

EXCERPTS FROM SENATE

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INTRODUCTION AND SUMMARY

APRIL 29, 1976

INTELLIGENCE

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REPORT

The constitutional system of checks and balances has not adequately controlled intelligence activities. Until recently the executive branch has neither delineated the scope of permissible activities nor established procedures for supervising intelligence agencies. Congress has failed to exercise sufficient oversight, seldom questioning the use to which its appropriations were being put. Most domestic intelligence issues have not reached the courts, and in those cases when they have reached the courts, the judiciary has been reluctant to grapple with them.

Each of these points is briefly illustrated below.

1. The Number of People Affected by Domestic Intelligence Activity

United States intelligence agencies have investigated a vast number of American citizens and domestic organizations. F.B.I. headquarters alone has developed over 500,000 domestic intelligence files, and these have been augmented by additional files at F.B.I. field offices. The F.B.I. opened 65,000 of these domestic intelligence files in 1972 alone. In fact, substantially more individuals and groups are subject to intelligence scrutiny than the number of files would appear to indicate since, typically, each domestic intelligence file contains information on more than one individual or group, and this information is readily retrievable through the F.B.I.'s General Name Index.

The number of Americans and domestic groups caught in the domestic intelligence net is further illustrated by the following statistics:

Nearly a quarter of a million first class letters were opened and photographed in the United States by the C.I.A. between 1953-1973, producing a C.I.A. computerized index of nearly one and one-half million names.

At least 300,000 individuals were indexed in a C.I.A. computer system and separate files were created on approximately 7,200 Americans and over 100 domestic groups during the course of C.I.A.'s Operation CHAOS (1967-1973).

Millions of private telegrams sent from, to or through the United States were obtained by the National Security Agency from 1947 to 1975 under a secret arrangement with three United

States telegraph companies.

An estimated 100,000 Americans were the subjects of United States Army intelligence files created between the mid-1960's and 1971.

Intelligence files on more than 11,000 individuals and groups were created by the Internal Revenue Service between 1969 and 1973 and tax investigations were started on the basis of political rather than tax criteria.

At least 26,000 individuals were at one point catalogued on an F.B.I. list of persons to be rounded up in the event of a "national emergency."

2. Too Much Information Is Collected for Too Long

Intelligence agencies have collected vast amounts of information about the intimate details of citizens' lives and about their participation in legal and peaceful political activities. The targets of intelligence activity have included political adherents of the right and the left, ranging from activist to casual supporters. Investigations have been directed against proponents of racial causes and women's rights, outspoken apostles of nonviolence and racial harmony; establishment politicians; religious groups, and advocates of new life styles. The widespread targeting of citizens and domestic groups and the excessive scope of the collection of information is illustrated by the following examples:

(a) The women's liberation movement was infiltrated by informants who collected material about the movement's policies, leaders and individual members. One report included the name of every woman who attended meetings, and another stated that each woman at a meeting had described "how she felt oppressed, sexually or otherwise." Another report concluded that the movement's purpose was to "free women from the humdrum existence of being only a wife and mother," but still recommended that the intelligence investigation should be continued.

(b) A prominent civil rights leader and adviser to Dr. Martin Luther King Jr. was investigated on the suspicion that he might be a Communist "sympathizer." The F.B.I. field office concluded he was not. Bureau headquarters directed that the investigation continue using a theory of "guilty until proven innocent":

"The bureau does not agree with the expressed belief of the field office that _____ is not sympathetic to the party cause. While there may not be any evidence that _____ is a Communist, neither is there any substantial evidence that _____ is anti-Communist."

(c) F.B.I. sources reported on the formation of the Conservative American Christian Action Council in 1971. In the 1950's, the bureau collected information about the John Birch Society and passed it to the White House because of the society's "scurrilous attack" on President Eisenhower and other high Government officials.

(d) Some investigations of the lawful activities of peaceful groups have continued for decades. For example, the N.A.A.C.P. was investigated to determine whether it "had connections with" the Communist Party. The investigation lasted for over 25 years, although nothing was found to rebut a report during the first year of the investigation that the N.A.A.C.P. had a "strong tendency" to "steer clear of Communist activities." Similarly, the F.B.I. has admitted that the Socialist Workers Party has committed no criminal acts. Yet the bureau has investigated the Socialist Workers Party for more than three decades on the basis of its revolutionary rhetoric—which the F.B.I. concedes falls short of incitement to violence—and its claimed international links. The bureau is currently using its informants to collect information about S.W.P. members' political views, including those on "U.S. involvement in Angola," "food prices," "racial matters," the "Vietnam War" and about any of their efforts to

support non-S.W.P. candidates for political office.

(e) National political leaders fell within the broad reach of intelligence investigations. For example, Army Intelligence maintained files on Senator Adlai Stevenson and Congressman Abner Mikva because of their participation in peaceful political meetings under surveillance by Army agents. A letter to Richard Nixon, while he was a candidate for President in 1968, was intercepted under C.I.A.'s mail opening program. In the 1960's President Johnson asked the F.B.I. to compare various senators' statements on Vietnam with the Communist Party line and to conduct name checks on leading antiwar senators.

(f) As part of their effort to collect information which "related even remotely" to people or groups "active" in communities which had "the potential" for civil disorder, Army intelligence agencies took such steps as: sending agents to a Halloween party for elementary school children in Washington, D.C., because they suspected a local "dissident" might be present; monitoring protests of welfare mothers' organizations in Milwaukee; infiltrating a coalition of church youth groups in Colorado, and sending agents to a priests' conference in Washington, D.C., held to discuss birth control measures.

(g) In the late 1960's and early 1970's, student groups were subjected to intense scrutiny. In 1970 the F.B.I. ordered investigations of every member of the Students for a Democratic Society and of "every black student union and similar group regardless of their past or present involvement in disorders." Files were opened on thousands of young men and women so that, as the former head of F.B.I. intelligence explained, the information could be used if they ever applied for a Government job.

In the 1960's bureau agents were instructed to increase their efforts to discredit "New Left" student demonstrators by tactics including publishing photographs ("naturally the most obnoxious picture should be used"), using "misinformation" to falsely notify members events had been canceled, and writing "tell-tale" letters to students' parents.

(h) The F.B.I. Intelligence Division commonly investigated any indication that "subversive" groups already under investigation were seeking to influence or control other groups. One example of the extreme breadth of this "infiltration" theory was an F.B.I. instruction in the mid-1960's to all field offices to investigate every "free university" because some of them had come under "subversive influence."

(i) Each administration from Franklin D. Roosevelt's to Richard Nixon's permitted and sometimes encouraged Government agencies to handle essentially political intelligence. For example:

¶President Roosevelt asked the F.B.I. to put in its files the names of citizens sending telegrams to the White House

opposing his "national defense" policy and supporting Col. Charles Lindbergh.

¶President Truman received inside information on a former Roosevelt aide's efforts to influence his appointments, labor union negotiating plans and the publishing plans of journalists.

¶President Eisenhower received reports on purely political and social contacts with foreign officials by Bernard Baruch, Mrs. Eleanor Roosevelt and Supreme Court Justice William O. Douglas.

¶The Kennedy Administration had the F.B.I. wiretap a Congressional staff member, three executive officials, a lobbyist and a Washington law firm. Attorney General Robert F. Kennedy received the fruits of a F.B.I. "tap" on Martin Luther King Jr. and a "bug" on a Congressman, both of which yielded information of a political nature.

President Johnson asked the F.B.I. to conduct "name checks" of his critics and of members of the staff of his 1964 opponent, Senator Barry Goldwater. He also requested purely political intelligence on his critics in the Senate, and received extensive intelligence reports on political activity at the 1964 Democratic Convention from F.B.I. electronic surveillance.

President Nixon authorized a program of wiretaps which produced for the White House purely political or personal information unrelated to national security, including information about a Supreme Court justice.

