to gather information because

the subject to be investigated was the administration of the Department of Justice -- whether its functions were being properly discharged or were being neglected or misdirected Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit.

In United States v. Nixon, 418 U.S. ____ (1974), the Supreme Court, considering another type of privilege, pointed out that:

The impediment that an absolute, unqualified privilege would place in the way of the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions would plainly conflict with the function of the courts under Article III.

The position of the Legislative Branch under Article I is surely no less in carrying out its legislative duties than that of the Judicial Branch in carrying out its adjudicative functions. Despite the Committee's clear authority to examine the Bureau's files directly, it agrees with you that there is a strong need for confidentiality, and has proposed instead that the GAO conduct the verification procedure.

The Honorable Edward H. Levi
June 25, 1975
Page 4

Finally, the verification procedure is essential to a thorough performance of the Committee's oversight function over the FBI. What you have proposed is essentially that the Bureau or the Department of Justice investigate itself, and then report to the GAO whether the Bureau has engaged in any wrongdoing, and if so, what. The essence of oversight is lost if the agency being investigated performs its own investigation to the exclusion of and without verification by an independent body. This is especially true where we are now on public notice of misdeeds and, as you noted in your statement before the Subcommittee on Civil and Constitutional Rights on February 27 of this year, that "the resources of the FBI were misused by the executive branch."

What is involved here is not any allegation of inaccurate reporting in the summaries prepared by Bureau agents. What is involved is the confidence of the House and of the people in the fairness, objectivity and thoroughness of the performance of the Committee's oversight function. Justice must not only be done, it must appear to be done. It will not appear to be done if the investigation is carried out by the very agency that has admitted misdeeds, unless there is some independent verification procedure by an independent agency.

It is for these reasons that your rejection of the GAO's verification proposal, which is so circumscribed as to accommodate the important interests involved on both sides of this issue, troubles me. I respectfully request that you reconsider your rejection in order that the Committee may proceed with its investigation.

With all best wishes, I remain

Sincerely yours,

PETER W. RODINO, JR.
CHAIRMAN

PHR:ps

BRIEF ON FBI AUTHORITY FOR DOMESTIC
INTELLIGENCE INVESTIGATIONS

For nearly forty years the Federal Bureau of Investigation (Bureau) has engaged in extensive intelligence investigations of domestic groups and individuals. 1/ Subversives were the early subject of these investigations that later included what the Bureau considered to be extremist elements in the country. The Bureau's Manual of Instruction provides the following statement of authority and general guidelines for such investigations:

"Investigative jurisdiction

"FBI investigations under this section are based on specific statutory jurisdiction and Departmental instructions.

"Investigations conducted under this section are to be directed to the gathering of material pertinent to a determination whether or not the subject has violated, or is engaged in activities which may result in a violation of, the statutes enumerated below; or in fulfillment of Departmental instructions." 2/

However, the Bureau presently asserts a broader authority for its domestic intelligence investigations than that found in its Manual: Presidential statements, Directives and Executive Orders.

Presidential Statements

Oral Presidential statements relating to the Bureau's domestic intelligence investigations were reported in Bureau memoranda written by the then Director, Mr. J. Edgar Hoover, on August 24 and 25, 1936. Mr. Hoover stated that President Roosevelt "was desirous of discussing the question of the subversive activities in the United States, particularly Fascism

1/ The Bureau did engage in at least one intelligence investigation prior to 1936 but it appears to have been limited in nature. See Hoover memorandum of May 10, 1934. Intelligence investigations as a major Bureau activity apparently began in 1936.

2/ Section 87 "Investigation of Subversive Organizations and Individuals," June 6, 1973, at 3. Manual of Instruction §122 "Extremist Matters and Civil Unrest" at 1 recites the same language for investigations conducted under §122.

and Communism," 3/ and there is a clear indication of President Roosevelt's desire to obtain "a broad picture of the general movement", 4/ a reference apparently directed to the Communist movement in the United States but presumably equally applicable to the Fascist movement. 5/

In order to satisfy the President's desire for "general intelligence information," the Secretary of State, pursuant to a statutory procedure previously outlined by Mr. Hoover to President Roosevelt and after being advised of the President's concern "relative to Communist activities in this Country, as well as Fascist activities," requested the Bureau to conduct investigations to obtain the desired information. 6/

Subsequently, however, Mr. Hoover advised the Attorney General that the Secretary of State's request was for the Bureau to "have investigation made of the subversive activities in this country, including communism and fascism." (Underscoring supplied). The Attorney General, according to a memorandum from Mr. Hoover to one of his associates, then directed Mr. Hoover on September 10, 1936, to proceed with the investigation. 7/

Thus the Bureau's commencement of intelligence gathering activities in September 1936, resulted, not from a direct order by the President, but from a request by the Secretary of State conforming to the statutory requirements of the Bureau's 1936 appropriation act that stated:

3/ Hoover Memorandum of August 24, 1936.

4/ Id.

5/ Hoover Memorandum of August 25, 1936.

6/ The President's exact desires at this time regarding the Fascist movement are not altogether clear. The Bureau in 1934 had commenced an investigation of the Nazi movement in the United States to determine whether German diplomatic personnel assigned to this country were connected with the movement. Documents available to us do not show whether this investigation was still continuing as of August 1936, but President Roosevelt apparently knew of this investigation from its inception. See, Hoover Memorandum dated May 10, 1934.

7/ Hoover Memorandum, September 10, 1936.

"TITLE II--DEPARTMENT OF JUSTICE

* * * * *

"FEDERAL BUREAU OF INVESTIGATION

"Detection and prosecution of crimes:
 * * * for such other investigations
 regarding official matters under the
 control of * * * the Secretary of State
 as may be directed by the Attorney
 General * * *." 8/

The Bureau asserts that the statements attributed to President Roosevelt in 1936 authorized and directed the Bureau to conduct intelligence investigations of subversive activities. Certainly, Mr. Hoover's August memoranda reflecting those statements show a Presidential desire for intelligence information. But intelligence about what? "Subversive activities" are mentioned but never defined, and an overall reading of the same memoranda shows a particular Presidential concern only about the Communist and Fascist movements within the country. They are in fact the only groups or movements specifically mentioned in the memoranda. And the Secretary of State's request to Mr. Hoover, made pursuant to the 1936 appropriation act, seems to have been only to investigate Communist and Fascist activity.9/

8/ This language has been codified in 28 U.S.C. §533 by Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 616. Section 533 provides:

"§553. Investigative and other officials;
 appointment
 The Attorney General may appoint officials--
 (1) to detect and prosecute crimes against
 the United States;
 (2) * * *
 (3) to conduct such other investigations
 regarding official matters under the con-
 trol of the Department of Justice and the
 Department of State as may be directed by
 the Attorney General.* * * "

9/ "The President stated that he had been considerably concerned about the movement of the Communists and of Fascism in the United States and * * * he was interested in * * * obtaining a broad picture of the general movement and its activities as may affect (footnote continued on next page)

Did President Roosevelt desire an investigation of Communists and Fascists only; of similar groups dominated or controlled by a foreign government; or of all domestic groups whether foreign controlled or not? Any answer, because of a lack of definition for "subversive activities" and because of general ambiguity in the memoranda, must be speculative. However, the request for investigation, made by the Secretary of State, made after the Secretary had been advised by the President that the Communist and Fascist movements were international in scope and controlled by foreign powers, and consequently that their activities fell within the scope of foreign affairs, 10/ suggests that the President's concern was, at most, in the pre-war year of 1936, limited to organizations having some connection with a foreign government.

Whatever may be deduced from Mr. Hoover's memoranda of August 24 and 25, 1936, it is clear that from the earliest times he acted as if the Bureau had received broad authority to investigate subversive activities in general, whether by groups or individuals, and not just the Communist and Fascist movements or other similar organizations controlled or directed by foreign governments. Mr. Hoover's letter to Bureau field offices on September 5, 1936, following his meeting with the President and the Secretary of State reads:

"Dear Sir: The Bureau desires to obtain from all possible sources information concerning subversive activities being conducted in the United States by Communists, Fascists and representatives or advocates of other organizations or

(footnote continued from previous page)

the economic and political life of the country as a whole. * * * Hoover Memorandum, August 24, 1936. Also, " * * * The President related to the Secretary of State his concern relative to Communist activities in this country, as well as Fascist activities. He stated that he was very desirous of having a survey made of these conditions and informed the Secretary of State that this survey could be made by the Department of Justice if the Secretary of State requested the Department to conduct the inquiry, as under the Appropriation Act this Bureau would have authority to make such investigation if asked to do so by the Secretary of State. * * * " Hoover Memorandum, August 25, 1936.

