

# How the FBI Spied on the High Court

*Thirty Years of Snooping and Over 2,000 Pages of Private Files on the Justices*

2/2/84

By Alexander Charns

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What answers we have come largely from government records released through FOI actions in recent years to me and a handful of historians and reporters. As a law student in 1982, I became interested in David Garrow's research about FBI surveillance of Dr. Martin Luther King Jr. and decided to investigate whether the bureau had kept track of two other presumed Hoover enemies—Warren and Douglas. My FOI request produced hundreds of documents about them, but when I asked for the FBI file on the Supreme Court itself in 1984, I was told none existed. I later learned that FBI personnel had in fact located such documents in 1984; in the winter of 1988, I filed suit and in July 1988 the FBI released them to me. All told, I have received some 20,000 pages of records about the Supreme Court and the federal judiciary in response to six years of FOI requests and two FOI lawsuits.

**B**ut as disturbing as their disclosures are, they do not explain the who-what-when-where-why of the still-secret wiretaps, and the Justice Department and the FBI decline to elaborate. Some electronic surveillance records concerning Warren, Douglas, Fortas, Murphy, Jackson, Harlan and Burton, they say, "must be kept secret in the interest of national defense or foreign policy." In other instances, the government asserts. Jackson, Murphy, Harlan, Fortas and Burton were merely mentioned by others during conversations of wiretap targets, but it refuses to say why these mentions were kept on file or whether they concerned official court business. Two con-

versations in which Potter Stewart was a party were wiretapped, but the government contends that their release would violate the privacy of the target even if the target's name were deleted. My effort to get the transcripts and additional records is continuing in court. In the meantime I can report only what I have learned so far.

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According to Athan Theoharis, professor of history at Marquette University and co-author with John Cox of "The Boss: J. Edgar Hoover and the Great American Inquisition," the Truman White House perceived Corcoran to be so powerful that he was said to be acting as *de facto* attorney general. The true head of the Justice Department, Attorney General Tom Clark, did not authorize the taps until five months after they were installed by the FBI and after Clark's own conversations with Corcoran had been recorded. Truman told Clark the taps were needed to ensure that Corcoran was not breaking the law or interfering with "the proper administration of government." Theoharis told me he believes that the White House was simply gathering political intelligence.

If so, it was a wish fulfilled. Among the luminaries picked up in the 1946 taps were Sens. Robert La Follette and Claude Pepper, Speaker Sam Rayburn, former New York mayor Fiorello La Guardia and Washington attorneys David Bazelon, Joseph Rauh Jr. and Paul Porter.

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While visiting on the West Coast in 1973, Douglas temporarily reinstated a lower-court ruling that the bombing in Cambodia was unconstitutional and dictated his ruling to employees at the Supreme Court from a pay phone. Douglas believed that his dictation was overheard, possibly by an FBI agent posing as a telephone operator, and hired former justice Fortas to investigate. The FBI assured Fortas that the pay phone had not been tapped and that the long-dis-

tance operator who handled the call worked for the phone company. It did not check phones at the Supreme Court building.

Four of Hoover's nominal bosses in the 1950s, '60s and '70s denied knowledge of any such bugging, and it may never have happened. Former attorneys general William Rogers (1957-1961), Nicholas Katzenbach (1965-66), Ramsey Clark (1967-69) and Richard Kleindienst (1972-73) told me they neither authorized nor were told of any electronic surveillances of the justices. Clark, whose father as Truman's attorney general finally authorized the tap on Corcoran, speculated that the surveillances might have been directed at foreign embassies. Katzenbach said flatly that the FBI had no business taking notes about conversations involving Supreme Court justices.

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Aside from the justices' overheard words, the FBI had other sources of information about the court. According to FBI records, the clerk of court, its marshal and its police chief served as FBI sources of information during the Julius and Ethel Rosenberg atomic espionage case pending before the court in 1953. Police Capt. Philip H. Crook was described as having "furnished immediately all information heard by his men stationed throughout the Supreme Court building. He kept Special Agents advised of the arrival and departure of persons having important roles in this case." A few days after the execution of the Rosenbergs, an FBI

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Under Hoover, agents also assisted vacationing justices, made hotel reservations, offered chauffeur services, served as a private-detective agency, took family pictures, arranged special FBI tours and provided other perks to select justices and their families. In 1958, when Justice Burton returned from a European vacation, an FBI driver was made available. During the drive, Burton talked in very general terms about the pending Little Rock desegregation case. The agent reported this discussion to his superiors.

More recently—in 1985—a memo described FBI assistance in expediting delivery of Oriental rugs that Chief Justice Burger ordered from London for use at the court.

**T**he story of the courts and the FBI isn't over. My original lawsuit is still pending in U.S. District Court in Greensboro, N.C., and seeks all other FBI records about the Supreme Court as a body and the wiretap records of the two conversation to which Potter Stewart was a party. I filed a second lawsuit this year asking for, among other things, any electronic surveillance records about 34 former justices and a 5,600-page subject file called "Federal Judges" that extends from the 1930s to the present day.

*Research for this article was supported by the Durham Institute for Southern Studies, the J. Roderick MacArthur Foundation, The Fund for Investigative Journalism and the Dick Goldensohn Fund. Assistance was also provided by attorney Paul M. Green. Some of this material originally appeared in the Durham Morning Herald.*

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