3. Covert Action and the Use of Illegal or Improper Means

(a) Covert Action

Apart from uncovering excesses in the collection of intelligence, our investigation has disclosed covert actions directed against Americans, and the use of illegal and improper surveillance techniques to gather information. For example:

(i) The F.B.I.'s Cointelpro—counter-intelligence program—was designed to "disrupt" groups and "neutralize" individuals deemed to be threats to domestic security. The F.B.I. resorted to counterintelligence tactics in part because its chief officials believed that the existing law could not control the activities of certain dissident groups and that

court decisions had tied the hands of the intelligence community. Whatever opinion one holds about the policies of the targeted groups, many of the tactics employed by the F.B.I. were indisputably degrading to a free society. Cointelpro tactics included:

¶Anonymously attacking the political beliefs of targets in order to induce their employers to fire them;

¶Anonymously mailing letters to the spouses of intelligence targets for the purpose of destroying their marriages;

¶Obtaining from I.R.S. the tax re-

turns of a target and then attempting to provoke an I.R.S. investigation for the express purpose of deterring a protest leader from attending the Democratic National Convention;

¶Falsely and anonymously labeling as Government informants members of groups known to be violent, thereby exposing the falsely labeled member to expulsion or physical attack;

¶Pursuant to instructions to use "misinformation" to disrupt demonstrations, employing such means as broadcasting fake orders on the same citizens band radio frequency used by demonstration marshals to attempt to control demonstrations and duplicating and falsely filling out forms soliciting housing for persons coming to a demonstration, thereby causing "long and useless journeys to locate these addresses."

Sending an anonymous letter to the leader of a Chicago street gang (described as "violence-prone") stating that the Black Panthers were supposed to have "a hit for you." The letter was suggested because it "may intensify . . . animosity" and cause the street gang leader to "take retaliatory action."

From "late 1963" until his death in 1968, Martin Luther King Jr. was the target of an intensive campaign by the Federal Bureau of Investigation to "neutralize" him as an effective civil rights leader. In the words of the man in charge of the F.B.I.'s "war" against Dr. King, "No holds were barred."

The F.B.I. gathered information about Dr. King's plans and activities through an extensive surveillance program, employing nearly every intelligence-gathering technique at the bureau's disposal in order to obtain information about the "private activities of Dr. King and his advisers" to use to "completely discredit" them.

The program to destroy Dr. King as the leader of the civil rights movement included efforts to discredit him with executive branch officials, Congressional leaders, foreign heads of state, American ambassadors, churches, universities and the press.

The F.B.I. mailed Dr. King a tape recording made from microphones hidden in his hotel rooms which one agent testified was an attempt to destroy Dr. King's marriage. The tape recording was accompanied by a note which Dr. King and his advisors interpreted as threatening to release the tape recording unless Dr. King committed suicide.

The extraordinary nature of the campaign to discredit Dr. King is evident from two documents.

At the August 1963 march on Washington, Dr. King told the country of his "dream" that:

"All of God's children, black men and white men, Jews and Gentiles, Protestant and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, 'Free at last, free at last, thank God Almighty, I'm free at last.'"

The bureau's Domestic Intelligence Division concluded that this "demagogic speech" established Dr. King as the "most dangerous and effective Negro



Senator Walter F. Mondale, center, Minnesota Democrat, talking with F. A. Q. Schwarz 3d, chief counsel to the Senate Select Committee on Intelligence. At right is Senator Charles McC. Mathias Jr., Maryland Republican.

The New York Times/Teresa Zabala

leader in the country." Shortly afterwards, and within days after Dr. King was named "Man of the Year" by Time magazine, the F.B.I. decided to "take him off his pedestal, reduce him completely in influence," and select and promote its own candidate to "assume the role of the leadership of the Negro people."

In early 1968, bureau headquarters explained to the field that Dr. King must be destroyed because he was seen as a potential "messiah" who could "unify and electrify" the "black nationalist movement." Indeed to the F.B.I. he was a potential threat because he might "abandon his supposed 'obedience' to white liberal doctrines (non-violence)." In short, a nonviolent man was to be secretly attacked and destroyed as insurance against his abandoning nonviolence.

(b) Illegal or Improper Means

The surveillance which we investigated was not only vastly excessive in breadth and a basis for degrading counterintelligence actions, but was also often conducted by illegal or improper means. For example:

(1) For approximately 20 years the C.I.A. carried out a program of in-

discriminately opening citizens first class mail. The bureau also had a mail opening program, but canceled it in 1966. The bureau continued, however, to receive the illegal fruits of C.I.A.'s program. In 1970, the heads of both agencies signed a document for President Nixon, which correctly stated that mail opening was illegal, falsely stated that it had been discontinued and proposed that the illegal opening of mail should be resumed because it would provide useful results. The President approved the program, but withdrew his approval five days later. The illegal opening continued nonetheless. Throughout this period C.I.A. officials knew that mail opening was illegal but expressed concern about the "flap potential" of exposure, not about the illegality of their activity.

(2) From 1947 until May 1975, N.S.A. received from international cable companies millions of cables which had been sent by American citizens in the reasonable expectation that they would be kept private.

(3) Since the early 1930's, intelligence agencies have frequently wiretapped and bugged American citizens without the benefit of judicial warrant. Recent court decisions have curtailed the use of these techniques against domestic targets. But past subjects of these sur-

veillances have included a United States Congressman, a Congressional staff member, journalists and newsmen, and numerous individuals and groups who engaged in no criminal activity and who posed no genuine threat to the national security, such as two White House domestic affairs advisers and an anti-Vietnam War protest group. While the prior written approval of the Attorney General has been required for all warrantless wiretaps since 1940, the record is replete with instances where this requirement was ignored and the Attorney General gave only after-the-fact authorization.

Until 1965, microphone surveillance by intelligence agencies was wholly unregulated in certain classes of cases. Within weeks after a 1954 Supreme Court decision denouncing the F.B.I.'s installation of a microphone in a defendant's bedroom, the Attorney General informed the bureau that he did not believe the decision applied to national security cases and permitted the F.B.I. to continue to install microphones subject only to its own "intelligent restraint."

(4) In several cases, purely political information (such as the reaction of Congress to an Administration's legislative proposal) and purely personal information (such as coverage of the extramarital social activities of a high-level executive official under surveil-

lance) was obtained from electronic surveillance and disseminated to the highest levels of the Federal Government.

(5) Warrantless break-ins have been conducted by intelligence agencies since World War II. During the 1960's alone, the F.B.I. and C.I.A. conducted hundreds of break-ins, many against American citizens and domestic organizations. In some cases, these break-ins were to install microphones; in other cases, they were to steal such items as membership lists from organizations considered "subversive" by the bureau.

(6) The most pervasive surveillance technique has been the informant. In a random sample of domestic intelligence cases, 83 percent involved informants and 5 percent involved electronic surveillance. Informants have been used against peaceful, law-abiding groups; they have collected information about personal and political views and activities. To maintain their credentials in violence-prone groups, informants have involved themselves in violent activity. This phenomenon is well illustrated by an informant in the Klan. He was present at the murder of a civil rights worker in Mississippi and subsequently helped to solve the crime and convict the perpetrators. Earlier, however, while performing duties paid for by the Government, he had previously "beaten people severely, had boarded buses and kicked people, had [gone] into restaurants and beaten them [blacks] with blackjacks, chains, pistols." Although the F.B.I. requires agents to instruct informants that they cannot be involved in violence, it was understood that in the Klan, "he couldn't be an angel and be a good informant."

4. Ignoring the Law

Officials of the intelligence agencies occasionally recognized that certain activities were illegal, but expressed concern only for "flap potential." Even more disturbing was the frequent testimony that the law and the Constitution were simply ignored. For example, the author of the so-called Huston plan testified:

Question: Was there any person who stated that the activity recommended, which you have previously identified as being illegal opening of the mail and breaking and entry or burglary—was there any single person who stated that such activity should not be done because it was unconstitutional?

Answer: No.

Question: Was there any single person who said such activity should not be done because it was illegal?

Answer: No.

Similarly, the man who for 10 years headed F.B.I.'s Intelligence Division testified that:

"... never once did I hear anybody, including myself, raise the question: is this course of action which we have agreed upon lawful, is it legal, is it

ethical or moral. We never gave any thought to this line of reasoning, because we were just naturally pragmatic."

Although the statutory law and the Constitution were often not "[given] a thought," there was a general attitude that intelligence needs were responsive to a higher law. Thus, as one witness testified in justifying the F.B.I.'s mail opening program:

"It was my assumption that what we were doing was justified by what we had to do . . . the greater good, the national security.

5. Deficiencies in Accountability and Control

The overwhelming number of excesses continuing over a prolonged period of time were due in large measure to the fact that the system of checks and balances—created in our Constitution to limit abuse of governmental power—was seldom applied to the intelligence community. Guidance and regulation from outside the intelligence agencies—where it has been imposed at all—has been vague. Presidents and other senior executive officials, particularly the Attorneys General, have virtually abdicated their constitutional responsibility to oversee and set standards for intelligence activity. Senior Government officials generally gave the agencies broad, general mandates or pressed for immediate results on pressing problems. In neither case did they provide guidance to prevent excesses and their broad mandates and pressures themselves often resulted in excessive or improper intelligence activity.

