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**INVESTIGATING THE INTELLIGENCE APPARATUS**



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simple economics of the matter must be given consideration. Figures distributed at the World Food Conference show that in both industrialized and dependent-underdeveloped nations planned economies have had higher growth rates in food production than have market economies.

The relationship of their decisions to the class structures of these societies is also significant. The future of the Sahel cannot be shaped solely by the urban elite classes which now govern. The choices must be made by the people of the region as a whole. This is not to say that the government cannot represent the needs and wishes of the people; rather, it is to suggest that it must.

The people of the Sahel must consider carefully how they are to apply the economic surplus created by their labors. They must face the imperative that, if there is to be economic development, the surplus cannot continue to be confiscated by the elite classes. Once that is determined, decisions can be made as to what sort of economic development model they wish to follow.

While they've been told that the Western industrial model, with its centralization, urbanization and capital-intensive technologies, is the only one for a modern nation to follow, the people of the Sahel may well deem it totally inappropriate to their needs. They may find that cultivating nonsubsistence cash crops is not the best disposition of agricultural land or labor; that they would be better advised to grow grains such as sorghum and millet which could be converted to domestic consumption as well as exported.

One last consideration relates to the concept held by these Sahelian countries of the sovereignty of the nation-state and its relations with other nation-states. The present division of states in the Sahel is arbitrary,

the boundaries having been drawn for the convenience of colonial administration. Many of the Sahelian states have very little economic potential, given their meager mineral resources, hostile climates and geography (four of the six are landlocked). This leaves a nation such as Upper Volta in rather desperate circumstances, regardless of the decisions it makes concerning its future.

It seems fair to say that many of these nations cannot achieve development along the lines of any model without a closer cooperation with other dependent-underdeveloped nations in the region and around the world. If the industrialized nations cannot or will not help them, they must help one another to break the ensnarement of chronic dependence and underdevelopment and improve their lives collectively.

These points having been made, it must be said that decisions regarding the development and future of the Sahel must be made by the people of the region themselves, for they must live with their decisions or perhaps die in attempting to create a society they envision as their own. No solution can be imposed by international organizations or intellectuals from the industrialized nations, however well-intentioned they might be.

That does not relieve the industrialized countries of a moral responsibility to help the people of the Sahel; on the contrary, the industrialized nations should do all that they can. But it does emphasize that the Sahelian nations should not count on the help of the industrialized nations as their only hope, for if they do they are likely to be disappointed.

For the people of the industrialized nations the first step toward helping the people of the Sahel is to understand their plight—that their misery is not merely the result of nature gone mad but of past and present history as well. Actions will follow from that understanding. □

## MEMOS TO THE CHAIRMEN

### The Issue, of Course, Is Power

FRANK J. DONNER

The following observations are set down for possible consideration by the select committees of the Senate and the House, appointed to study the intelligence activities of various agencies and branches of the government. They are also respectfully called to the attention of Vice President Rockefeller, assigned by President Ford to head an Executive panel investigating intelligence activities by U.S. agencies.

(1) The key question of course is one of power. The statute creating the CIA in 1947 is extraordinarily vague. It seems fair to say that never has a single government agency been granted so much power with so few meaningful standards and restraints. The most notable

example of its vagueness is perhaps the failure to define the term "intelligence activities." It would appear from the legislative history that Congress thought this referred exclusively to passive data collection, worlds away from the aggressive covert practices which subsequently became the CIA's trademark. The agency is barred, as everybody now knows, from "internal security functions." Congress intended to proscribe secret political police practices on our shores, but surely there are more precise ways of conveying this purpose. The very section which seems to bar internal security functions authorizes the director to protect "intelligence sources and methods from unauthorized disclosure." Was this proviso intended

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to offer an escape hatch from the prohibition to which it is attached?