10/ Hoover Memorandum, August 25, 1936.

groups advocating the overthrow or replacement of the Government of the United States by illegal methods. * * * It is desired, accordingly, that you immediately transmit to the Bureau any information relating to subversive activities on the part of any individual or organization, regardless of the source from which this information is received.
* * *

Presidential Directives

The five Presidential Directives bearing on the Bureau's domestic intelligence investigation activities were issued by various Presidents from June 1936 to December 1953.

President Roosevelt's June 26, 1939, confidential Directive issued for the guidance of Government agencies states his desire that "the investigation of all espionage, counterespionage, and sabotage matters be controlled and handled by the Federal Bureau of Investigation * * * " and certain military intelligence agencies. The directors of the three agencies involved were to function as a coordinating committee. 11/ No other agencies were to investigate " * * * into matters involving actually or potentially any * * * " of these specified matters and the heads of all other investigative agencies were to immediately refer to the Bureau information "bearing directly or indirectly on espionage, counterespionage, or sabotage."

This Directive, in the Bureau's view, constitutes an "unquestionable delegation of investigative authority" 12/ to the Bureau (and certain military intelligence services) in the areas specified. The Bureau suggests that "subversive activity," mentioned in Mr. Hoover's 1936 memoranda, is akin to and in many respects overlaps the areas of espionage, counterespionage, and sabotage.

11/ As regards this committee, the Directive merely formalized an existing informal working arrangement involving the same directors. See, letter from the Attorney General to the President, dated October 20, 1938, contained in a memorandum for the Attorney General from Mr. Hoover, dated March 16, 1939.

12/ Undated Bureau paper on FBI authority under Presidential Directives, page 4.

We question whether this Directive constitutes an "unquestionable delegation of investigative authority" as claimed by the Bureau either generally or with respect to subversive activities. First, the Directive makes no specific reference to investigations of subversive activities in general, to particular movements or groups, or to prior written or oral delegations of investigative authority.

Second, in early June 1939, a memorandum 13/ was prepared by the Department of Justice and the Bureau for possible presentation to the President. We do not know if the memorandum was in fact presented to him; 14/ it does clearly indicate, however, that as of that date Government agencies other than the Bureau and military intelligence agencies were actively engaged in "the handling of investigations involving espionage, counter-espionage and sabotage," and that investigations in these areas were being coordinated by an official of the Department of State. The purpose of the memorandum was to secure an end to the involvement of the other agencies and the State Department in espionage, counter-espionage and sabotage investigations; it contained several recommendations, each found in and implemented by the June 26, 1939 Directive. Any interpretation of the Directive must therefore consider the intent and purpose of the June memorandum.

Neither the June memorandum nor the June Presidential Directive speaks to the authority of various Government agencies to conduct espionage, counter-espionage and sabotage investigations, but only mentions the fact of such activities. The authority to engage in such investigations apparently was assumed. Certainly the June memorandum cannot be reasonably considered as a source of authority for agencies to engage in investigative activities. Its two-fold purpose was simply to stop certain agencies from investigating espionage, counter-espionage and sabotage matters while at the same time assuring that exclusive responsibility for these same investigations would be assigned to the Bureau and military intelligence organizations. Since the language of the June 26, 1939, Directive seems to have been taken from the recommendations found

13/ The memorandum is dated June 5, 1939, but was transmitted from Mr. Tamm to Mr. Hoover by a memorandum dated May 31, 1939, indicating that it was pre-dated.

14/ A June 17, 1939 letter to the President from the Attorney General contained the same facts and recommendations as the June 5 memorandum, however.

in the June memorandum, we see no basis for attributing to it any more meaning or purpose than that found in the June memorandum.

The Directive, then, merely assured the primacy of the Bureau in the investigation of espionage, counter-espionage and sabotage matters by barring other agencies from such activity and by evidencing a Presidential desire that the Bureau (and military intelligence agencies) be responsible for those investigations -- investigations that apparently had been conducted by the Bureau during and at times since World War I. ^{15/} This distinction between authority and responsibility seems to be recognized by the Bureau's own Manual. ^{16/} In this context, we do not construe the Presidential Directive's phrase "controlled and handled" as authority for intelligence investigations by the Bureau, but only as fixing responsibility for them.

Yet aside from the question of authority, the Directive does provide some basis for concluding that the investigations "controlled and handled" by the Bureau were intelligence investigations. It should be noted that counter-espionage is not a crime and that in 1939 certain acts of espionage and all acts of sabotage were not punishable under the espionage and sabotage laws, since criminal penalties did not attach unless the country was at war. ^{17/} Investigations by the Bureau (and certain military intelligence agencies) at this time, a time when the United States was not at war, were arguably not intended or conducted for purposes of immediate criminal prosecution under the espionage and sabotage laws. By elimination, the only purpose remaining for the investigations is intelligence.

Because the Directive refers to activities, not named groups, investigations of groups and individuals engaged, or possibly engaged, in those activities might not necessarily be limited to groups or individuals subject to a foreign influence.

President Roosevelt issued the first public Presidential Directive on September 6, 1939. The first paragraph stated:

^{15/} Hoover Memorandum for the Attorney General, dated March 16, 1939.

^{16/} See, footnote 31, below.

^{17/} Act of June 15, 1917, Ch. 30, Title I, 40 Stat. 217 (Espionage); Act of April 20, 1918, Ch. 59, 40 Stat. 533 (Sabotage).

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

The second paragraph stated that "This task"--taking charge of investigative work--"must be conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated" to avoid confusion.

The last paragraph requested information in the following terms:

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

This Directive provided public notice of prior Presidential instructions that the Bureau was to take charge of matters relating to espionage, sabotage and neutrality law violations and also requested that law enforcement officials turn over to the FBI information on those subjects and on counterespionage and subversive activities. Obtaining the referral of information to the Bureau by law enforcement officials was, in fact, the sole motivation for the issuance of this Directive since the Bureau had requested it upon learning that a sabotage squad had been established in one large city police force. 18/ The aim of this Directive was basically the same as that of the confidential June 26, 1939, Directive--to maintain and insure a steady and direct flow of information to the Bureau--except that the impediment to the information flow addressed by this Directive was local law enforcement agencies, not other Federal Government agencies.

18/ Hoover Memorandum to the Attorney General, dated September 6, 1939, and Tamm Memorandum to File dated at 2:30 p.m. the same day.

The September 6, 1939, public Directive, then, was not intended to authorize the Bureau to conduct investigations. Consequently it did not order the Bureau to "take charge" of investigations in the mentioned areas, but said the Department of Justice had been requested, at some prior time, to "instruct" the Bureau to do so. We do not know exactly when that instruction was given by the Department. The similarities in investigative areas suggest that the prior June 26, 1939, confidential Directive constituted the Presidential request referred to. If so, then "take charge" would be no more a delegation of authority than the previous "collected and handled." In any event, the Bureau apparently was, at some prior time, instructed to "take charge" of investigations relating to matters in three specified areas -- espionage, sabotage and neutrality act violations but not in some broad generic area such as "subversive activities".

"Subversive activities" were mentioned in the public Directive, but not in the first paragraph dealing with the investigative activities of the Bureau. Instead, the term "subversive activities," without further definition, appeared in the Directive's third paragraph dealing with the delivery of information to the FBI by local law enforcement officials. The receipt of such information is a passive action; and the Directive did not indicate that active investigation by the Bureau was expected except in the matters of espionage, sabotage, and violation of the neutrality laws.

The Bureau, in essence, asserts that the scope of its investigative activities is determinable by the types of information local police officials were requested, in the third paragraph, to transmit, and not by the investigative work specifically mentioned in the first paragraph of the Directive. Perhaps. But a description of information sought about particular activities is not necessarily authority to conduct investigations into those activities. Nonetheless, under the Bureau's construction, paragraph three brought investigations into matters relating to "counterespionage" and "subversive activities" within the ambit of the Bureau's investigative responsibilities. Of course, in the Bureau's view, investigation into these areas was already authorized and being conducted on a confidential basis pursuant to the June 1939 Directive and the 1936 Presidential statements.