Congress has often declined to exercise meaningful oversight, and on occasion has passed laws or made statements which were taken by intelligence agencies as supporting overly broad investigations.

On the other hand, the record reveals instances when intelligence agencies have concealed improper activities from their superiors in the executive branch and from the Congress, or have elected to disclose only the less questionable aspects of their activities.

There has been, in short, a clear and sustained failure by those responsible to control the intelligence community and to insure its accountability. There has been an equally clear and sustained failure by intelligence agencies to fully inform the proper authorities of their activities and to comply with directives from those authorities.

6. The Adverse Impact of Improper Intelligence Activity

Many of the illegal or improper dis-

ruptive efforts directed against American citizens and domestic organizations succeeded in injuring their targets. Although it is sometimes difficult to prove that a target's misfortunes were caused by a counterintelligence program directed against him, the possibility that an arm of the United States Govern-

ment intended to cause the harm and might have been responsible is itself abhorrent.

The committee has observed numerous examples of the impact of intelligence operations. Sometimes the harm was readily apparent—destruction of marriages, loss of friends or jobs. Sometimes the attitudes of the public and of Government officials responsible for formulating policy and resolving vital issues were influenced by distorted intelligence. But the most basic harm was to the values of privacy and freedom which our Constitution seeks to protect and which intelligence activity infringed on a broad scale.

(a) General Efforts to Discredit

Several efforts against individuals and groups appear to have achieved their stated aims. For example:

¶A bureau field office reported that the anonymous letter it had sent to an activist's husband accusing his wife of infidelity "contributed very strongly" to the subsequent breakup of the marriage.

¶Another field office reported that a draft counselor, deliberately and falsely accused of being an F.B.I. informant, was "ostracized" by his friends and associates.

¶Two instructors were reportedly put on probation after the bureau sent an anonymous letter to a university administrator about their funding of an anti-Administration student newspaper.

¶The bureau evaluated its attempts to "put a stop" to a contribution to the Southern Christian Leadership Conference as "quite successful."

¶An F.B.I. document boasted that a "pretext" phone call to Stokely Carmichael's mother telling her that members of the Black Panther Party intended to kill her son left her "shocked." The memorandum intimated that the bureau believed it had been responsible for Carmichael's flight to Africa the following day.

(b) Media Manipulation

The F.B.I. has attempted covertly to influence the public's perception of persons and organizations by disseminating derogatory information to the press, either anonymously or through "friendly" news contacts. The impact of those articles is generally difficult to measure, although in some cases there are fairly direct connections to injury to the target. The bureau also attempted to influence media reporting which would have an impact on the public image of the F.B.I. Examples include:

¶Planning a series of derogatory

articles about Martin Luther King Jr., and the poor people's campaign.

For example, in anticipation of the 1968 "poor people's march on Washington, D. C.," bureau headquarters granted authority to furnish "cooperative news media sources" an article "designed to curtail success of Martin Luther King's fund raising." Another memorandum illustrated how "photographs of demonstrators" could be used in discrediting the civil rights movement. Six photographs of participants in the poor people's campaign in Cleveland accompanied the memorandum with the following note attached: "These [photographs] show the militant aggressive appearance of the participants and might be of interest to a cooperative news source." Information on the "poor people's campaign was provided by the F.B.I. to friendly reporters on the condition that "the Bureau must not be revealed as the source."

¶Soliciting information from field offices "on a continuing basis" for "prompt . . . dissemination to the news media . . . to discredit the New Left movement and its adherents." The headquarters directive requested, among other things, that:

"Specific data should be furnished depicting the scurrilous and depraved nature of many of the characters, activities, habits and living conditions representative of New Left adherents."

Field Offices were to be exhorted that "every avenue of possible embarrassment must be vigorously and enthusiastically explored."

¶Ordering field offices to gather information which would disprove allegations by the "liberal press, the bleeding hearts and the forces on the left" that the Chicago police used undue force in dealing with demonstrators at the 1968 Democratic convention.

¶Taking advantage of a close relationship with the chairman of the board—described in an F.B.I. memorandum as "our good friend"—of a magazine with national circulation to influence articles which related to the F.B.I. For example, through this relationship the bureau "squashed" an "unfavorable article against the bureau" written by a freelance writer about an F.B.I. investigation; "postponed publication" of an article on another F.B.I. case; "fore-stalled publication" of an article by Dr. Martin Luther King Jr., and received information about proposed editing of King's articles.

(c) Distorting Data to Influence Government Policy and Public Perceptions

Accurate intelligence is a prerequisite to sound Government policy. However, as the past head of the F.B.I.'s Domestic Intelligence Division reminded the committee:

"The facts by themselves are not too meaningful. They are something like stones cast into a heap."

On certain crucial subjects the domestic intelligence agencies reported the "facts" in ways that gave rise to misleading impressions.

For example, the F.B.I.'s Domestic Intelligence Division initially discounted as an "obvious failure" the alleged attempts of Communists to influence the civil rights movement. Without any significant change in the factual situation, the bureau moved from the division's conclusion to Director Hoover's public Congressional testimony characterizing Communist influence on the civil rights movement as "vitally important."

F.B.I. reporting on protests against

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the Vietnam War provides another example of the manner in which the information provided to decision-makers can be skewed. In acquiescence with a judgment already expressed by President Johnson, the bureau's reports on demonstrations against the war in Vietnam emphasized Communist efforts to influence the antiwar movement and underplayed the fact that the vast majority of demonstrators were not Communist controlled.

(d) "Chilling" First Amendment Rights

The First Amendment protects the rights of American citizens to engage in free and open discussions and to associate with persons of their choosing. Intelligence agencies have, on occasion, expressly attempted to interfere with those rights. For example, one internal F.B.I. memorandum called for "more interviews" with New Left subjects "to enhance the paranoia endemic in these circles" and "get the point across there is an F.B.I. agent behind every mailbox."

More importantly, the Government's surveillance activities in the aggregate—whether or not expressly intended to do so—tend, as the committee concludes, to deter the exercise of First Amendment rights by American citizens who become aware of the Government's domestic intelligence program.

(e) Preventing the Free Exchange of Ideas

Speakers, teachers, writers and publications themselves were targets of the F.B.I.'s counterintelligence program. The F.B.I.'s efforts to interfere with the free exchange of ideas included:

¶Anonymously attempting to prevent an alleged "Communist-front" group from holding a forum on a Midwest campus and then investigating the judge who ordered that the meeting be allowed to proceed.

¶Using another "confidential source" in a foundation which contributed to a local college to apply pressure on the school to fire an activist professor.

¶Anonymously contacting a university official to urge him to "persuade"

two professors to stop funding a student newspaper in order to "eliminate what voice the New Left has" in the area.

¶Targeting the New Mexico Free University for teaching "confrontation politics" and "draft counseling training."

7. Cost and Value

Domestic intelligence is expensive. We have already indicated the cost of illegal and improper intelligence activities in terms of the harm to victims, the injury to constitutional values and the damage to the democratic process itself. The cost in dollars is also significant. For example, the F.B.I. has budgeted for fiscal year 1976 over \$7 million for its domestic security informant program, more than twice the amount it spends on informants against organized crime. The aggregate budget for F.B.I. domestic security intelligence and foreign counterintelligence is at least \$80 million. In the late 1960's and early 1970's, when the bureau was joined by the C.I.A., the military and N.S.A. in collecting information about the antiwar movement and black activists, the cost was substantially greater.

Apart from the excesses described above, the usefulness of many domestic intelligence activities in serving the legitimate goal of protecting society has been questionable. Properly directed intelligence investigations concentrating upon hostile foreign agents and violent terrorists can produce valuable results. The committee has examined cases where the F.B.I. uncovered "illegal" agents of a foreign power engaged in clandestine intelligence activities in violation of Federal law. Information leading to the prevention of serious violence has been acquired by the F.B.I. through its informant penetration of terrorist groups and through the inclusion in bureau files of the names of persons actively involved with such groups. Nevertheless, the most sweeping domestic intelligence surveillance programs have produced surprisingly few useful returns in view of their extent. For example:

¶Between 1960 and 1974, the F.B.I. conducted over 500,000 separate investigations of persons and groups under the "subversive" category, predicated on the possibility that they might be likely to overthrow the Government of the United States. Yet not a single individual or group has been prosecuted since 1957 under the laws which prohibit planning or advocating action to

overthrow the Government and which are the main alleged statutory basis for such F.B.I. investigations.

