Soldier, Agent, Tax Man, Spy

Post 2/2/75

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THE SEPARATE scandals, as they became known one by one, read like a first rough draft of "1984."

The U.S. Army was uptight about Oleo Strut, a GI coffeehouse outside Ft. Hood, Tex., and so Oleo Strut was put under surveillance by military intelligence agents.

The FBI, among other things, was busy trying to penetrate the Black Student Union at Pennsylvania Military College, a quiet campus in Chester, Pa.

The IRS was scanning the tax returns of the Cummings Engine Foundation, looking for violations because that tax-exempt foundation gave some money to black activists and New Left theoreticians.

The CIA, which is supposed to gather intelligence on foreign powers, instead was trailing columnist Jack Anderson and his staff.

Those disjointed fragments are now beginning to form a more coherent picture: over the past eight years, the American government devoted enormous energy to a secret activity—spying on American citizens. It was done with videotape cameras and electronic bugs, with undercover agents and paid informers, with fancy computers and with the tacit consent or even encouragement of two Presidents from both political parties.

As usual, Sam Ervin, the retired senator from North Carolina, said it well: Unfortunately, in the heat of political crisis, government and the men that wield its power become frightened by opinions they dislike. Their reaction is to combat those views by any power they have at hand — except the power of better ideas and better government."

The Fear Reflex

HOW DID IT happen? What is to prevent its happening again? If the new congressional committees on intelligence seriously confront the complex history of these episodes, they will find that the most important questions are still largely unanswered.

The issues of legality which surround government surveillance are at best unsettled and, even now, civil libertarians argue that there is no firm legal barrier to prevent similar controversies if the nation finds itself in a future period of domestic turmoil.

What is the long-term danger? It may sound melodramatic to invoke the image of George Orwell's "1984." And yet, if society fails to punish political spying or to build strong preventives into the law, it is easy

enough to envision the eventual acceptance of these practices as legitimate activities, not just in times of social stress, but always. That path would surely lead to a society quite different from the American ideal, a place where unorthodox ideas and free expression are permanently inhibited by the government's computer memory.

It is still not entirely clear what decisions produced this explosion of surveillance and dirty tricks. There are at least two competing theories. One, which might be called the theory of "spontaneous combustion," suggests that these various branches of government, watching the same frightening events, reacted individually but in similar ways. The other theory holds that the CIA or the FBI weren't acting irresponsibly on their own passion but were following "orders from above."

Although the factual evidence isn't settled, at least this much is clear: that these activities grew out of common reflexes of fear, that the regular inhibitions of decent men or traditional legal restraints which are supposed to prevent such abuses of power proved inadequate, not just in the CIA or the Justice Department or the FBI, but in the White House. Cities were burning. Radicals were, indeed, planting bombs in public buildings. The citizens' protest movement against the war in Vietnam—which seemed so impotent in terms of changing government policy—was most effective in frightening the men who made that policy.

Looking back, the circumstantial evidence does suggest that all of these activities were interrelated, at least to some degree. In a sense, that is mitigating testimony for the individual agencies. If one concludes that all of these bureaucracies were responding to the same alarm bells, then it is more difficult to portray the CIA or the FBI as a secret police force that has run amok in a democratic society.

Two Periods of Reaction

THE SIMPLIFIED history of events runs like this:

There were two distinct periods of fear when the federal government mobilized to gather intelligence on society's trouble-makers, whether they were anti-war demonstrators or black activists in America's central cities.

The first was in late 1967, after a tumultuous summer of urban riots, when the Justice Department under Attorney General Ramsey Clark formed its Inter-Divisional Information Unit to gather names and organizations and President Johnson's White House expressed to various departments—from the CIA to the Pentagon—the need for better intelligence on the domestic discord.

A lot of things started in those months: In the spring of 1968, for instance, the FBI ordered its 59 field offices to develop "ghetto informants," at least one for each of the bureau's 8,000 agents. It also launched its now-infamous COINTELPRO operations aimed at disrupting New Left groups. It broadened its regular surveillance, including wiretaps and paid infiltrators, on both black and anti-war groups.

The Army, in that same period, issued an "intelligence collection plan"—distributed to 300 federal offices—which authorized surveillance on the premise that riots were caused by "militant agitators" and "rabble-rousing meetings and fiery agitation speeches of extremist civil rights groups." Military intelligence was equally interested in monitoring "subversive" efforts like the underground newspapers and GI coffee-houses which were fostering "resistance to the Army."

The CIA, as the public recently learned, also participated in its own limited way. The intelligence agency "inserted" 10 agents inside dissident groups in the Washington area, on the pretext that it was protecting CIA buildings against assault.

The second time of crisis within the government —which is better known probably because it was well exposed during the Watergate scandal—came in the summer of 1970 when a young White House aide named Tom Charles Huston wrote his famous memo calling on all agencies, from Justice to the CIA to the Pentagon's National Security Agency, to sign up for a broad and explicitly illegal campaign of surveillance. All but J. Edgar Hoover of the FBI were willing.

The CIA, by its own account, became active again, planting a dozen or so agents inside "dissident circles," allegedly to search for foreign connections. The Internal Revenue Service, meantime, had initiated in the summer of 1969 its own "special services staff," collecting names of political dissenters and investigating their taxes. And the FBI was sending its agents onto college campuses, with orders to start files on every Black Student Union in the nation.