(2) That the CIA flouted the Congressional intent is hardly open to question. "Flouted" is precisely the word. For example, after the widespread furor in the early months of 1967, in the wake of the disclosure of the CIA's Covert Action Division program of hidden subsidies to some thirty-nine American organizations over a period of seventeen years—after the admissions of impropriety and the hand wringing—the Johnson administration *in the summer of that same year* used the CIA for domestic operations against the anti-war movement. Dean Rusk, whose memory has now become conveniently vague on the subject, regularly attacked the movement as foreign-influenced, presumably on the basis of CIA data collected by a new unit formed within its counterintelligence department "to look into the possibility of foreign links to American dissident elements." In 1970-71 the Nixon administration commissioned the CIA to turn up evidence of foreign influence not only on the anti-war movement but on the entire New Left and black militancy. It would not take much digging to discover that since 1967 the CIA has pursued a virtually uninterrupted course of domestic intelligence operations. This pattern is not uniform; when the FBI broke with the CIA in 1970, the operational activities of the CIA intensified in this country. A particularly rich source of local operations were the "contract" employees, especially the pro-Castro Cubans in Florida and Los Angeles. Also, there is evidence of a chain of "proprietary fronts," businesses set up by the CIA for intelligence purposes.

(3) As the statute now stands, the director of the CIA has almost unrestrained and unreviewed power to determine the nature and scope of its operations. Indeed, this vagueness in the delegation of power was deliberate: it was central to Allen Dulles' format for the new agency. The CIA's legislative warrant creates the very "government of men" which the founders of the Republic feared. The CIA's abuses of power over the years attest to the wisdom of a "government of laws" and the dangers of entrusting decision making to the values and policies of powerful individuals, themselves captives of the mystique of intelligence.

However clumsily Congress may have originally expressed itself, it is incontestable that it did not intend to create in the CIA the autonomous power system it seems to have become. The emergence and growth of an independent organ of state administration to monitor the opinions and political activities of a country's nationals are among the hallmarks of a police state. The CIA was created to assemble and evaluate data as an aid in the formulation of policy and the making of decisions by agencies of government (the National Security Council, the State Department and the White House) charged with substantive responsibilities.

(4) There is an observable pathology in the process by which intelligence agencies enlarge their powers. For more than three decades Director J. Edgar Hoover maintained that the FBI had been entrusted by a Presidential

directive of September 1939 with an open-ended intelligence mission unrelated to law enforcement. When Director Kelley took over in 1973, this claimed Magna Carta for domestic political intelligence was all but abandoned. Similarly, the bureau's political filing practices were justified by an invented intelligence mandate, until the Congress, by a recent statute, required a law-enforcement justification. In the same way, despite the austere language of the Constitution limiting the Army's role in civilian affairs, military intelligence developed a vast civilian surveillance capability, wholly unrelated to its narrow mission of responding to a call-out when, in the judgment of the President, such action was warranted.

(5) The reasons for expansion of domestic intelligence beyond its intended limits are evident. To begin with, intelligence operations typically become the responsibility of zealots, men who are committed to the long twilight struggle. Further, the intelligence process itself is inherently subject to abuse: one investigates in order to discover whether there is a need to investigate. Every activity of the target, however legitimate and indeed constitutionally protected, is treated with suspicion and monitored: who knows, it may be a vital piece in a sinister not-yet-revealed subversive design. Since, in the intelligence mind, the stakes are so large—our very survival as a nation—overkill is almost deliberate. Ultimately, the intelligence institution exploits reasons of state to achieve autonomy and, by a parallel process, its operations become ends in themselves. The goal of collecting information is transformed into one of doing injury to the target.

(6) The great *idée fixe* of the intelligence mind is that domestic protest and dissent ("agitation") are the fruits of foreign plotting and direction. Intelligence functionaries and agents in other countries are amused by the readiness of their American counterparts to justify their domestic practices as defensive, "counterintelligence." All sorts of domestic intelligence programs in this country, whatever the motivation or authority, are automatically labeled "counterintelligence." This not only avoids the stigma of affirmatively initiating a program of spying on one's own nationals but evades problems of authorization and constitutionality. For example, in the 1972 *Keith* case the Supreme Court ruled that domestic wiretapping for intelligence purposes (as opposed to law enforcement) was subject to the warrant requirements of the Fourth Amendment. The Department of Justice, overnight, ascribed to its electronic eavesdropping a "foreign intelligence" justification which had been excluded from the scope of the Court's decision. One can see this form of rationalization at work in the report by the Saxbe committee on the FBI's counterintelligence programs (COINTELPROs). The document, released in November 1974, justifies the most aggressive instances of counterintelligence, a program conducted for some fifteen years against nominal Communists, on the ground that it "was conceived as a 'counterintelligence' effort in the purest sense." The targets, the report argued, were embryonic foreign spies and saboteurs. The other six COINTELPROs were presumably also defensive initiatives against foreign plotters—but in some less pure sense. Attorney