¶A recent study by the General Accounting Office has estimated that of some 17,528 F.B.I. domestic intelligence investigations of individuals in 1974, only 1.3 percent resulted in prosecution and conviction, and in only "about 2 percent" of the cases was advance knowledge of any activity—legal or illegal—obtained.

¶One of the main reasons advanced

for expanded collection of intelligence about urban unrest and antiwar protest was to help responsible officials cope with possible violence. However, a former White House official with major duties in this area under the Johnson Administration has concluded, in retrospect, that "in none of these situations . . . would advance intelligence about dissident groups [have] been of much help," that what was needed was "physical intelligence" about the geography of major cities, and that the attempt to "predict violence" was not a "successful undertaking."

¶ Domestic intelligence reports have sometimes even been counterproductive. A local police chief, for example, described F.B.I. reports which led to the positioning of Federal troops near his city as:

" . . . Almost completely composed of unsorted and unevaluated stories, threats and rumors that had crossed my desk in New Haven. Many of these had long before been discounted by our intelligence division. But they had made their way from New Haven to Washington, had gained completely unwarranted credibility and had been submitted by the Director of the F.B.I. to the President of the United States. They seemed to present a convincing picture of impending holocaust."

In considering its recommendations, the committee undertook an evaluation of the F.B.I.'s claims that domestic intelligence was necessary to combat terrorism, civil disorders, "subversion" and hostile foreign intelligence activity. The committee reviewed voluminous materials bearing on this issue and questioned bureau officials and former Federal executive officials.

We have found that we are in fundamental agreement with the wisdom of Attorney General Stone's initial warning that intelligence agencies must not be "concerned with political or other opinions of individuals" and must be limited to investigating essentially only "such conduct as is forbidden by the laws of the United States." The committee's record demonstrates that domestic intelligence which departs from this standard raises grave risks of undermining the democratic process and harming the interests of individual citizens. This danger weighs heavily against the speculative or negligible benefits of the ill-defined and overbroad investigations authorized in the past. Thus, the basic purpose of the recommendations in this report is to limit the F.B.I. to investigating conduct rather than ideas or associations.

The excesses of the past do not, however, justify depriving the United States of a clearly defined and effectively controlled domestic intelligence capability. The intelligence services of this nation's international adversaries continue to attempt to conduct clandestine espionage operations within the United States. Our recommendations provide for intelligence investigations of hostile foreign intelligence activity.

Moreover, terrorists have engaged in serious acts of violence which have brought death and injury to Americans and threaten further such acts. These acts, not the politics or beliefs of those who would commit them, are the proper focus for investigations to anticipate terrorist violence. Accordingly, the committee would permit properly controlled intelligence investigations in those narrow circumstances.

Concentration on imminent violence can avoid the wasteful dispersion of resources which has characterized the sweeping (and fruitless) domestic intelligence investigations of the past. But the most important reason for the fundamental change in the domestic intelligence operations which our recommendations propose is the need to protect the constitutional rights of Americans.

In light of the record of abuse revealed by our inquiry, the committee is not satisfied with the position that mere exposure of what has occurred in the past will prevent its recurrence. Clear legal standards and effective oversight and controls are necessary to insure that domestic intelligence activity does not itself undermine the democratic system it is intended to protect.

RECOMMENDATIONS

Recommendation 1—There is no inherent constitutional authority for the President or any intelligence agency to violate the law.

Recommendation 2—It is the intent of the committee that statutes implementing these recommendations provide the exclusive legal authority for Federal domestic security activities.

(a) No intelligence agency may engage in such activities unless authorized by statute, nor may it permit its employees, informants or other covert human sources to engage in such activities on its behalf.

(b) No executive directive or order may be issued which would conflict with such statutes.

Recommendation 3—In authorizing intelligence agencies to engage in certain activities, it is not intended that such authority empower agencies, their informants or covert human sources to violate any prohibition enacted pursuant to these recommendations or contained in the Constitution or in any other law.

Recommendation 4—To supplement the prohibitions in the 1947 National Security Act against the C.I.A. exercising "police, subpoena, law enforcement powers or internal security functions," the C.I.A. should be prohibited from conducting domestic security activities within the United States, except as specifically permitted by these recommendations.

Recommendation 5—The Director of Central Intelligence should be made responsible for "coordinating" the protection of sources and methods of the intelligence community. As head of the C.I.A., the Director should also be responsible in the first instance for the security of C.I.A. facilities, personnel, operations and information. Neither function, however, authorizes the Director of Central Intelligence to violate any Federal or state law or to take any action which is otherwise inconsistent with statutes implementing these recommendations.

Recommendation 6—The C.I.A. should not conduct electronic surveillance, unauthorized entry or mail openings within the United States for any purpose.

Recommendation 7—The C.I.A. should not employ physical surveillance, infiltration of groups or any other covert techniques against Americans within the United States except:

(a) Physical surveillance of persons on the grounds of C.I.A. installations;

(b) Physical surveillance during a preliminary investigation of allegations an employee is a security risk for a limited period outside of C.I.A. installations. Such surveillance should be conducted only upon written authorization of the Director of Central Intelligence and should be limited to the subject of the investigation and, only to the extent necessary to identify them, to persons with whom the subject has contact;

(c) Confidential inquiries, during a preliminary investigation of allegations an employee is a security risk, of outside sources concerning medical or financial information about the subject which is relevant to those allegations;

(d) The use of identification which does not reveal C.I.A. or Government affiliation, in background and other security investigations permitted the C.I.A. by these recommendations and the conduct of checks which do not reveal C.I.A. or Government affiliation for the purpose of judging the effectiveness of cover operations upon the written authorization of the Director of Central Intelligence;

(e) In exceptional cases, the placement or recruitment of agents within an unwitting domestic group solely for the purpose of preparing them for assignments abroad and only for as long as is necessary to accomplish that purpose. This should take place only if the Director of Central Intelligence makes a written finding that it is essential for foreign intelligence collection of vital importance to the United States, and the Attorney General makes a written finding that the operation will be conducted under procedures designed to prevent misuse of the undisclosed participation or of any information obtained therefrom. In the case of any such action, no information received by C.I.A. from the agent as a result of his position in the group should be disseminated outside the C.I.A. unless it indicates felonious criminal conduct or threat of death or serious bodily harm, in which case dissemination should be permitted to an appropriate official agency if approved by the Attorney General.

Recommendation 8 — The C.I.A. should not collect information within the United States concerning Americans except:

(a) Information concerning C.I.A. employees, C.I.A. contractors and their employees or applicants for such employment or contracting;

(b) Information concerning individuals or organizations providing or offering to provide assistance to the C.I.A.;

(c) Information concerning individuals or organizations being considered by the C.I.A. as potential sources of information or assistance;

(d) Visitors to C.I.A. facilities;

(e) Persons otherwise in the immediate vicinity of sensitive C.I.A. sites; or

(f) Persons who give their informed written consent to such collection.

In (a), (b) and (c) above, information should be collected only if necessary for the purpose of determining the person's fitness for employment or assistance. If, in the course of such collection, information is obtained which indicates criminal activity, it should be transmitted to the F.B.I. or other appropriate agency. When an American's relationship with the C.I.A. is prospective, information should only be collected if there is a bona fide expecta-

tion the person might be used by the C.I.A.

Recommendation 9—The C.I.A. should not collect information abroad concerning Americans except:

(a) Information concerning Americans which it is permitted to collect within the United States;

(b) At the request of the Justice Department as part of criminal investigations or an investigation of an American for suspected terrorist or hostile foreign intelligence activities or security leak or security risk investigations which the F.B.I. has opened.

Recommendation 10—The C.I.A. should be able to transmit to the F.B.I. or other appropriate agencies information concerning Americans acquired as the incidental byproduct of otherwise permissible foreign intelligence and counterintelligence operations whenever such information indicates any activity in violation of American law.

Recommendation 11—The C.I.A. may employ covert techniques abroad against Americans:

(a) Under circumstances in which the C.I.A. could use such covert techniques against Americans within the United States, or

(b) When collecting information as part of Justice Department investigation, in which case the C.I.A. may use a particular covert technique under the standards and procedures and approvals applicable to its use against Americans within the United States by the F.B.I.

(c) To the extent necessary to identify persons known or suspected to be Americans who come in contact with foreigners the C.I.A. is investigating.