The Bureau's assertion leaves several unanswered questions. For example, other areas of Bureau investigative work were specifically mentioned in the September 1939 public Directive; why was the Bureau's work in counterespionage and subversive

activities treated so circuitously? If a confidentiality restriction precluded their mention, then why mention them anywhere in the Directive, since doing so might suggest Bureau involvement and negate the secrecy restriction? And in fact the August 25, 1936, memorandum of the meeting with the President and the Secretary of State permits the inference that the Secretary's request ran only to investigating Communist and Fascist activities, and the June 1939 confidential Directive listed only espionage, counterespionage and sabotage, but not subversive activities.

As with the June 26, 1939, confidential Directive, the September 6, 1939, public Directive put the focus of Bureau investigations on acts, not organizations. Consequently, Bureau investigations could involve domestic groups engaged in these activities regardless of foreign government control or influence. Whether President Roosevelt intended such a result in the pre-war year of 1939 is conjectural.

The September 6, 1939, Directive was referred to in three subsequent Presidential Directives. These later Directives were also, judging from their language, designed to solicit information from the public for the Bureau along the lines of the September 6 Directive. They did not, by their terms, delegate investigatory authority or fix investigatory responsibility on the Bureau. Their issuance may have been dictated by the events of the times or by new legislation; but we know of nothing that would impart to these Directives a meaning or purpose beyond the obvious one of assuring a flow of information to the Bureau.

The first of the three was issued on January 8, 1943, by President Roosevelt. This Directive summarized the Bureau's investigative activities mentioned in the September 6, 1939, Directive as relating to "espionage, sabotage and violations of the neutrality regulations", and, in addition to reminding law enforcement officers of the request made to them in the earlier Directive, suggested that "all patriotic organizations and individuals" also report such information to the FBI.

The second was President Truman's Directive of July 24, 1950. This Directive stated that Presidential Directives had been issued September 6, 1939, and January 8, 1943, providing that the FBI "should take charge of investigative work in matters relating to espionage, sabotage, subversive activities and related matters." (Emphasis supplied.) This was in fact a misstatement of the language of the earlier Directives, which were directed to "espionage, sabotage, and violations

of the neutrality regulations." The Truman Directive then reiterated the request for all law enforcement officers to report information on these matters to the Bureau and the suggestion that patriotic organizations and individuals do likewise.

The third, issued by President Eisenhower on December 15, 1953, referred to the requests of the earlier Directives that law enforcement officers report to the Bureau information "relating to espionage, sabotage, subversive activities and related matters." The Directive then recited the investigative responsibility of the Bureau under the Atomic Energy Act, requested Federal and State enforcement officers to report to the Bureau information relating to violations of that Act, and suggested that patriotic organizations and individuals do likewise. Considered in context, the referencing of the prior Directives apparently was only to establish a precedent upon which to request information on Atomic Energy Act violations.

The first mention in the Directives of investigative work in the area of subversive activities, then, was in the 1950 Truman Directive. But that mention did not purport to delegate investigative authority or impose investigative responsibility for subversive activities; it was only a reference to the prior Directives as providing that the Bureau should take charge of investigative work in matters relating to, among others, subversive activities. And since the prior Directives did not so provide, it cannot fairly be said that the Bureau received either authority or responsibility to investigate subversive activities from the Truman Presidential Directive.

In sum, the Presidential statements and Directives did not, whether considered individually or collectively, explicitly delegate authority to the Bureau to conduct intelligence investigations of subversive activities. To the extent, if any, that they fixed responsibility on the Bureau for such investigations, they did not explicitly indicate that all types of domestic groups and individuals were subject to investigation or clearly indicate what constitutes "subversive activities" or "subversion."

Interdepartmental Intelligence Conference

Implementation of the June 26, 1939, Presidential Directive resulted in the formation of the Interdepartmental Intelligence Conference (IIC) to coordinate the investigative activities of the Bureau and two military intelligence agencies. To facilitate coordination, the IIC adopted a Delimitations Agreement on June 5, 1940, citing as authority for the Agreement the Directive of June 26, 1939, as augmented by the Directive

of September 6, 1939, charging the IIC members with responsibility for the investigation of all espionage, counter-espionage, sabotage, and subversive activities.

The Delimitations Agreement was revised on February 9, 1942, and February 23, 1949. On both occasions the June and September 1939 Directives were cited as authority and both revisions, with the exception of changing "subversive activities" to "subversion," enumerate the same areas of investigation mentioned in the 1940 Agreement. Within these investigative areas, the Bureau had general responsibility for investigations of "civilians * * * of all classes in the continental United States * * *."^{19/} Connection with a foreign government was not a prerequisite to Bureau investigation of civilians under the Agreement.

The Bureau advises that the IIC, as an independent committee, ceased to exist in 1949 when it came under the control of the National Security Council (NSC) presided over by the President. Thereafter, in 1962, the IIC came under the control of the Attorney General.^{20/} The IIC's charter from the Attorney General stated:

" * * * the Attorney General hereby authorizes and directs that the Interdepartmental Intelligence Conference effect the coordination of all investigation of domestic espionage, counter-espionage, sabotage and subversion, and other related intelligence matters affecting internal security. * * * " (Emphasis supplied.)

There is evidence to suggest that the IIC's prior charter received from the NSC imposed, with the approval of President Truman, responsibilities identical to those in the Attorney General's charter.^{21/}

^{19/} Delimitations Agreement, February 23, 1949, para. II. 1.

^{20/} National Security Action Memorandum No. 161, June 9, 1962, signed by President John F. Kennedy.

^{21/} The evidence mentioned is a draft of the NSC charter for the IIC. NSC Document 17/5, June 15, 1949.

Subversive Activities

"Subversive activities" and "subversion" as used in the Hoover memoranda, as used in the Presidential Directives requesting that information be furnished to the Bureau, and as used in the Delimitations Agreement, are without definition. There is no way to say with assurance that these terms had at all times the same meaning or that persons concerned with them understood them the same way. Exactly what the Presidents issuing the various Directives considered to be "subversive activities" or "subversive matters" when they requested information thereon to be reported to the Bureau is conjectural.

Mr. Hoover, in his September 5, 1936, letter to Bureau field offices, apparently defined "subversive activities" in terms of "advocating the overthrow or replacement of the Government of the United States by illegal methods." But the Bureau also advises that during the preparation of proposals for the 1940 Delimitations Agreement, Mr. Hoover suggested to the members of the coordinating committee that "subversive activity" be understood to include "espionage, sabotage, groups organized to assist hostile forces ('Fifth Column') and Subversive propaganda." The Delimitations Agreements, however, never defined "subversive activities" or "subversion."

The Bureau's Manual of Instruction for agents defines "subversive activities" in terms of three principal statutes found at sections 2383, 2384, and 2385 of Title 18, United States Code, dealing with rebellion or insurrection, seditious conspiracy, and advocating the overthrow of the Government, respectively. While these statutes provide the principal basis for defining "subversive" and "subversive activities", they do not themselves define those terms and they are not exclusive; the Manual of Instruction also mentions §783(a), Title 50, United States Code, the Internal Security Act of 1950, as amended, as a possible basis for subversive investigations.^{22/}

^{22/} Section 122 of the Bureau's Manual of Instruction dealing with "Extremists matters and Civil Unrest" also cites 18 U.S.C. 2383, 2384, and 2385 as principal authority for Bureau investigations of extremist organizations and individuals. In addition the Civil Rights Act of 1968, 18 U.S.C. 241 is cited as a possible statutory basis for extremist investigations.

The Manual states:

"The term 'subversive activities' as used in this section denotes activities which are aimed at overthrowing, destroying or undermining the Government of the United States or any of its political subdivisions by the illegal means prohibited by statutes enumerated in A. 1. above. The term 'subversive organization' or 'subversive movement' denotes a group or movement which is known to engage in or advocate subversive activities, as defined above." 23/

The Internal Security Act of 1950 (50 U.S.C. 781 et seq.) does not explicitly define "subversive" or "subversive activities". Subchapter I of the Act (also known as the Subversive Activities Control Act of 1950) does however make it an offense for persons to knowingly conspire to perform any act that would substantially contribute to the establishment of a totalitarian dictatorship (as defined in §782(15) of the Act) in the United States that is dominated or controlled by a foreign government, organization or individual, 24/ and Subchapter II, the Emergency Detention Act of 1950 25/ (repealed in 1971) 26/ provided, upon the declaration of an Internal Security Emergency by the President for the detention of individuals as to whom--

23/ Section 87, July 15, 1974, at 4. Similar language exists in §122 of the Manual for extremist activity:

"The term 'extremist activities' as used in this section denotes activities which are 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 [as] prohibited by statutes enumerated in A.l.a. above. The term 'extremist organizations' denotes a group or movement which is known to engage in or advocate internal subversive or extremist activities as defined above" §122, at lb.