General Petersen thought so highly of this formulation that, when he retired at the beginning of this year, he used the report's conclusions as a warning against overreacting to the CIA's domestic efforts. In the same way the Army's enormous computerized domestic intelligence filing operation at Fort Holabird, with its 100,000 subjects was called the "Counterintelligence Analysis Branch," the allegation being that it was merely monitoring the activities of foreign intelligence agents.

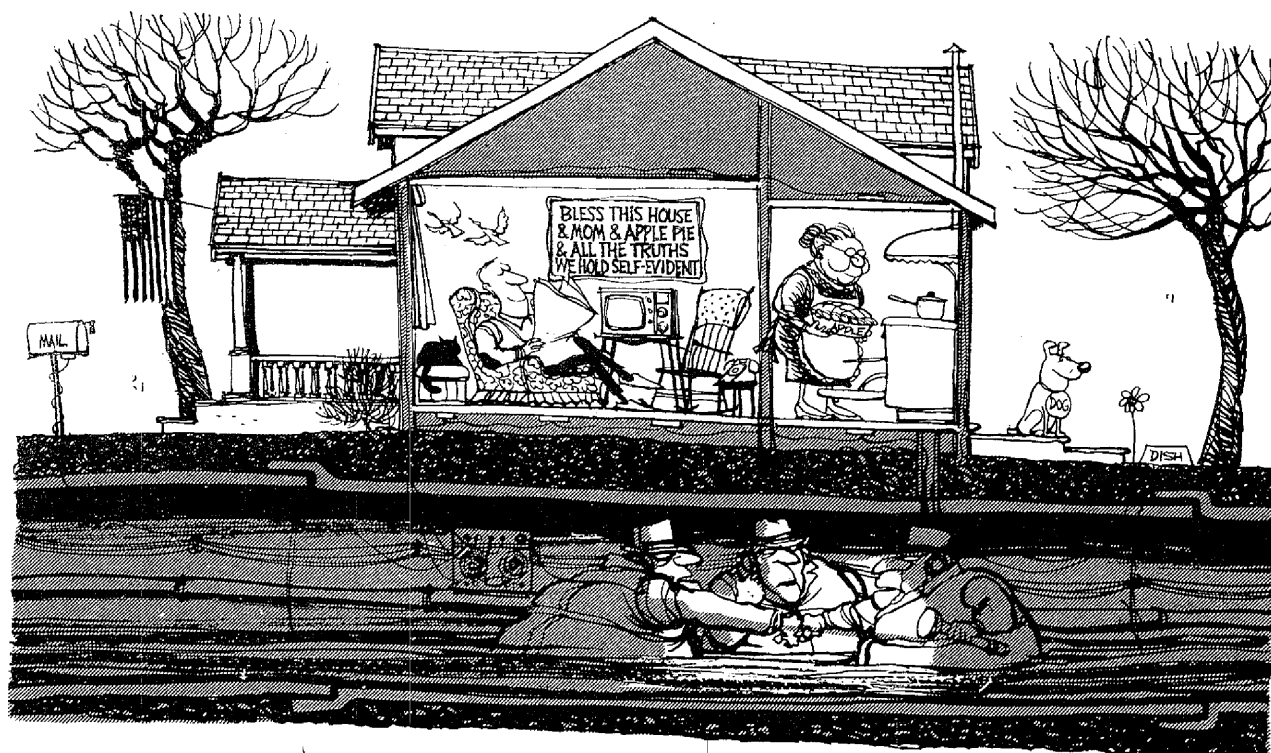
A super-secret FBI counterintelligence program was designated "Special Operations." The full details of this program were withheld when facts about the other counterintelligence programs were made public, on the ground that it dealt with the intelligence activities of a hostile foreign power. But the three documents which were released bearing the file caption of this program deal with the Black Panthers—hardly, whatever one may say about them, the intelligence agents of a foreign power. Similarly, campus informers and ghetto plants of the bureau were in the late 1960s and early 1970s regularly instructed to look for evidence of foreign collaboration in the activities of their targets.