C.I.A. Human Experiments and Drug Use

Recommendation 12—The C.I.A. should not use in experimentation on human subjects any drug, device or procedure which is designed or intended to harm, or is reasonably likely to harm, the physical or mental health of the human subject, except with the informed written consent, witnessed by a disinterested third party, of each human subject, and in accordance with the guidelines issued by the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research. The jurisdiction of the commission should be amended to include the Central Intelligence Agency and other intelligence agencies of the United States Government.

Recommendation 13—Any C.I.A. activity engaged in pursuant to Recommendations 7, 8, 9, 10 or 11 should be subject to periodic review and certification of compliance with the Constitution, applicable statutes, agency regulations and executive orders by:

(a) The Inspector General of the C.I.A.;

(b) The General Counsel of the C.I.A., in coordination with the Director of Central Intelligence;

(c) The Attorney General, and
(d) The oversight committee recommended [below].

All such certifications should be available for review by Congressional oversight committees.

Recommendation 14—N.S.A. should not engage in domestic security activities. Its functions should be limited in a precisely drawn legislative charter to the collection of foreign intelligence from foreign communications.

Recommendation 15—N.S.A. should take all practicable measures consistent with its foreign intelligence mission to eliminate or minimize the interception, selection and monitoring of communications of Americans from the foreign communications.

Recommendation 16—N.S.A. should not be permitted to select for monitoring any communication to, from or about an American without his consent, except for the purpose of obtaining information about hostile foreign intelligence or terrorist activities, and then only if a warrant approving such monitoring is obtained in accordance with procedures similar to those contained in Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

Recommendation 17—Any personally identifiable information about an American which N.S.A. incidentally acquires, other than pursuant to a warrant, should not be disseminated without the consent of the American, but should be destroyed as promptly as possible unless it indicates:

(a) Hostile foreign intelligence or terrorist activities, or

(b) Felonious criminal conduct for which a warrant might be obtained pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, or

(c) A threat of death or serious bodily harm.

If dissemination is permitted, by (a), (b) and (c) above, it must only be made to an appropriate official and after approval by the Attorney General.

Recommendation 18—N.S.A. should not request from any commercial carrier any communication which it could not otherwise obtain pursuant to these recommendations.

Recommendation 19—The Office of Security at N.S.A. should be permitted to collect background information on present or prospective employees or contractors for N.S.A. solely for the purpose of determining their fitness for employment. With respect to security risks or the security of its installations, N.S.A. should be permitted to conduct physical surveillances consistent with such surveillances as the C.I.A. is permitted to conduct, in similar circumstances, by these recommendations.

Recommendation 20—Except as specifically provided herein, the Department of Defense should not engage in domestic security activities. Its functions, as they relate to the activities

of the foreign intelligence community, should be limited in a precisely drawn legislative charter to the conduct of foreign intelligence and foreign counter-intelligence activities and tactical military intelligence activities abroad and production, analysis and dissemination of departmental intelligence.

Recommendation 21—In addition to its foreign intelligence responsibility, the Department of Defense has a responsibility to investigate its personnel in order to protect the security of its installations and property, to ensure order and discipline within its ranks and to conduct other limited investigations once dispatched by the President to suppress a civil disorder. A legislative charter should define precisely—in a manner which is not inconsistent with these recommendations—the authorized scope and purpose of any investigations undertaken by the Department of Defense to satisfy these responsibilities.

Recommendation 22—No agency of the Department of Defense should conduct investigations of violations of criminal law or otherwise perform any law enforcement or domestic security functions within the United States, except on military bases or concerning military personnel, to enforce the Uniform Code of Military Justice.

Control of Civil Disturbance Intelligence

Recommendation 23—The Department of Defense should not be permitted to conduct investigations of Americans on the theory that the information derived therefrom might be useful in potential civil disorders. The Army should be permitted to gather information about geography, logistical matters or the identity of local officials which is necessary to the positioning, support and use of troops in an area where troops are likely to be deployed by the President in connection with a civil disturbance. The Army should be permitted to investigate Americans involved in such disturbances after troops have been deployed to the site of a civil disorder to the extent necessary to fulfill the military mission and to the extent the information cannot be obtained from the F.B.I.

Recommendation 24 — Appropriate agencies of the Department of Defense should be permitted to collect background information on their present or prospective employees or contractors. With respect to security risks or the security of its installations, the Department of Defense should be permitted to conduct physical surveillance consistent with such surveillances as the C.I.A. is permitted to conduct, in similar circumstances, by these recommendations.

Recommendation 25—Except as provided in 27 below, the Department of Defense should not direct any covert technique (e.g., electronic surveillance, informants, etc.) at American civilians.

Recommendation 26—The Department of Defense should be permitted to conduct abroad preventive intelligence in-

vestigations of unaffiliated Americans, provided such investigations are first approved by the F.B.I. Such investigations by the Department of Defense, including the use of covert techniques, should ordinarily be conducted in a manner consistent with the recommendations pertaining to the F.B.I.; however in overseas locations where U.S. military forces constitute the governing power or where U.S. military forces are engaged in hostilities circumstances may require greater latitude to conduct such investigations.

Recommendation 27 — The I.R.S. should not, on behalf of any intelligence agency or for its own use, collect any information about the activities of Americans except for the purposes of enforcing the tax laws.

Recommendation 28—I.R.S. should not select any person or group for tax investigation on the basis of political

activity or for any other reason not relevant to enforcement of the tax laws.

Recommendation 29—Any program of intelligence investigation relating to domestic security in which targets are selected by both tax and nontax criteria should only be initiated:

(a) Upon the written request of the Attorney General or the Secretary of the Treasury, specifying the nature of the requested program and the need therefore, and

(b) After the written certification by the Commissioner of the I.R.S. that procedures have been developed which are sufficient to prevent the infringement of the constitutional rights of Americans, and

(c) With Congressional oversight committees being kept continually advised of the nature and extent of such programs.

Disclosure Procedures

Recommendation 30—No intelligence agency should request from the Internal Revenue Service tax returns or tax-related information except under the statutes and regulations controlling such disclosures. In addition, the existing procedures under which tax returns and tax-related information are released by the I.R.S. should be strengthened, as suggested in the following five recommendations.

Recommendation 31 — All requests from an intelligence agency to the I.R.S. for tax returns and tax-related information should be in writing and signed by the head of the intelligence agency making the requests or his designee. Copies of such requests should be filed with the Attorney General. Each request should include a clear statement of:

(a) The purpose for which disclosure is sought;

(b) Facts sufficient to establish that the requested information is needed by the requesting agency for the performance of an authorized and lawful function;

(c) The uses which the requesting agency intends to make of the information;

(d) The extent of the disclosures sought;

(e) Agreement by the requesting agency not to use the documents or information for any purpose other than that stated in the request, and

(f) Agreement by the requesting agency that the information will not be disclosed to any other agency or person except in accordance with the law.

Recommendation 32—I.R.S. should not release tax returns or tax-related information to any intelligence agency unless it has received a request satisfying the requirements of Recommendation 31 and the Commissioner of Internal Revenue has approved the request in writing.

Recommendation 33—I.R.S. should maintain a record of all such requests and responses thereto for a period of 20 years.

Recommendation 34—No intelligence agency should use the information supplied to it by the I.R.S. pursuant to a request of the agency except as stated in a proper request for disclosure.

Recommendation 35—All requests for information sought by the F.B.I. should be filed by the Department of Justice. Such requests should be signed by the Attorney General or his designee, following a determination by the department that the request is proper under the applicable statutes and regulations.

Post Office

Recommendation 36—The Post Office should not permit the F.B.I. or any intelligence agency to inspect markings or addresses on first class mail, nor should the Post Office itself inspect markings or addresses on behalf of the F.B.I. or any intelligence agency on first class mail, except upon the written approval of the Attorney General or his designee. Where one of the correspondents is an American, the Attorney General or his designee should only approve such inspection for domestic security purposes upon a written finding that it is necessary to a criminal investigation or a preventive intelligence investigation of terrorist activity or hostile foreign intelligence activity.

Upon such a request, the Post Office may temporarily remove from circulation such correspondence for the purpose of such inspection of its exterior as is related to the investigation.

Recommendation 37—The Post Office should not transfer the custody of any first class mail to any agency except the Department of Justice. Such mail should not be transferred or opened except upon a judicial search warrant.

(a) In the case of mail where one of the correspondents is an American, the judge must find that there is probable cause to believe that the mail contains evidence of a crime.