24/ 50 U.S.C. §783(a).

25/ Act of September 23, 1950, Title II, 64 Stat. 1019.

26/ Pub. L. 92-128, §2(a), September 25, 1971, 85 Stat. 348.

There is a reasonable ground to believe that such person probably will engage in, or probably will conspire to engage in, acts of espionage or of sabotage." 27/

The Bureau Manual indicates that the Bureau presently considers the conspiracy offense of Subchapter I to be a basis for subversive investigations. 28/ But the Bureau insists that individuals were not investigated solely to determine whether they should be put in detention if an Internal Security Emergency were declared under that law prior to its repeal.

Between July 1971 and June 1974, Executive Order 10450, as amended (discussed later herein) provided a definition of "subversive" 29/ in connection with Subversive Activities Control Board activities. Specifically:

"(h) The Board may determine an organization to be 'subversive' if it is found that such organization engages in activities which seek the abolition or destruction by unlawful means of the government of the United States or any State, or subdivision thereof."

The Bureau apparently conducted investigations on the basis of this definition. 30/ However, the Subversive Activities Control Board ceased to function when Congress failed to appropriate funds for its operation in fiscal year 1974.

Before 1950, when the Internal Security Act was passed, the Bureau's basis for determining what constituted a "subversive activity" was even less clear than between 1950 and July 1971. There is of course Mr. Hoover's apparent definition

27/ Act of September 23, 1950, Title II, §103, 64 Stat. 1021.

28/ Section 87, Investigations of Subversive Organizations, para. A.I.d., at 4, revised July 15, 1974.

29/ This definition was added by §2 of Executive Order 11605, July 2, 1971, 37 F.R. 12831, and revoked by Executive Order 11785, June 4, 1974, 39 F.R. 20053.

30/ See Bureau statement with respect to Executive Order 11606, below.

contained in his September 1936 letter, and, given the Bureau's view of its statutory authority to conduct domestic intelligence investigations, below, it may be that the Bureau defined "subversive activities" in terms of certain Federal criminal statutes such as those dealing with insurrection or seditious conspiracy.

Statutory Authority

The Bureau asserts parallel and preexisting statutory authority to conduct domestic intelligence investigations in addition to the asserted authority derived from the Presidential Directives. 31/ This statutory authority was not emphasized until recently, when the Bureau's Manual of Instruction was rewritten. This authority is codified at §533, title 28, United States Code, in language comparable to that of the 1936 Appropriations Act. 32/

The Bureau thinks that 28 U.S.C. §533 authorizes intelligence investigations of groups and individuals who have violated, or who are engaged in activities that may violate a substantive criminal statute such as that pertaining to seditious conspiracy, 18 U.S.C. §2384. Section 533 provides:

"The Attorney General may appoint officials--

31/ FBI Manual of Instruction §§87 and 122 dealing with subversives and extremists respectively does not mention any Presidential Directives as a basis for investigative authority. The only reference to Presidential Directives is an indirect one in §122:

"d. FBI Responsibility.

"The FBI has been charged by various Presidents with the responsibility to coordinate and collect all information relating to the internal security of the United States, including information from all other Federal and local agencies. See section 102, Volume IV, of this manual. This coordination and collection responsibility is not to be confused with our jurisdictional authority for conducting active investigations, set out in A.I.a. above." (Underscoring supplied.)

32/ See, footnote 8, above.

"(1) to detect and prosecute
crimes against the United States;
* * *."

The "detect and prosecute" language, like other provisions of §533 relied on by the Bureau as justification for intelligence investigations, had its genesis in appropriation acts applicable to the Department of Justice. The historical note following §533 reports that similar language has been contained in each Department of Justice appropriation act since 1921; our research indicated its existence as early as 1871. As to the Department of Justice, the "detect and prosecute" language first appeared in H.R. 3064, 33/ ultimately enacted as the Sundry Appropriations Act of March 3, 1871. 34/

As originally passed by the House and reported to the Senate, H.R. 3064, unlike prior appropriation acts applicable to the Office of the Attorney General, lacked language providing for expenditures in aid of the "prosecution of crimes against the United States." The Senate Committee on Appropriations recommended to the Senate an amendment to H.R. 3064 that would provide, among other things, an appropriation for the "* * * detection and prosecution of crimes against the United States * * *." 35/ The amendment was adopted by the Senate, without objection or discussion. 36/ Thereafter the House, without objection or discussion, adopted the Senate amendment. 37/ Apparently there were no written reports on the amendment that might have helped determine what Congress meant by "detection."

A precise definition of the duties intended to be encompassed by the term "detect" in section 533 is therefore not possible, but its use in conjunction with "prosecute" suggests that matters appropriate for detection are those for which prosecution, as opposed to intelligence gathering, is seriously contemplated. In fact it could well be that Congress intended

33/ 41st Cong., 3d Sess. (1871).

34/ Ch. 114, 16 Stat. 495.

35/ Cong. Globe, 41st Cong., 3d Sess. at 1891 (1871).

36/ Id.

37/ Id. at 1936.

to detect and prosecute crimes" to mean exactly that: to discover (detect) crimes that have been committed and to prosecute the perpetrators. Long term monitoring of groups and individuals for primarily intelligence purposes may therefore be of questionable propriety when conducted pursuant to this statutory authority. Nonetheless, without a clear indication of what Congress intended, the Bureau's interpretation, that allows the monitoring of groups and individuals for intelligence purposes to detect crimes against the United States, cannot be said to be clearly incorrect.

In addition to the "detect and prosecute" language, §533 to allows the Attorney General to appoint officials--

"(3) to conduct such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General."

We have already discussed comparable language found in the Bureau's appropriation act for 1936 that allowed it to undertake general intelligence investigations of Communist and Fascist movements (and perhaps others) at the request of the Secretary of State. In fact, as early as 1924, the Bureau thought that comparable language authorized the investigation of certain domestic activities in connection with State Department recognition of a foreign government. 38/

Aside from investigations initiated at the request of the Secretary of State, §533(3) has been the basis for intelligence investigations regarding matters under the control of the Department of Justice. Internal security has been one such matter since 1962, when National Security Action Memorandum No. 161 39/ not only brought the IIC under the control of the Attorney General but assigned to him "primary responsibility" for developing plans, programs and proposals to protect the internal

38/ Hoover memorandum for the Attorney General, dated December 13, 1924.

39/ See footnote 20, above.

security of the country. The Attorney General or the Department implemented this responsibility by issuing directives to the Bureau. 40/

Department of Justice Directives

In September 1967, for example, the Attorney General, as a result of urban riots, charged the Bureau to--

"use the maximum available resources, investigative and intelligence, to collect all facts bearing on the question as to whether there has been or is a scheme or conspiracy by any group of whatever size, effectiveness or affiliation, to plan, promote or aggravate riot activity. * * * "

Later the Department of Justice requested information from the Bureau relating to possible subversive group and individual involvement in campus disorders 41/ and militant Indian activities. 42/ The requests for information relating to urban riots and campus unrest both recognize prior Bureau intelligence activity in each of these areas.

The Department has also issued regulations that relate to the Bureau's domestic intelligence activities. They are found at section 0.85, title 28, Code of Federal Regulations and state:

40/ The FBI Manual, see footnote 2, above, suggests that these directives are in themselves authority for investigations. More recently, however, the Bureau advises that the directives do not constitute additional authority for such investigations. Bureau representatives stated that the directives were merely evidence of the Department's authority under §533.

41/ Memorandum of Assistant Attorney General, Internal Security Division, February 18, 1969.

42/ Memorandum of Assistant Attorney General, Criminal Division. Hearings Before the Committee on Internal Security, House of Representatives, 93d Cong., 2d Sess., "Domestic Intelligence Operations for Internal Security Purposes, Part I," at 3417.

"0.85 General functions.

"Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Director of the Federal Bureau of Investigation shall:

"(a) Investigate violations of the laws of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency.

* * * * *

"(c) Conduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise.

"(d) Carry out the Presidential directive of September 6, 1939, as reaffirmed by Presidential directives of January 8, 1943, July 24, 1950, and December 15, 1953, designating the Federal Bureau of Investigation to take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and related matters. * * *"

Executive Orders

Finally, the Bureau claims to have conducted intelligence investigations under the authority of Executive Orders 10450 and 11605, dated April 27, 1953, and July 2, 1971, respectively.