(7) The 1947 CIA statute simply permits other intelligence agencies to continue domestic data collection. This provision is as tricky as the "intelligence sources and methods" provision already discussed. Did this backhandedly authorize the FBI to engage in practices which are not spelled out in any other more direct mandate to the bureau? It is becoming fairly clear, although Director Kelley is not giving up without a struggle, that the FBI has no ongoing intelligence responsibilities unrelated to law enforcement, at least in the area of domestic intelligence. But the bureau still insists that it is charged with a foreign intelligence responsibility with re-

spect to such matters as the actions of foreign agents and other domestic "subversive activities" with a foreign dimension. In this area, too, we may need corrective or clarifying legislation.

(8) The domestic investigation of political activities by the bureau has been justified either on law-enforcement or intelligence grounds. The Nixon administration developed the thesis that political investigations for intelligence purposes could be more intrusive and hostile to constitutional rights than could an investigation for purposes of law enforcement. This position emerged from the cold war, but Attorney General Mitchell elevated it to the level of a principle. Under this formulation a bomb-laden terrorist under criminal investigation could not be made the subject of a wiretap without the protection of the warrant procedures of Title III of the 1968 law. But an individual merely suspected of "subversive activities" could be electronically monitored with no concern for his rights. There is one case described in an affidavit submitted by Attorney General Saxbe in a lawsuit (March 18, 1974) of a wiretap which was commenced on October 24, 1942, and not discontinued until February 10, 1967. This marathon surveillance was targeted against "an organization whose activities were controlled" by another organization composed of citizens of the United States but, according to the affidavit, dominated by an organization acting on behalf of a foreign power. Bear in mind that for twenty-five years all of this target's outgoing and incoming calls to and from whatever party were recorded, logged and filed. What intelligence purpose was served by such a massive invasion of both privacy and free expression?

(9) There is an understandable fear that members



"Hi, Ferguson, FBI" . . . "Oh, Hi, Kelley, CIA . . . Meet Wilson, Phone Company" . . . "Hi."

Oliphant, The Denver Post

of Congress have been made special targets of surveillance and filing practices. But the answer to this well-documented abuse is certainly not to immunize legislators, *ex officio*, as it were, from FBI investigation. The nation was shocked when evidence emerged that Acting Director L. Patrick Gray III protected the Nixon administration from the bureau's Watergate investigation. It will not do to shelter members of Congress from legitimate bureau investigations. What is imperatively needed is a precise formulation of the bureau's investigative jurisdiction, of its authority for *all* data collection. A recent case in point demonstrates the necessity. After the director retreated from the claim that his bureau had an ongoing intelligence jurisdiction unrelated to law enforcement, he continued his former practices but simply changed the justification. Although the Young Socialist Alliance had programmatically rejected violence and, indeed, expelled advocates of violence, the bureau justified infiltrating its convention in December 1974, on the ground that the YSA might conceivably, at some future time, engage in criminal violence and that the bureau's law-enforcement responsibilities required such infiltration as a preventive measure. Not only were rights of the convention attendants violated but the courts were deceived by this strained interpretation.

(10) It will be quite difficult, if not impossible, to impose meaningful positive standards on the operations of an intelligence agency. A far more realistic course would be to state in unequivocal language what an agency may not do. Senator Ervin introduced such a measure, barring the military from the civilian surveillance area, but it died in the past session of Congress.

(11) A precisely worded quarantine of forbidden areas and practices is imperative for another reason. Every intelligence agency rapidly substitutes for its mandate a "mission." The mission, a key intelligence concept, is a grandiose, ideologized reinterpretation by the agency of its responsibilities; it leads both to abuse of power and to competition with other agencies.