(b) In the case of mail where both

parties are foreigners:

(1) The judge must find that there is probable cause to believe that both parties to such correspondence are foreigners and or one of the correspondents is an official employee or conscientious agent of a foreign power, and

(2) The Attorney General must certify that the mail opening is likely to reveal information necessary either to the protection of the nation against actual or potential attack or other hostile acts of force of a foreign power; to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against hostile foreign intelligence activity.

Recommendation 38—All domestic security investigative activity, including the use of covert techniques, should be centralized within the Federal Bureau of Investigation, except those investigations by the Secret Service designed to protect the life of the President or other Secret Service protectees. Such investigations and the use of covert techniques in those investigations should be centralized within the Secret Service.

Recommendation 39—All domestic security activities of the Federal Government and all other intelligence agency activities covered by the domestic intelligence recommendations should

be subject to Justice Department oversight to assure compliance with the Constitution and laws of the United States.

Recommendation 40 — The F.B.I. should be prohibited from engaging on its own or through informants or others in any of the following activities directed at Americans:

(a) Disseminating any information to the White House, any other Federal official, the news media or any other person for a political or other improper purpose, such as discrediting an opponent of the Administration or a critic of an intelligence or investigative agency.

(b) Interfering with lawful speech, publication, assembly, organizational activity or association of Americans.

(c) Harassing individuals through unnecessary overt investigative techniques such as interviews of obvious physical surveillance for the purpose of intimidation.

Recommendation 41 — The bureau should be prohibited from maintaining information on the political beliefs, political associations or private lives of Americans except that which is clearly necessary for domestic security investigations as described [below].

Investigations of Committed or Imminent Offenses

Recommendation 42—The F.B.I. should be permitted to investigate a committed act which may violate a Federal criminal statute pertaining to the domestic security to determine the identity of the perpetrator or to determine whether the act violates such a statute.

Recommendation 43 — The F.B.I. should be permitted to investigate an American or foreigner to obtain evidence of criminal activity where there is "reasonable suspicion" that the American or foreigner has committed, is committing or is about to commit a specific act which violates a Federal statute pertaining to the domestic security.

Recommendation 44 — The F.B.I. should be permitted to conduct a preliminary preventive intelligence investigation of an American or foreigner where it has a specific allegation or specific or substantiated information that the American or foreigner will soon engage in terrorist activity or hostile foreign intelligence activity. Such a preliminary investigation should not continue longer than 30 days from receipt of the information unless the Attorney General or his designee finds that the information and any corroboration which has been obtained warrants investigation for an additional period which may not exceed 60 days. If, at the outset or at any time during the course of a preliminary investigation, the bureau establishes "reasonable suspicion" that an American or foreigner will soon engage in terrorist activity or hostile foreign intelligence activity, it may conduct a full preventive intelligence investigation. Such full investigation should not continue longer than one year except upon a finding of compelling circumstances by the Attorney General or his designee.

In no event should the F.B.I. open a preliminary or full preventive intelligence investigation based upon information that an American is advocating political ideas or engaging in lawful political activities or is associating with others for the purpose of petitioning the Government for redress of grievances or other such constitutionally protected purpose.

Recommendation 45 — The F.B.I. should be permitted to collect information to assist Federal, state and local officials, in connection with a civil disorder either—

(i) After the Attorney General finds in writing that there is a clear and immediate threat of domestic violence or rioting which is likely to require implementation of 10 U.S.C. 332 or 333 (the use of Federal troops for the enforcement of Federal law or Federal court orders), or likely to result in a request by the governor or legislature of a state pursuant to 10 U.S.C. 331 for the use of Federal militia or other Federal armed forces as a countermeasure, or

(ii) After such troops have been introduced.

Recommendation 46—F.B.I. assistance to Federal, state and local officials in connection with a civil disorder should be limited to collecting information necessary for

(1) The President in making decisions concerning the introduction of Federal troops;

(2) Military officials in positioning and supporting such troops, and

(3) State and local officials in coordinating their activities with such military officials.

Background Investigations

Recommendation 47—The F.B.I. should be permitted to participate in the Federal Government's program of background investigations of Federal employees or employees of Federal contractors. The authority to conduct such investigations should not, however, be used as the basis for conducting investigations of other persons. In addition, Congress should examine the standards of Executive Order 10450, which serves as the current authority for F.B.I. background investigations, to determine whether additional legislation is necessary to:

(a) Modify criteria based on political beliefs and associations unrelated to suitability for employment; such modification should make those criteria consistent with judicial decisions regarding privacy of political association, and

(b) Restrict the dissemination of information from name checks of information related to suitability for employment.

Recommendation 48—Under regulations to be formulated by the Attorney General, the F.B.I. should be permitted to investigate a specific allegation that an individual within the executive branch with access to classified information is a security risk as described in Executive Order 10450. Such investigation should not continue longer than 30 days except upon written approval of the Attorney General or his designee.

Recommendation 49—Under regula-

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tions to be formulated by the Attorney General, the F.B.I. should be permitted to investigate a specific allegation of the improper disclosure of classified information by employees or contractors of the executive branch. Such investigation should not continue longer than 30 days except upon written approval of the Attorney General or his designee.

Recommendation 50—Overt techniques and name checks should be permitted in all of the authorized domestic security investigations described above, including preliminary and full preventive intelligence investigations.

Recommendation 51—All nonconsensual electronic surveillance, mail-opening and unauthorized entries should be conducted only upon authority of a judicial warrant.

Recommendation 52—All nonconsensual electronic surveillance should be conducted pursuant to judicial warrants issued under authority of Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

The act should be amended to provide, with respect to electronic surveillance of foreigners in the United States,

that a warrant may issue it:

(a) There is probable cause that the target is an officer, employee or conscious agent of a foreign power.

(b) The Attorney General has certified that the surveillance is likely to reveal information necessary to the protection of the nation against actual or potential attack or other hostile acts of force of a foreign power; to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against hostile foreign intelligence activity.

(c) With respect to any such electronic surveillance, the judge should adopt procedures to minimize the acquisition and retention of nonforeign intelligence information about Americans.

(d) Such electronic surveillance should be exempt from the disclosure requirements of Title III of the 1968 Act as to foreigners generally and as to Americans if they are involved in hostile foreign intelligence activity.

As noted earlier, the committee believes that the espionage laws should be amended to include industrial espionage and other modern forms of espionage not presently covered and Title III should incorporate any such amendment.

Recommendation 53—Mail opening should be conducted only pursuant to a judicial warrant issued upon probable cause of criminal activity as described in Recommendation 37.

Recommendation 54 — Unauthorized entry should be conducted only upon judicial warrant issued on probable cause to believe that the place to be searched contains evidence of a crime, except unauthorized entry, including surreptitious entry, against foreigners who are officers, employees or conscious agents of a foreign power should be permitted upon judicial warrant under the standards which apply to electronic surveillance described in Recommendation 52.

Administrative Procedures

Recommendation 55—Covert human sources may not be directed at an American except:

(1) In the course of a criminal investigation if necessary to the investigation, provided that covert human sources should not be directed at an American as a part of an investigation of a committed act unless there is reasonable suspicion to believe that the American is responsible for the act, and then only for the purpose of identifying the perpetrators of the act.

(2) If the American is the target of a full preventive intelligence investigation and the Attorney General or his designee makes a written finding that he has considered and rejected less intrusive techniques and he believes that covert human sources are necessary to obtain information for the investigation.

Recommendation 56—Covert human sources which have been directed at an American in a full preventive intelligence investigation should not be used to collect information on the activities of the American for more than 90 days after the source is in place and capable of reporting unless the Attorney General or his designee finds in writing either that there are "compelling circumstances," in which case they may be used for an additional 60 days, or that there is probable cause that the American will soon engage in terrorist activities or hostile foreign intelligence activities.

Recommendation 57—All covert human sources used by the F.B.I. should be reviewed by the Attorney General or his designee as soon as practicable and should be terminated unless the covert human source could be directed against an American in a criminal investigation or a full preventive intelligence investigation under these recommendations.

Recommendation 58—Mail surveillance and the review of tax returns and tax-related information should be conducted consistently with the recommendations [above]. In addition to restrictions [above], the review of tax returns and tax-related information, as well as review of medical or social history records, confidential records of private institutions and confidential records of Federal, state and local government agencies other than intelligence or law enforcement agencies may not be used against an American except:

(1) In the course of a criminal investigation, if necessary to the investigation;

(2) If the American is the target of a full preventive intelligence investigation and the Attorney General or his designee makes a written finding that he has considered and rejected less intrusive techniques and he believes that the covert technique requested by the bureau is necessary to obtain information necessary to the investigation.