Executive Order 10450 43/ established programs to ensure that the employment and retention of Government employees is consistent with interests of national security. Under the Executive Order, each agency is to conduct security investigations of its personnel. However, §8(d) of the Executive Order, as amended, states:

43/ 18 F.R. 2489, April 29, 1953.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation."

The activities covered by subdivisions (2) through (8) include, for example, establishing or continuing an association with any person who advocates the use of force to overthrow the Government of the United States by unconstitutional means, or membership, affiliation or association with any foreign or domestic group which seeks to alter the Government of the United States by unconstitutional means.

Executive Order 10450 also effected a general revocation of Executive Order 9835, ^{44/} except for a provision that the Department of Justice provide the Loyalty Review Board certain information developed by its investigations and determinations. That provision was saved, but the information was now to be provided directly to the head of each department or agency. ^{45/} The function so saved, as it appeared in Executive Order 9835, was:

"3. The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as

^{44/} March 21, 1947, also dealing with Government employee loyalty programs.

^{45/} §12, Executive Order 10450.

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

"a. The Loyalty Review Board shall disseminate such information to all departments and agencies." (Underscoring added.) 46/

Executive Order 11605 47/ amended Executive Order 10450, in part by authorizing the Subversive Activities Control Board, upon petition of the Attorney General, to hold hearings to determine whether any organization is totalitarian, fascist, communist, subversive, or seeks to overthrow the Government of the United States or any State by unlawful means.

This authority was revoked nearly three years later, 48/ but the Bureau says of the authority derived from Executive Order 11605:

"* * * By inference, the FBI, as investigative arm of the Attorney General, would develop evidence for hearings required [by the Subversive Activities Control Board]. Also, FBI, by inference, would develop evidence of membership in such organizations, which may be basis for denial of Government employment." 49/

The Bureau, then, takes the position that the Attorney General, under these Executive Orders, had the responsibility to provide information about groups and organizations to the departments and agencies, or to the Subversive Activities Control Board,

46/ §3, Part III, Executive Order 9835, March 21, 1947, as amended.

47/ 36 F.R. 12831, July 8, 1971.

48/ Executive Order 11785, June 6, 1974, 39 F.R. 20053.

49/ FBI Position Paper: Domestic Intelligence Division May 19, 1972, at 12.

information which he could obtain only as a result of FBI intelligence investigations.

Summary

We do not concur in the Bureau's interpretation of Mr. Hoover's August 1936 memoranda and the later Presidential Directives as providing or evidencing a Presidential delegation of authority to conduct intelligence investigations of subversive activities and subversion. The Bureau's commencement of intelligence activities in 1936, made at the request of the Secretary of State, did conform to the language contained in the Bureau's appropriation act. But we point out that the Secretary's request was apparently limited to investigation of Communist and Facist activities.

As to the authority now asserted to conduct domestic intelligence investigations based on 28 U.S.C. §533 and various Executive Orders, however, we cannot say that it does not exist. The problem with the Bureau's authority even under these delegations remains: it is not clearly spelled out, but must be distilled through an interpretive process that leaves it vulnerable to continuous questioning and debate.

We think, based on our review of FBI authority and responsibility for domestic intelligence investigations, that there is a clear need for legislation that provides such authority and delineates it in terms of objectives, scope, and functions encompassed.



Address Reply to the
Division Indicated
and Refer to Encls. and Number

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

1 0 FEB 1976

Mr. Victor L. Lowe
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

Enclosed are the comments of the Federal Bureau of Investigation and the Department's Committee on FBI Guidelines in response to your letter of January 20, 1976, which requested comments on the draft report entitled "FBI Domestic Intelligence Operations--Their Purpose and Scope: Issues that Need to be Resolved."

We appreciate the opportunity given us to comment on the draft report. Should you have any further questions, please feel free to contact me. In the future, any special arrangements for handling audit matters should be made through my office, since the Attorney General assigned the Assistant Attorney General for Administration the responsibility to represent the Department in its contacts with GAO relating to administration and management by 28 CFR 0.7(v).

Sincerely,

Glen E. Pommerening
Assistant Attorney General
for Administration

Enclosures - 2



OPTIONAL FORM NO. 10
 JULY 1973 EDITION
 GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : The Attorney General

DATE: February 5, 1976

FROM : *cmk* Director, FBI

SUBJECT: GENERAL ACCOUNTING OFFICE (GAO)
 REVIEW OF FBI DOMESTIC INTELLIGENCE OPERATIONS

Enclosed is the original of an LHM containing our comments on the proposed GAO report to the House Judiciary Committee entitled, "FBI's Domestic Intelligence Operations--Their Purpose and Scope: Issues That Need To Be Resolved."

By letter dated January 20, 1976, from Victor L. Lowe, Director of GAO's General Government Division, to the Attorney General, comments on GAO's proposed report by the Department and the FBI were requested by February 6th. It is our understanding the final GAO report is to be issued on or about February 24, 1976, in conjunction with scheduled testimony by the Comptroller General before the House Subcommittee on Civil Rights and Constitutional Rights. In compliance with agreed procedures, we have resolved most of the factual and technical inaccuracies in their report through informal discussions with GAO representatives.

In our enclosed memorandum, we have attempted to limit our comments to some of the broader, yet crucial, issues raised by GAO, with the purpose of providing the reader with a fuller understanding of some areas of our operations, and to express our own views and concerns.

We have avoided commenting on findings and recommendations dealing with suggested oversight and responsibilities of the Attorney General and the Department. Nor have we commented on the proposed guidelines since this is a subject of continuing dialogue between the Department and the FBI, and is properly a matter for discussion by your office.

Enclosure

- 1 - The Deputy Attorney General
 Attention: Michael E. Shaheen, Jr. (Enclosures - 2)
 Special Counsel for Intelligence Coordination



5010-108

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OFFICE OF THE DIRECTOR



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D. C. 20535

February 5, 1976

GAO DRAFT REPORT:
"FBI DOMESTIC INTELLIGENCE OPERATIONS--THEIR
PURPOSE AND SCOPE: ISSUES THAT NEED TO BE RESOLVED"

This memorandum is in response to a request for comments on the draft report entitled "FBI Domestic Intelligence Operations--Their Purpose and Scope: Issues That Need To Be Resolved."

We recognize that General Accounting Office (GAO) auditors were called upon to perform a unique and sensitive task during a most difficult period for the FBI and for all intelligence and law enforcement agencies. We commend them for their patience, their adherence to agreed procedures relating to the handling of sensitive, classified material, for their perseverance in striving to understand the procedures and operations of a law enforcement agency, and for their efforts at objectivity.

GAO concluded there is a need for legislation clearly defining FBI authority in this area. The thrust of our recent testimony before appropriate congressional committees has been directed toward this same goal. The need for clarifying legislation in this area is clearly recognized by all.

Nevertheless, we take issue with GAO's finding that the Bureau was not granted investigative authority based upon a Presidential delegation in 1936, or by means of subsequent Presidential Directives. We believe a careful analysis of all pertinent documentary evidence bearing on the question of limitations on the 1936 delegation would convincingly reveal that the authority was granted the FBI at the instruction of the President and that this authority extended to subversive activities in general.

We do agree, however, that the important question now is not what Presidents, Attorneys General, and legislators considered legal authority for some forty years of investigative activity, but what new course will be plotted for the future through comprehensive and, hopefully, more carefully drawn legislation.



**GAO Draft Report: "FBI Domestic Intelligence Operations--
Their Purpose and Scope: Issues That Need To Be Resolved"**

Implicit in GAO's findings is the conclusion that domestic intelligence investigations should only be directed towards protecting those governmental interests which relate to the anticipation of imminent violent action. Upon this unstated conclusion, GAO evidently bases its recommendation that the scope of FBI domestic intelligence operations be reduced so that only those groups which are engaged in or are likely to engage in force or violence could properly be investigated as part of domestic intelligence operations.

The domestic intelligence investigative program which has been conducted by the FBI since World War II has been intended to anticipate threats to national security posed by organizations whose activities are directed towards the overthrow of the Government even though their objective is not necessarily expressed, or likely to be expressed, in imminent violent action. The doctrines and objectives of Marxist-Leninist revolutionary organizations and similar groups have provided a basis for the conduct of intelligence investigations concerning them predicated upon a reasonable belief that government has a legitimate interest in collecting information to assess the extent to which such organizations may contribute to future crises which affect its ability to function. To obtain information of this character, the FBI has conducted inquiries concerning continuing organizational activities which may or may not involve violence but which do involve the potential violation of Federal statutes relating to national security such as overthrow of the Government, civil rights and rioting.