(12) The CIA is a member of an intelligence community in the fields of both foreign and domestic intelligence. Especially over the past decade, surveillance operations, the development and storage of files and dossiers, have become a collaborative endeavor by a constellation of federal, state and urban agencies. An agency that is barred by its mandate or lack of funds from a particular area of domestic intelligence enters into a liaison relationship with other units with a similar or overlapping mission for the purpose of exchanging data, operational information and files. Liaison relationships are not casual or optional aspects of intelligence but functional. (This happens all over the world; the British describe it by the verb "to liaise.") Thus, when intelligence agencies are not cutting each other's throats in the competition for funding and power, they are borrowing each other's capability to accomplish indirectly what they are barred from doing directly.

(13) The Congressional mandate authorizes the select

committees to explore the need for "improved, strengthened or consolidated oversight" of domestic intelligence activities. This problem should have top priority. Neither the existing oversight panels nor the President's commission can effectively probe the abuses of the CIA and its sister agencies in the domestic field. The precedent for Executive oversight is President Johnson's three-man committee headed by Under Secretary of State Nicholas DeB. Katzenbach, which took less than six weeks to return its emollient conclusions. The pattern of legislative response when the CIA comes under attack has been marked by a curious protectiveness. The committee chairman summons the elders of the agency and accepts their justification for its conduct. There is no real will to get at the facts. One is reminded of the tear-stained boy who pleaded with Shoeless Joe Jackson at the time of the Black Sox scandals to "Say it ain't so, Joe." But it is time for Congress to come to terms with fundamentals: given a residual ambiguity even in a well-drafted statute, the power of the director, the secrecy of the operation and the ease with which oversight committees are co-opted, abuses are inevitable and, indeed, will increase. The intelligence functionaries know that in a democracy storms of criticism periodically strike their sanctuaries. The trick is to hibernate, to confess error, but to survive until the climate changes.

(14) The Watergate and military intelligence investigations, both directed by Senator Ervin, show that Congress can do an effective job of getting at the roots of sensitive and factually complicated problems. But fruitful investigation requires careful preparation and a competent staff. An intelligence agency operating in a politically sensitive area makes certain of its cover in advance, a claim to authorization if the operation is blown—in Malcolm Muggeridge's words, "like those iron staircases in case of fire that one sees outside brownstone houses in New York." While it may not have taken much to activate the CIA's domestic surveillance, the agency almost certainly received a signal from some higher authority—not in writing, of course, but in some form. In fact, the evidence is clear that every administration since that of Eisenhower has either authorized or ratified CIA domestic intelligence operations.

(15) The investigation of domestic intelligence practices is child's play compared to a probe of the CIA's covert actions abroad, and there is a particular reason why the two areas should be studied in separate stages of any investigation. The committees should strive to make public as much information as is possible without compromising matters which have a colorable claim to

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secrecy. It would be unfortunate if foreign-related considerations were used to screen from public view information about domestic activities which have no valid claim to secrecy. Yet, if the past is a guide, the danger of such a cover-up is great.

(16) Finally, there is no point even starting without planning to call the insiders, the kinds of people who have contributed to the success of every important Congressional investigation. The committees need to hear testimony from agency staffers, whether now employed or retired. But they must evaluate the testimony, from whatever source, in the light of today's world. A vast intelligence bureaucracy, rooted in the needs and assumptions

of the 1940s, is threatened by heaving historic changes—not only in the world political situation but in the very techniques of data collection. The persons involved will go to great lengths to conform reality to their ideological biases and occupational needs. What legitimate governmental purpose should intelligence, both domestic and foreign, serve? A sound answer to that question will give needed perspective to the problems of authority, coordination, operations and data evaluation.