Recommendation 59—The use of physical surveillance and review of credit and telephone records and any records of governmental or private institutions other than those covered in Recommendation

58 should be permitted to be used against an American, if necessary, in the course of either a criminal investigation or a preliminary or full preventive intelligence investigation.

Recommendation 60—Covert techniques should be permitted at the scene of a potential civil disorder in the course of preventive criminal intelligence and criminal investigations as described above. Nonwarrant covert techniques may also be directed at an American during a civil disorder in which extensive acts of violence are occurring and Federal troops have been introduced. This additional authority to direct such covert techniques at Americans during a civil disorder should be limited to circumstances where Federal troops are actually in

use and the technique is used only for the purpose of preventing further violence.

Recommendation 61—Covert techniques should not be directed at an American in the course of a background investigation without the informed written consent of the American.

Recommendation 62—If Congress enacts a statute attaching criminal sanctions to security leaks, covert techniques should be directed at Americans in the course of security leak investigations only if such techniques are consistent with Recommendation 55(1), 58(1) or 59. With respect to security risks, Congress might consider authorizing covert techniques, other than those requiring a judicial warrant, to be directed at Americans in the course of security risk investigations, but only upon a written finding of the Attorney General that there is reasonable suspicion to believe that the individual is a security risk, he has considered and rejected less intrusive techniques and he believes the technique requested is necessary to the investigation.

Incidental Overhears

Recommendation 63—Except as limited elsewhere in these recommendations or in Title III of the Omnibus Crime Control and Safe Streets Act of 1968, information obtained incidentally through an authorized covert technique about an American or a foreigner who is not the target of the covert technique can be used as the basis for any authorized domestic security investigation.

Recommendation 64 — Information should not be maintained except where relevant to the purpose of an investigation.

Recommendation 65 — Personally identifiable information on Americans obtained in the following kinds of investigations should be sealed or purged as follows (unless it appears on its face to be necessary for another authorized investigation):

(a) Preventive intelligence investigations of terrorist or hostile foreign intelligence activities—as soon as the investigation is terminated by the Attorney General or his designee pursuant to Recommendation 45 or 69.

(b) Civil disorder assistance—as soon as the assistance is terminated by the Attorney General or his designee pursuant to Recommendation 69, provided that where troops have been introduced such information need be sealed or purged only within a reasonable period after their withdrawal.

Recommendation 66 — Information previously gained by the F.B.I. or any other intelligence agency through illegal techniques should be sealed or purged as soon as practicable.

Recommendation 67 — Personally identifiable information on Americans from domestic security investigations may be disseminated outside the Department of Justice as follows:

(a) Preventive intelligence investiga-

tions of terrorist activities—personally identifiable information on Americans from preventive criminal intelligence investigations of terrorist activities may be disseminated only to:

(1) A foreign or domestic law enforcement agency which has jurisdiction over the criminal activity to which the information relates, or

(2) To a foreign intelligence or military agency of the United States, if necessary for an activity permitted by these recommendations, or

(3) To an appropriate Federal official with authority to make personnel decisions about the subject of the information, or

(4) To a foreign intelligence or military agency of a cooperating foreign power if necessary for an activity permitted by these recommendations to similar agencies of the United States, or

(5) Where necessary to warn state or local officials of terrorist activity likely to occur within their jurisdiction, or

(6) Where necessary to warn any person of a threat to life or property from terrorist activity.

(b) Preventive intelligence investigations of hostile foreign intelligence activities—personally identifiable information on Americans from preventive criminal intelligence investigations of hostile intelligence activities may be disseminated only:

(1) To an appropriate Federal official with authority to make personnel decisions about the subject of the information, or

(2) To the National Security Council or the Department of State upon request or where appropriate to their administration of U.S. foreign policy, or

(3) To a foreign intelligence or military agency of the United States, if relevant to an activity permitted by these recommendations, or

(4) To a foreign intelligence or military agency of a cooperating foreign power if relevant to an activity permitted by these recommendations to similar

(c) Civil disorders assistance—personally identifiable information on Americans involved in an actual or potential disorder, collected in the course of civil disorders assistance, should not be disseminated outside the Department of Justice except to military officials and appropriate state and local officials at the scene of a civil disorder where Federal troops are present.

(d) Background investigations—to the maximum extent feasible, the results of background investigations should be segregated within the F.B.I. and only

disseminated to officials outside the Department of Justice authorized to make personnel decisions with respect to the subject.

(e) All other authorized domestic security investigations—to governmental officials who are authorized to take action consistent with the purpose of an investigation or who have statutory

duties which require the information.

Recommendation 68—Officers of the executive branch who are made responsible by these recommendations for overseeing intelligence activities and appropriate Congressional committees should have access to all information necessary for their functions. The committees should adopt procedures to protect the privacy of subjects of files maintained by the F.B.I. and other agencies affected by the domestic intelligence recommendations.

Attorney General Oversight of the F.B.I.

Recommendation 69—The Attorney General should:

(a) Establish a program of routine and periodic review of F.B.I. domestic security investigations to ensure that the F.B.I. is complying with all of the foregoing recommendations, and

(b) Assure, with respect to the following investigations of Americans, that:

(1) Preventive intelligence investigations of terrorist activity or hostile foreign intelligence activity are terminated within one year, except that the Attorney General or his designee may grant extensions upon a written finding of "compelling circumstances";

(2) Covert techniques are used in preventive intelligence investigations of terrorist activity or hostile foreign intelligence activity only so long as necessary and not beyond time limits established by the Attorney General, except that the Attorney General or his designee may grant extensions upon a written finding of "compelling circumstances."

(3) Civil disorders assistance is terminated upon withdrawal of Federal troops or, if troops were not introduced, within a reasonable time after the finding by the Attorney General that troops are likely to be requested, except that the Attorney General or his designee may grant extensions upon a written finding of "compelling circumstances."

Recommendation 70—The Attorney General should review the internal regulations of the F.B.I. and other intelligence agencies engaging in domestic security activities to ensure that such internal regulations are proper and adequate to protect the constitutional rights of Americans.

Recommendation 71—The Attorney General or his designee (such as the Office of Legal Counsel of the Department of Justice) should advise the general counsels of intelligence agencies on interpretations of statutes and regulations adopted pursuant to these rec-

ommendations and on such other legal questions as are described below.

Recommendation 72—The Attorney General should have ultimate responsibility for the investigation of alleged violations of law relating to the domestic intelligence recommendations.

Recommendations 73—The Attorney General should be notified of possible alleged violations of law through the Office of Professional Responsibility by agency heads, general counsel or inspectors general of intelligence agencies.

Recommendation 74—The heads of all intelligence agencies affected by these recommendations are responsible for the prevention and detection of alleged violations of the law by or on behalf of their respective agencies and for the reporting to the Attorney General of all such alleged violations. Each such agency head should also assure his agency's cooperation with the Attorney General in investigation of alleged violations.

Recommendation 75—The F.B.I. and each other intelligence agency should have a general counsel, nominated by the President and confirmed by the Senate, and an inspector general appointed by the agency head.

Recommendation 76—Any individual having information on past, current or proposed activities which appear to be illegal, improper or in violation of agency policy should be required to report the matter immediately to the agency head, general counsel or inspector general. If the matter is not initially reported to the general counsel he should be notified by the agency head or inspector general. Each agency should regularly remind employees of their obligation to report such information.

Recommendation 77—As provided in Recommendation 74, the heads of the F.B.I. and of other intelligence agencies are responsible for reporting to the Attorney General alleged violations of law. When such reports are made the appropriate Congressional committees should be notified.

Recommendation 78—The general counsel and inspector general of the F.B.I. and of each other intelligence agency should have unrestricted access to all information in the possession of the agency and should have the authority to review all of the agency's activities. The Attorney General of the Office of Professional Responsibility, on his behalf, should have access to all information in the possession of an agency which, in the opinion of the Attorney General, is necessary for an investigation of illegal activity.

Recommendation 79—The general counsel of the F.B.I. and of each other intelligence agency should review all significant proposed agency activities to determine their legality and constitutionality.

Recommendation 80—The director of the F.B.I. and the heads of each other intelligence agency should be required to report at least annually, to the appro-

private committee of the Congress on the activities of the general counsel and the Office of the Inspector General.