We believe that the issue whether domestic intelligence investigations should be confined to anticipating violence, which GAO has resolved in its report without analysis, is one which is deserving of specific and detailed consideration by the Congress and the Attorney General. Limiting domestic intelligence investigations to preventing force and violence could restrict the gathering of intelligence information useful for anticipating threats to national security of a more subtle nature. This is the case because, in our view, such a limitation would protect from governmental inquiry those plotting to undermine our institutions during their preliminary stages of organization and preparation and thus inhibit the development of an intelligence collage upon which to base meaningful analyses and predictions as to future threats to the stability of our society.

**GAO Draft Report: "FBI Domestic Intelligence Operations--
Their Purpose and Scope: Issues That Need To Be Resolved"**

In discussing the initiation and continuation of FBI domestic intelligence investigations, GAO states that "in practice, investigations of individuals occur because of their association with a group the FBI has characterized as 'subversive' or 'extremist.'" GAO goes on to conclude that the FBI should concentrate on violence-prone groups. The report does not specifically address the need to investigate individuals unaffiliated with groups. How then to deal with the individual, unaffiliated extremist or subversive, anarchist or potential terrorist? Must we await the commission of some irrational, illegal act? Some of the more infamous acts of recent violence have been perpetrated by people such as Lee Harvey Oswald, Sirhan Sirhan, Arthur Bremer, James Earl Ray, Mark Essex, and others, not known to have espoused the cause of any organized subversive or extremist group.

We also feel it is incumbent on any intelligence agency to resolve allegations of subversive activity or extremism made against individuals. GAO implies that, where the FBI is unable to establish any association with an extremist or subversive organization in a leadership or membership capacity, our investigations are, therefore, unsuccessful. On the contrary, where an allegation is made and we establish no affiliation or potential dangerousness, we accomplished a positive result not a negative one. For example, if we can inform a local police department that an allegation made by one of its sources against a citizen has no apparent basis in fact, we feel we have contributed something of value.

In commenting upon the concept of preliminary inquiries as contrasted with full investigations, GAO concluded that the FBI's policy of conducting preliminary inquiries is sound, but that in practice the field offices have not adequately distinguished between the two, and have not adhered to the 90-day time limitation or to restrictions on sources in conducting the preliminaries.

In an effort to insure closer FBI Headquarters supervision of the preliminary inquiry process, a change in the FBI policy was implemented on December 15, 1975. This change was a recognition of the findings of the

**GAO Draft Report: "FBI Domestic Intelligence Operations--
Their Purpose and Scope: Issues That Need To Be Resolved"**

GAO audit as set forth in its interim report issued in September, 1975, and also a result of similar deficiencies noted by the FBI Inspection Division during the course of its annual inspections of FBI offices during the Calendar Years 1974 and 1975.

Under the revised policy, field offices must now advise FBI Headquarters of the initiation of any preliminary inquiry in the subversive or extremist field pertaining to both organizations and individuals and the scope of the contacts is specifically delineated. These preliminary inquiries are to be limited to contacts with established sources and informants, a check of office indices and files, and a review of public source information. This should insure adequate Headquarters control over the duration and scope of preliminary inquiries.

In discussing the results of the FBI's domestic intelligence investigations, GAO lists certain statistics based on its 1974 case sampling and projections from this sampling, and concludes that the operations do not appear to have produced tangible results. GAO does add, however, "who is to say that the FBI's continuous coverage of such groups and their key leaders has not prevented them to date from achieving their ultimate subversive or extremist goals."

GAO's statistical projections do show that, of 17,528 individual cases investigated by ten FBI field offices during 1974, 2.7 percent or 476 cases resulted in the FBI obtaining advance knowledge of planned activities.

Based on its actual sampling of 797 cases of individual investigations, GAO cited on pages 230 and 231 instances where the FBI learned of an alleged conspiracy to blow up a bridge in a large metropolitan area; an alleged plan to bomb a Selective Service office; two instances of planned attacks on police and a planned police ambush, among others. Each of these instances cited are examples where human lives may have been saved. How does one place a value on this type of information? Percentages do not appear to be an adequate measurement.

GAO note: Pages 230 and 231 correspond to pages 141 and 142 of this report.

**GAO Draft Report: "FBI Domestic Intelligence Operations--
Their Purpose and Scope: Issues That Need To Be Resolved"**

Furthermore, GAO in its analysis of 101 organizational-type cases found advance knowledge of planned activities in each case varying from one to about 50 instances.

We submit that most advance information is the result of informant coverage in organizations whose members advocate specific acts of violence. Since practically all of this information would be set forth in organizational case files, the high sampling of individual cases does not place this matter in proper perspective.

With respect to GAO's findings concerning the analysis and evaluation of information derived from domestic intelligence investigations, it should be noted the FBI has not been assigned the responsibility for analysis of the results of domestic intelligence investigations. The FBI has furnished investigative results to the Attorney General for his use in discharging his delegated responsibilities, including those under Executive Order 10450, and, in certain instances, to other components of the Department, such as the Analysis and Evaluation Unit, to permit assessments of situations involving civil disturbances and potential riots.

One of the most significant statements in the GAO draft report is the following:

"The problem, of course, is that no one can say with assurance what might happen were the scope of the FBI's domestic intelligence operations changed...."

It further states:

"We believe the nation should be willing to accept a certain amount of risk inherent in any decision to reduce the scope of domestic intelligence operations to better assure that the FBI directs its investigative effort toward those groups and individuals who truly warrant it."

**GAO Draft Report: "FBI Domestic Intelligence Operations--
Their Purpose and Scope: Issues That Need To Be Resolved"**

The FBI has no vested interest in the status quo. We have a continuing process of evaluation and redirection of effort. In his recent January 26th testimony before the Senate's Government Operations Committee, Director Kelley pointed to a substantial reduction in FBI domestic intelligence investigations since mid-1973. He described this as "solid evidence of our responsiveness" to altered domestic conditions.

But should the restrictions on the FBI be enacted in statutory form? We believe there is a continuing need for intelligence collection with responsible oversight but with sufficient flexibility to do a job adequate to respond to changing conditions and needs. To preserve this flexibility, we believe that any statute should clearly set forth our responsibility in this area but provide that the administration of our investigative effort should be placed in the hands of the FBI Director and the Attorney General.

What does the future hold for American society? Here is what a cross section of contemporary spokesmen have to say:

In commenting on the riots and violence of the late sixties and early seventies, Harvard sociologist James Q. Wilson, goes on to say that no one is competent to make any confident predictions on the future prospects for violence in America. "What can be said is that long-term prosperity is no guarantee against political violence of some form. Prosperity cannot by itself eliminate the ideological sources of violence and indeed may weaken the institutional constraints on it so that the effects of the activities of even a few persons with violent intentions may be amplified by an increasingly larger multiplier and thus influence the action of even larger numbers of persons." In short, Wilson adds that forms of direct collective action may become more rather than less common. How many will be violent, no one can say, but it is not unreasonable to assume that there will be some--either because they seek violence or because they feel frustrated or provoked--who will take matters into their own hands.

GAO Draft Report: "FBI Domestic Intelligence Operations--
Their Purpose and Scope: Issues That Need To Be Resolved"

The February 2, 1976, issue of "U. S. News and World Report" contained the following entry of interest:

"Fear of Nuclear terrorism is growing among officials. One expert in domestic intelligence predicts that 'a terrorist group will set off a nuclear weapon somewhere in the world during the next five years.'

"There is increasing worry that the next target to be chosen for terrorist attack could be the vulnerable offshore oil and gas-production platforms that are a major energy source...."

In an interview with Mr. Roy Wilkins, Executive Director of the National Association For the Advancement of Colored People, in the same February 2, 1976, issue of "U. S. News and World Report," Mr. Wilkins warns that the racial/social climate in the U. S. is worsening, and expresses his concern that we are on our way to a racial showdown in this country. He indicates that young blacks coming into power have no patience with the things their parents endured.

He goes on to state there will not be a shooting war, but there might be a riot here and there, not like we had in the summers of 1967-68, but perhaps a return of the confrontations that marked the 1980's. Despite some progress, Wilkins believes that we are still drifting toward two societies in this country.