In a post-Watergate America theories of inherent Executive power can no longer serve to justify secret intelligence baronies either at home or abroad. But does Congress have the will and resources to forge a legitimate alternative? □

## Some Questions to be Answered

JO POMERANCE

With remarkable dispatch and virtual unanimity, the new Congress has determined to investigate the operations of the FBI and the CIA (along with related operations that make up the so-called intelligence establishment). By a vote of 82 to 4, the Senate has established an eleven-member panel and named Sen. Frank Church as chairman. As Senate committees go, this one is good: from the Democratic side, Mondale, Huddleston, Morgan, Philip Hart and Gary Hart and Church; from the Republican, Schweiker, Baker, Mathias, Tower and Goldwater. In the House, Democratic policy makers have recommended a ten-member committee of the same type. Rep. Phillip Burton is quoted as saying that sentiment favoring creation of such a committee was nearly unanimous. Then, of course, a commission named by President Ford and chaired by Vice President Rockefeller is now conducting an inquiry; it is made up for the most part of individuals with strong ties to the intelligence establishment. But as William Greider points out in *The Washington Post*, "the circus now has three rings—select committees on intelligence in both the House and Senate, plus the Presidential CIA commission." In itself, this would seem to insure a thorough investigation. Vice President Rockefeller is said to have complained bitterly about the election of Frank Church as chairman of the Senate committee and to feel that there is little prospect for cooperation between the commission he heads and the Senate committee. But what is needed is not so much cooperation as a close check by the Senate committee on the findings and report of the commission.

More important, as Tom Wicker notes in *The New York Times*, "There will never be a better time or a more sympathetic public attitude for finding out the truth, fixing responsibility for abuses, and fashioning

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safeguards to protect American citizens against their own government." The Watergate investigations, hearings and trials have created the ideal setting for such inquiries. In addition, the mandate of the committees—to investigate the operations of the FBI and the CIA—justifies a broad range of inquiry. And the tensions between the committees and the commission could produce some testimony that might otherwise be difficult to unearth. For example, Richard Helms has let it be known that, if he is made the scapegoat, he will have a lot to say. So a fine opportunity exists, beyond curbing and disciplining the intelligence establishment, to clarify some issues that have been the subject of continuous controversy and concern since the assassination of President John F. Kennedy. This opportunity must not be lost. It is perhaps too much to expect that these issues can ever be resolved to the complete satisfaction of the entire public, but the fact that a large majority continues to be deeply troubled by them demonstrates the need for clarification. What, then, are these issues?

The first of them can be defined in this way: was Lee Harvey Oswald at any time an informer, paid or unpaid, for the FBI? If not an informer, was he a contact? Did he have any connection with the agency or any of its agents? Thanks to the persistence of Harold Weisberg, the National Archives and Records Service of the General Services Administration has now released the heretofore classified transcript of a special executive session of the Warren Commission held on January 27, 1964 (see *Whitewash IV: Top Secret, JFK Assassination Transcript* by Harold Weisberg, 1974). The special executive session had been hurriedly called by the chairman to discuss an article which had just then appeared in *The Nation*—"Oswald and the FBI" by Harold Feldman (January 27, 1964). The modest premise of the article was that the Warren Commission, in addition to telling the public how President Kennedy was killed, who killed him and why, should tell us if the FBI or any other government intelligence agency was in any way connected "with the alleged assassin, Lee Harvey Oswald." The article then went on to cite evidence and reports indicating that



Oswald might have been an informer for the FBI. In retrospect, it is remarkable that such a simple proposition should have agitated the commission to the extent that it did. The entire transcript of this session is devoted to a discussion of how to treat with—what to do about—this report. The discussion is most revealing; it shows, for example, the awesome respect for J. Edgar Hoover that prevailed at that time.

No point would be served here in detailing the discussion that took place at this executive session of the commission. The transcript is now available—ten years later. Reasonable men and women will interpret the discussion and subsequent proceedings differently, but on two points there should be agreement. One is that the commission, within the inherent limitations it faced, did in fact investigate the report. Affidavits were obtained from Hoover and nine FBI officials to the effect that Oswald was never an informer for the agency. The commission also heard from Dallas law-enforcement officials of reports they had received that Oswald might have been an informer. On the basis of the limited investigation that it was able to conduct, the Warren Commission and staff were satisfied that Oswald had not been an informer or agent of the FBI. But the record does not entirely dispose of the report; there are some loopholes. In fairness it should be noted that the Warren Commission was not set up to investigate the FBI; it had a specific and limited mandate. Moreover, it had to rely, for the most part, on FBI personnel for field investigations; it did not have a full investigative staff of its own.