Recommendation 81—The director of the F.B.I. and the heads of each other intelligence agency should be required to report, at least annually, to the Attorney General on all reports of activities which appear illegal, improper, outside the legislative charter or in violation of agency regulations. Such reports

should include the general counsel's findings concerning these activities, a summary of the inspector general's investigations of these activities and the practice and procedures developed to discover activities that raise questions of legality or propriety.

Office of Professional Responsibility

Recommendation 82—The Office of Professional Responsibility created by Attorney General Levi should be recognized in statute. The director of the office, appointed by the Attorney General, should report directly to the Attorney General or the Deputy Attorney General. The functions of the office should include:

Attorney General, should report directly to the Attorney General or the Deputy Attorney General. The functions of the office should include:

(a) Serving as a central repository of reports and notifications provided the Attorney General, and

(b) Investigation, if requested by the Attorney General, of alleged violations by intelligence agencies of statutes enacted or regulations promulgated pursuant to these recommendations.

Recommendation 83—The Attorney General is responsible for all of the activities of the F.B.I., and the director of the F.B.I. is responsible to, and should be under the supervision and control of, the Attorney General.

Recommendation 84—The director of the F.B.I. should be nominated by the President and confirmed by the Senate to serve at the pleasure of the President for a single term of not more than eight years.

Recommendation 85—The Attorney General should consider exercising his power to appoint assistant directors of the F.B.I. should be nominated by the should be imposed on the tenure of the assistant director for the Intelligence Division.

Recommendation 86—The Attorney General should approve all administrative regulations required to implement statutes created pursuant to these recommendations.

Recommendation 87—Such regulations, except for regulations concerning investigations of hostile foreign intelligence activity or other matters which are properly classified, should be issued pursuant to the Administrative Procedures Act and should be subject to the approval of the Attorney General.

Recommendation 88—The effective date of regulations pertaining to the following matters should be delayed 90 days, during which time Congress would have the opportunity to review such regulations:

(a) Any C.I.A. activities against Americans, as permitted above;

(b) Military activities at the time of a civil disorder;

(c) The authorized scope of domestic security investigations, authorized investigative techniques, maintenance and dissemination of information by the FBI, and

(d) The termination of investigations and covert techniques as described [above].

Recommendation 89—Each year the F.B.I. and other intelligence agencies affected by these recommendations should be required to seek annual statutory authorization for their programs.

Recommendation 90—The Freedom of Information Act (5 U.S.C. 552 (b)) and the Federal Privacy Act (5 U.S.C. 552 (a)) provide important mechanisms by which individuals can gain access to information on intelligence activity directed against them. The domestic intelligence recommendations assume that these statutes will continue to be vigorously enforced. In addition, the Department of Justice should notify all readily identifiable targets of past illegal surveillance techniques and all Cointelpro victims and third parties who had received anonymous Cointelpro communications of the nature of the activities directed against them or the source of the anonymous communication to them.

Recommendation 91—Congress should enact a comprehensive civil remedies statute which would accomplish the following:

(a) Any American with a substantial and specific claim to an actual or threatened injury by a violation of the Constitution by Federal intelligence officers or agents acting under color of law should have a Federal cause of action against the Government and the individual Federal intelligence officer or agent responsible for the violation, without regard to the monetary amount in controversy. If actual injury is proven in court, the committee believes that the injured person should be entitled to equitable relief, actual, general and punitive damages and recovery of the costs of litigation. If threatened injury is proven in court, the committee believes that equitable relief and recovery of the costs of litigation should be available.

(b) Any American with a substantial and specific claim to actual or threatened injury by violation of the statutory charter for intelligence activity (as proposed by these domestic intelligence recommendations) should have a cause of action for relief as in (a) above.

(c) Because of the secrecy that surrounds intelligence programs, the committee believes that a plaintiff should

have two years from the date upon which he discovers or reasonably should have discovered the facts which give rise to a cause of action for relief from a constitutional or statutory violation.

(d) Whatever statutory provision may be made to permit an individual defendant to raise an affirmative defense that he acted within the scope of his official duties, in good faith and with a reasonable belief that the action he took was lawful, the committee believes that to insure relief to persons injured by governmental intelligence activity this defense should be available solely to individual defendants and should not extend to the Government. Moreover, the defense should not be available to bar injunctions against individual defendants.

Criminal Penalties Should Be Enacted

Recommendation 92—The committee believes that criminal penalties should apply, where appropriate, to willful and knowing violations of statutes enacted pursuant to the domestic intelligence recommendations.

Recommendation 93—Congress should either repeal the Smith Act (18 U.S.C. 2385) and the Voorhis Act (18 U.S.C. 2386), which on their face appear to authorize investigation of "mere advocacy" of a political ideology, or amend those statutes so that domestic security investigations are only directed at conduct which might serve as the basis for a constitutional criminal prosecution under Supreme Court decisions interpreting these and related statutes.

Recommendation 94—The appropriate committees of the Congress should review the Espionage Act of 1917 to determine whether it should be amended

to cover modern forms of foreign espionage, including industrial, technological or economic espionage.

Recommendation 95—The appropriate Congressional oversight committees of the Congress should, from time to time, request the Comptroller General of the United States to conduct audits and reviews of the intelligence activities of any department or agency of the United States affected by the Domestic Intelligence Recommendations. For such purpose, the Comptroller General or any of his duly authorized representatives should have access to, and the right to examine, all necessary materials of any such department or agency.

Recommendation 96—The committee re-endorses the concept of vigorous Senate oversight to review the conduct of domestic security activities through a new permanent intelligence oversight committee.

Definitions

For the purposes of these recommen-

dations:

- A. "Americans" means U.S. citizens, resident aliens and unincorporated associations, composed primarily of U.S. citizens or resident aliens; and corporations, incorporated or having their principal place of business in the United States or having majority ownership by U.S. citizens, or resident aliens, including foreign subsidiaries of such corporations, provided, however, "Americans" does not include corporations directed by foreign governments or organizations.
- B. "Collect" means to gather or initiate the acquisition of information or to request it from another agency.
- C. A "covert human source" means undercover agents or informants who are paid or otherwise controlled by an agency.
- D. "Covert techniques" means the collection of information, including collection from record sources not readily available to a private person (except state or local law enforcement files), in such a manner as not to be detected by the subject.
- E. "Domestic security activities" means governmental activities against Americans or conducted within the United States or its territories, including enforcement of the criminal laws, intended to:
1. Protect the United States from hostile foreign intelligence activity including espionage;
 2. Protect the Federal, state and local governments from domestic violence or rioting, and
 3. Protect Americans and their Government from terrorists.
- F. "Foreign communications" refers to a communication between or among two or more parties in which at least one party is outside the United States or a communication transmitted between points within the United States if transmitted over a facility which is under the control of or exclusively used by a foreign government.
- G. "Foreigners" means persons and organizations who are not Americans as defined above.
- H. "Hostile foreign intelligence activities" means acts or conspiracies by Americans or foreigners who are officers, employees or conscious agents of a foreign power or who, pursuant to the direction of a foreign power, engage in clandestine intelligence activity or engage in espionage, sabotage or similar conduct in violation of Federal criminal statutes.
- I. "Name checks" means the retrieval by an agency of information already in the possession of the Federal Government or in the possession of state or local law enforcement agencies.
- J. "Overt investigative techniques" means the collection of information readily available from public sources or available to a private person, including interviews of the subject or his friends or associates.
- K. "Purged" means to destroy or transfer to the National Archives all personally identifiable information (including references in any general name index).
- L. "Sealed" means to retain personally identifiable information and to retain entries in a general name index but to restrict access to the information and entries to circumstances of "compelling necessity."
- M. "Reasonable suspicion" is based upon the Supreme Court's decision in the case of Terry v. Ohio, 392 U.S. 1 (1968), and means specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion that specified activity has occurred, is occurring or is about to occur.
- N. "Terrorist activities" means acts, or conspiracies which: (a) are violent or dangerous to human life; and (b) violate Federal or state criminal statutes concerning assassination, murder, arson, bombing, hijacking or kidnapping; and (c) appear intended to or are likely to have the effect of:
- (1) Substantially disrupting Federal, state or local government, or
 - (2) Substantially disrupting interstate or foreign commerce between the United States and another country, or
 - (3) Directly interfering with the exercise by Americans of constitutional rights protected by the Civil Rights Act of 1968, or by foreigners of their rights under the laws or treaties of the United States.
- O. "Unauthorized entry" means entry unauthorized by the target.