The January 29, 1976, issue of the "New York Times" quotes remarks made in Dallas, Texas, the preceding day, by William M. Kunstler, Attorney, who is Chief Counsel for several members of the Symbionese Liberation Army. In commenting on the assassinations of John and Robert Kennedy, Mr. Kunstler said he was not "entirely upset" by their

**GAO Draft Report: "FBI Domestic Intelligence Operations--
Their Purpose and Scope: Issues That Need To Be Resolved"**

assassinations: "Although I couldn't pull the trigger myself, I don't disagree with murder sometimes, especially political assassinations which have been a part of political life since the beginning of recorded history."

The FBI does not choose the role of Cassandra for itself, but undue restrictive curtailment of domestic intelligence efforts should be carefully weighed as they may have serious future consequences.

OPTIONAL FORM NO. 10
 JULY 1973 EDITION
 GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Michael E. Shaheen, Jr.
 Special Counsel for Intelligence
 Coordination

DATE: January 29, 1976

FROM : Mary C. Lawton, Office of Legal Counsel
 and the Committee on FBI Guidelines

SUBJECT: GAO Draft Report: "FBI Domestic Intelligence Operations -- Their
 Purpose and Scope: Issues That Need To Be Resolved"

Inasmuch as other divisions of the Department of Justice are responding to the substantive provisions in this draft report, the Committee on FBI Guidelines has limited its comments primarily to Chapter 11 (pages 239 - 261) which pertain to proposed FBI Guidelines. The committee has just completed another revision in the Domestic Security Guidelines (a copy of which is attached). We suggest that this draft be forwarded to the General Accounting Office along with departmental comments. For your convenience the committee recommends comments along the following lines:

"The department's committee on FBI Guidelines had already confronted several of the issues raised in the report of the General Accounting Office, and made changes similar to those recommended. The standards for opening preliminary and full investigations have been clarified. In previous drafts the standard was divided between paragraphs I B and II [I], but the standards are now set out only in the latter sections. Standards used in the proposed guidelines have been substantially defined in existing case law (see Terry v. Ohio). In addition, a list of detailed factors to be considered in initiating domestic security investigations has been added (see guidelines II [I])."

"As the draft GAO report observes any meaningful guidelines will place a substantial responsibility upon the Attorney General and the Deputy Attorney General to insure that effective implementation goes forward. Oversight of FBI domestic security investigations will be time consuming and require difficult judgments. Careful consideration is already underway within the Department of Justice for implementing departmental oversight for the guidelines."

GAO note: Pages 239 to 261 correspond to pages 148 to 165 of this report.



5010-108

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

"The draft GAO report also notes that ^{the} period of retention for investigative information obtained during domestic security investigations has not as yet been determined. As the note in the guidelines indicates (See paragraph V C(1)) this determination must relate to the department's FBI Guidelines as a whole, and has been deferred accordingly."

DOMESTIC SECURITY INVESTIGATIONSI. BASES OF INVESTIGATION

- A. Domestic security investigations shall be limited to the activities of individuals and groups not directed by, subsidized by or otherwise undertaken in active collaboration with a foreign power or foreign political organization.
- B. Domestic security investigations are conducted, when authorized under Section II(C) or II(I), to ascertain information on the activities of individuals, or individuals acting in concert, which involves or will involve the use of force or violence and the violation of federal law, for the purpose of:
- (1) overthrowing the government of the United States or the government of a State;
 - (2) interfering, in the United States, with the activities of a foreign government or its authorized representatives;
 - (3) impairing for the purpose of influencing U.S. government policies or decisions:
 - (a) the functioning of the government of the United States;
 - (b) the functioning of the government of a State; or
 - (c) interstate commerce.
 - (4) depriving persons of their civil rights under the Constitution, laws, or treaties of the United States; or
 - (5) engaging in domestic violence or rioting when such violence or rioting is likely to require the use of federal militia or other armed forces.
- C. Domestic security investigations may also be authorized by the Attorney General, when there is a clear and immediate threat of domestic violence or rioting which is likely to result in a request by the governor or legislature of a state under 10 U.S.C. 331 for the use of federal militia or other federal armed forces as a counter-measure. Investigations may be authorized for

DRAFT

a period of 30 days under this paragraph but may be renewed in writing by the Attorney General for subsequent periods of 30 days. Investigations under this paragraph may be instituted for the limited purpose of ascertaining information upon which a decision whether to use federal forces may be made and information necessary to implement an order calling for the use of federal troops. Techniques available in a full investigation, authorized as otherwise required under these guidelines, may be used in investigating under this paragraph.

II. INITIATION AND SCOPE OF INVESTIGATIONS

- A. Domestic security investigations are conducted at two levels--preliminary investigations and full investigations--differing in scope and in investigative techniques which may be used.
- B. All preliminary and full investigations undertaken through these guidelines shall be designed and conducted so as not to limit the full exercise of rights protected by the Constitution and laws of the United States.

Preliminary Investigations

- C. Preliminary investigations may be undertaken on the basis of allegations or other information that an individual, or individuals acting in concert, may be engaged in activities described in paragraph IB. These investigations shall be confined to determining if there is a factual basis for a full investigation.
- D. Information gathered by the FBI during preliminary investigations shall be pertinent to verifying or refuting the allegations or information concerning activities described in paragraph IB.
- E. FBI field offices may, on their own initiative, undertake preliminary investigations limited to inquiries of:
 - (1) FBI indices and files;
 - (2) public records and other public sources of information;
 - (3) federal, state, and local records; and
 - (4) existing informants and sources of information.

DRAFT

- F. Physical surveillance or interviews of persons other than those mentioned in paragraph E above may be used in preliminary investigations, subject to the limitations set forth below, only when use of the investigative techniques authorized in paragraph E is inadequate to meet the objectives of preliminary investigation.
- (1) field agents may undertake physical surveillance and interviews, for the limited purpose of identifying the subject of the investigation;
 - (2) no other surveillance or interviews may be undertaken except upon the express written authorization of the Special Agent in Charge or FBI Headquarters;
 - (3) written authorizations for surveillance and interviews shall be reported, as provided in VA(1) of these guidelines, and shall include a statement setting forth the circumstances justifying such investigative steps.
- G. Techniques such as recruitment or placement of informants in groups, "mail covers," or electronic surveillance, may not be used as part of a preliminary investigation.
- H. All preliminary investigations shall be closed within 90 days of the date upon which it was initiated. However, FBI headquarters may authorize in writing one 90-day extension of a preliminary investigation when facts or information obtained in the original period justify such an extension. The authorization shall include a statement of the circumstances justifying the extension.

Full Investigation

- I. Full investigations must be authorized by FBI headquarters. They may only be authorized on the basis of specific and articulable facts giving reason to believe that an individual, or individuals acting in concert, are or may be engaged in activities which involve or will involve the use of force or violence and the violation of federal law for one or more of the purposes enumerated in IB(1)-IB(5). In addition the following factors must be considered in determining whether a full investigation should be undertaken:
- (1) the magnitude of the threatened harm;
 - (2) the likelihood it will occur;

DRAFT

- (3) the immediacy of the threat; and
- (4) the danger to privacy and free expression posed by a full investigation.

Surveillance Techniques

J. Whenever use of the following techniques for surveillance is permitted by these guidelines, they shall be implemented as limited herein:

- (1) use of informants to gather information, when approved by FBI headquarters, and subject to review at ninety (90) day intervals; provided,
 - (a) when persons have been arrested or charged with a crime, and criminal proceedings are still pending, informants shall not be used to gather information concerning that crime from the person(s) charged; and
 - (b) informants shall not be used to obtain privileged information; and where such information is obtained by an informant on his own initiative no record or use shall be made of the information.
- (2) "Mail covers," pursuant to postal regulations, when approved by the Attorney General or his designee, initially or upon request for extension; and
- (3) electronic surveillance in accordance with the requirement of Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

Provided that whenever it becomes known that person(s) under surveillance are engaged in privileged conversation (e.g., with their attorney) interception equipment shall be immediately shut off and the Justice Department advised as soon as practicable. Where such a conversation is recorded it shall not be transcribed, and a Department attorney shall determine if such conversation is privileged.

DRAFT

NOTE: These techniques have been the subject of strong concern. The committee is not yet satisfied that all sensitive areas have been covered (e.g., inquiries made under "pretext;" "trash covers," photographic or other surveillance techniques.)