Although members of the commission reflected an awareness that, regardless of the facts, blanket *pro forma* denials might be expected from the FBI (Allen Dulles even suggested that for this reason it might be impossible to determine the issue), Hoover and the other FBI officials who had furnished affidavits were not called before the commission, placed under oath and closely questioned. In addition there were contradictions and inconsistencies that should have been but never were clarified. And there were some quirky details; a page from Oswald's telephone address book, referring to an FBI agent named Hosty, was withheld until a specific request was made to produce it. But the real difficulty arises from the fact that the Warren Commission was not in a position to pursue the kind of inquiry that Congressional committees can conduct, nor did it have the benefit of the long series of recent disclosures about how the FBI and the CIA operate in certain areas, nor did it have the grounds which exist today for questioning the credibility of blanket denials of the kind it received. One does not need to share the point of view of those who have been critical of the Warren Commission to realize that the record it made on this issue does need clarification. Not to attempt that clarification now, when the circumstances are most favorable to a full airing, would be a mistake.

To the same effect, the committees should find out what if any ties, as informers, contract employees, "contacts" or otherwise, some of the key individuals who figured in reports of the assassination tragedy had with the CIA. Reports of such connections have been

widely publicized over the last ten years. The cast is well known. Merely to illustrate: Victor Marchetti has been quoted as saying that at regular 9 A.M. staff meetings of CIA senior officials and executive assistants, which were attended by Richard Helms as director, the case of Clay Shaw, who had figured in James Garrison's investigation, was discussed on several occasions in the context of "Are we giving him all the help he needs?" From these discussions Marchetti got the impression that Shaw had been at one time, quite some years earlier, an agency contact when he was in the export-import business. This report should be thoroughly tested by putting Helms and others under oath and learning just what contacts if any Shaw had with the agency and when.

Again, merely by way of illustration, the committees should, in open public hearings, find out the truth about the "small secret army" of Cuban anti-Castro refugees that the CIA funded to the tune of \$2 million a year. In the period from 1960 to 1970 this group, known as "Operation 40"—it grew out of the Bay of Pigs fiasco—engaged in a series of activities that should be aired, if only as a sample of the dangerous operations unsupervised intelligence agencies have initiated, sponsored and funded (see story by George Volsky, *The New York Times*, January 4, 1975). Also, inquiry should be made as to what contacts *any* of the key figures in the assassination tragedy, including Oswald, Shaw and others, ever had, at *any* time, with elements of the "small secret army" and/or the CIA. Again merely by way of illustration: it has been reported that Lieut. Manuel Pena resigned from the Los Angeles police in 1967 to accept a position with the Agency for International Development, said to be used by the CIA as an agency to train foreign police officers. Pena, according to these reports, actually took training at the CIA headquarters at McLean, Va. One month before the assassination of Robert F. Kennedy, Pena was back with the Los Angeles police, and was assigned by Assistant Police Chief Robert Houghton to direct a team known as "Special Unit Senator," which was set up to investigate the death of Senator Kennedy. In his book of that title, Houghton points out that Pena was thought qualified for the assignment because he had had "connections with various intelligence agencies in several countries." Just what were Pena's contacts with the CIA? And to what extent did that agency cooperate with local police, and vice versa? Over what period of time? In what kinds of investigation?

Other illustrations of the same sort might be cited, but enough is generally known—many aspects of the events in question have been widely publicized in the press—to warrant the conclusion that the Congressional committees, as part of the inquiry into the operations of the FBI and the CIA, should investigate: first, what if any ties any of those who have been identified in this voluminous documentation had with the two agencies under investigation. And, second, what kinds of role these agencies played in the subsequent investigations of the two assassinations. In particular, did they promptly disclose all that they knew; with what degree of diligence did they scrutinize any of their activities that might have a bearing on the investigations? In general, what role did they play in these subsequent investigations? □