III. TERMINATING INVESTIGATIONS

- A. Preliminary and full investigations may be terminated at any time by the Attorney General, his designee, or FBI headquarters.
- B. At such time as it appears that the standard for a full investigation under II(I) can no longer be satisfied and all logical leads have been exhausted or are not likely to be productive, the Attorney General, his designee, or FBI headquarters shall terminate the full investigation.
- C. The Department of Justice shall review the results of full domestic intelligence investigations at least annually, and determine if continued investigation is warranted. Full investigations shall not continue beyond one year without the written approval of the Department.

IV. PREVENTIVE ACTION

- A. Upon authorization of the Attorney General, the FBI may undertake non-violent emergency measures to obstruct or prevent the use of force or violence in violation of federal law only when there is probable cause to believe:
 - (1) that an individual, or individuals acting in concert, is preparing to use force or violence for purposes described in paragraph IB or IC; and
 - (2) such force and violence poses a real and immediate threat to life, or to property the impairment of which would interfere substantially with the essential functioning of government as described in paragraph IB or IC.

And such non-violent, emergency measures are necessary to minimize the danger to life and property.

- B. In the course of domestic security investigations preventive action by the FBI may include objectives such as:

DRAFT

- (1) disrupting plans for using force or violence; or
 - (2) preventing access to, or rendering inoperative weapons, explosives, or other instrumentalities of planned violence.
- C. Preventive actions shall not include:
- (1) committing or instigating criminal acts;
 - (2) disseminating information for the purpose of holding an individual or group up to scorn, ridicule, or disgrace;
 - (3) disseminating information anonymously or under a false identity;
 - (4) inciting violence.
- D. Preventive action by the FBI, short of prosecution, to obstruct the use of force or violence shall:
- (1) be undertaken only with the express written approval of the Attorney General, based upon a written request describing the force or violence to be prevented, the preventive action to be undertaken (which shall be the minimum necessary to obstruct the force and violence), and the justification for the preventive action; provided that, in circumstances of immediate danger, preventive action may be taken by the FBI upon the oral approval of the Attorney General or his designee for a period of 24 hours, within which period written justification must be submitted to the Attorney General, and provided further that the preventive action shall be discontinued immediately upon declination by the Attorney General, or discontinued after 24 hours if written authorization is not obtained.
 - (2) not be authorized for any period longer than is necessary to achieve the objective of the authorization, nor in any case longer than thirty days. Extensions of an authorization may be granted by the Attorney General for an additional thirty (30) days, when he deems it necessary to achieve the purposes for which the original authorization was granted.

DRAFT

- (3) be designed and conducted so as not to limit the full exercise of rights protected by the Constitution and laws of the United States.

V. REPORTING, DISSEMINATION, AND RETENTION

A. Reporting

- (1) Preliminary investigations which involve a 90-day extension under IIF, or interviews or surveillance under IIF(2), shall be reported periodically to the Department of Justice. Reports of preliminary investigations shall include the identity of the subject of the investigation, the identity of the person interviewed or the person or place surveilled, and shall indicate which preliminary investigations involved a 90-day extension. FBI headquarters shall maintain, and provide to the Department of Justice upon request, statistics on the number of preliminary investigations instituted by each field office, the number of preliminary investigations which involved interviews or surveillance under IIF(2), the number of preliminary investigations that involved 90-day extensions under IIF, and the number of preliminary investigations that resulted in the opening of a full investigation.
- (2) upon opening a full domestic security investigation the FBI shall, within one (1) week, advise the Attorney General or his designee thereof, setting forth the basis for undertaking the investigation.
- (3) the FBI shall report the results of full domestic security investigations to the Department of Justice not later than ninety (90) days after the initiation thereof, and at the end of each year the investigation continues.
- (4) where the identity of the source of information is not disclosed in a domestic security report, an assessment of the reliability of the source shall be provided.
- (5) the FBI shall promptly notify the Attorney General when preventive action is undertaken, and shall report the results thereof within thirty (30) days of initiation, or earlier as required by the Attorney General.

DRAFT

- (6) the Attorney General shall report to Congress, at least annually, on the use of preventive action by the FBI.

B. Dissemination

(1) Other Federal Authorities

The FBI may disseminate facts or information relevant to activities described in paragraph IB to federal authorities when such information:

- (a) falls within their investigative jurisdiction;
 - (b) may assist in preventing the use of force or violence; or
 - (c) may be required by statute, interagency agreement approved by the Attorney General, or Presidential directive. All such agreements and directives shall be published in the Federal Register.
- (2) when information relating to matters not covered by paragraph IB is obtained during a domestic security investigation, the FBI shall promptly refer the information to the appropriate federal authorities if it is within their civil or criminal jurisdiction.

(3) State and local authorities

The FBI may disseminate facts or information relative to activities described in paragraph IB to state and local law enforcement authorities when such information:

- (a) falls within their investigative jurisdiction;
- (b) may assist in preventing the use of force or violence; or
- (c) may protect the integrity of a law enforcement agency.

DRAFT

- (4) when information relating to serious crimes not covered by paragraph IB or IC is obtained during a domestic security investigation, the FBI shall promptly refer the information to the appropriate lawful authorities if it is within the jurisdiction of state and local agencies.
- (5) nothing in these guidelines shall limit the authority of the FBI to inform any individual(s) whose safety or property is directly threatened by planned force or violence, so that they may take appropriate protective safeguards.
- (6) the FBI shall maintain records, as required by law, of all disseminations made outside the Department of Justice, of information obtained during domestic security investigations.

C. Retention

- (1) the FBI shall, in accordance with a Records Retention Plan approved by the National Archives and Records Service, within _____ years after closing domestic service investigations, destroy all information obtained during the investigation, as well as all index references thereto, or transfer all information and index references to the National Archives and Records Service.

NOTE: We are not yet certain whether empirical data exists to help define a period of retention for information gathered in preliminary or full investigations. Whatever period is determined should take into account the retention period for other categories of information (e.g., general criminal, organized crime, and background checks); since we have not yet considered these areas we cannot fix a period for retention at this time.

NOTE: It may also be possible to establish a sealing procedure to preserve investigative records for an interim period prior to destruction. After being sealed, access would be permitted only under controlled conditions.

DRAFT

- (2) information relating to activities not covered by paragraph IB or IC, obtained during domestic security investigations, which may be maintained by the FBI under other parts of these guidelines, shall be retained in accordance with such other provisions.
- (3) the provisions of paragraphs one (1), and two (2) above apply to all domestic security investigations completed after the promulgation of these guidelines, and apply to investigations completed prior to promulgation of these guidelines when use of these files serves to identify them as subject to destruction or transfer to the National Archives and Records Service.
- (4) when an individual's request pursuant to law for access to FBI records identifies the records as being subject to destruction or transfer under paragraph one (1), the individual shall be furnished all information to which he is entitled prior to destruction or transfer.

DRAFT

PRINCIPAL JUSTICE DEPARTMENT AND FBI OFFICIALS RESPONSIBLE
FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS
REPORT DURING THE LAST 15 YEARS

DEPARTMENT OF JUSTICE

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
ATTORNEY GENERAL OF THE UNITED STATES:		
Edward H. Levi	Feb. 1975	Present
William B. Saxbe	Jan. 1974	Feb. 1975
Robert H. Bork, Jr. (acting)	Oct. 1973	Jan. 1974
Elliot L. Richardson	May 1973	Oct. 1973
Richard G. Kleindienst	June 1972	May 1973
Richard G. Kleindienst (acting)	Mar. 1972	June 1972
John N. Mitchell	Jan. 1969	Mar. 1972
Ramsey Clark	Mar. 1967	Jan. 1969
Ramsey Clark (acting)	Oct. 1966	Mar. 1967
Nicholas deB. Katzenbach	Feb. 1965	Oct. 1966
Nicholas deB. Katzenbach (acting)	Sept. 1964	Feb. 1965
Robert F. Kennedy	Jan. 1961	Sept. 1964

FEDERAL BUREAU OF INVESTIGATION

DIRECTOR:		
Clarence M. Kelley	July 1973	Present
William D. Ruckelshaus (acting)	Apr. 1973	July 1973
L. Patrick Gray, III (acting)	May 1972	Apr. 1973
J. Edgar Hoover	May 1924	May 1972

ASSISTANT DIRECTOR, INTELLIGENCE DIVISION:

W. Raymond Wannall (note a)	Dec. 1973	Present
Edward S. Miller (note a)	Nov. 1971	Oct. 1973
Charles D. Brennan	Aug. 1970	Sept. 1971
William C. Sullivan	June 1961	Aug. 1970

a/No individual designated Assistant Director, Intelligence Division, during periods Oct. to Dec. 1973 and Sept. to Nov. 1971.

END