Tantalizing Leads

IN BOTH PERIODS, the record is studded with tantalizing leads, essentially unresolved, which suggest that these vari-

By Maxwell Silverstein for The Washington Post.

ous programs were more closely coordinated than anyone has quite admitted. For instance:

• When Ramsey Clark issued his first marching order for the IDIU, he noted: "You are free to consult with the FBI and other intelligence agencies in the government to draw on their experience in maintaining similar units, to explore the possibilities of obtaining information we do not now receive . . ."

• Clark's assistant attorney general for civil rights, John Doar, suggested trading information with the poverty program's agencies, the Internal Revenue Service, the Narcotics Bureau, the Post Office, and the Alcohol, Tax and Tobacco unit of Treasury.

• The Army's various intelligence collectors shared their information with Justice on a regular basis and, indeed, got frequent requests for data. After Army photographers, posing as "Midwest Video," took films of the demonstrators at the 1968 Democratic convention in Chicago, Deputy Attorney General Warren Christopher asked for copies.

• An Army "collection plan" issued in 1968 listed the CIA among the cooperating agencies which would provide information.

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• The IRS, when it launched its super-secret program aimed at radicals, started with 77 names and quickly grew to a file with 11,458 names. About 55 per cent came from the FBI, but IRS also "coordinated" with the Defense Department and sought Secret Service files. The IRS targets included those on both the left and the right—local chapters of moderate civil rights organizations, a Black Muslim temple, a Jewish organization, labor unions, a law students' association, three universities, even a branch of the Republican Party.

• When the CIA got into the business, it received names from Justice's IDIU and the FBI. In turn, the CIA traded its own data with metropolitan police departments all over the country, most of whom have their own "red squads" to look after political dissenters.

• At various times, many of these agencies were called together to "coordinate," though officials of each insisted later that they were not familiar with the particulars of what others were doing. Thus, for example, former Attorney General Clark has denied knowing about the Army spying, though his own IDIU got data from it, or even knowing about the FBI's COINTELPRO, though it was in his own department.

• Victor Marchetti, formerly a high official at CIA, recalled recently that in 1967 President Johnson was pushing the intelligence community to pursue the anti-war movement more actively and that Director Richard Helms resisted much of the pressure. "Helms came in one day [to a daily CIA meeting] and said the military would handle most of the action and the FBI would help out," Marchetti related. "In the CIA, you get the feeling this was a put-off story, the cover story. I learned subsequently the agency was training local police forces in this country. If you were going into domestic intelligence work, it would make sense to train the police and maybe penetrate them."

During the Nixon years, Huston assembled all of the agencies at the same table. The Nixon administration claimed that the so-called Huston Plan was never implemented, but the same organizations—the FBI, the CIA, NSA, the Defense Intelligence Agency, the Secret Service and the White House—met weekly for two years afterwards under the Intelligence Evaluation Committee, a group launched by Robert Mardian when he was assistant attorney general for internal security. In 1972, after the Army had pulled back from its massive spying, it still lent a hand to Mardian's IEC, including three counter-intelligence analysts sent to help out at the national political conventions.

The "Deniability" Principle

WHO REALLY KNEW what was going on? The bureaucratic principle of "deniability" seems to have permeated the government, and it is hard to reach precise conclusions. The civilian managers at the Pentagon, for instance, insisted later that they were misled by Army intelligence people who blandly asserted that the bulk of the intelligence information was collected by the FBI and merely passed on for Army analysis. There are a lot of internal documents which seem to corroborate that claim.

On the other hand, Under Secretary of Defense Paul Nitze approved 100 new slots for Army intelligence in 1968 (trimming the Army request from 167). What were all those jobs supposed to be for? And in early 1969 Army General Counsel Robert E. Jordan tried to persuade the Nixon administration to adopt a new inter-agency policy restricting the military role and shifting the main responsibility for spying to the Justice Department (the effort failed). Why make that policy fight if no one grasped what was going on?

Who knew about the Army spying? In the summer of 1969, after the change of administrations, the new under secretary of the Army got a phone call from Fred Vinson, former assistant attorney general in Ramsey Clark's Justice Department. Vinson, according to an Army memorandum, "had indicated that he was concerned about the Army's role in domestic intelligence activities and that he understood the Army had 'two separate computerized intelligence setups.'" How did a Justice Department offi-

cial know what Pentagon officials claimed not to know?

In short, while investigations have not yet pinned down the precise relationships between these various surveillance activities, it is clear that the traditional jurisdictional lines between agencies became almost meaningless. The "files" are interwoven. They fed upon each other. The computer tapes traveled freely around town, from Pennsylvania Avenue to Langley to an IRS computer in Rockville.

Undoing the damage which those files can inflict on individual reputations, careers, credit ratings or whatever is not so easy. The Army, for instance, issued what it regards as very tough regulations in early 1971, halting general surveillance and requiring all intelligence units to "clean" their files, to reduce the holdings drastically and to re-verify periodically any information which is still there.

Two years later, however, when Pentagon inspection teams went out, they found some curious items.

At Travis Air Force Base, the intelligence office still held data such as an "estimate of Enemy Situations," including reports on several local dissident groups "which were targeted against Travis AFB and which were thought to pose a real or potential threat to the base." Another California air base still had a list of "enemy forces" covering leftist groups dating back to the Abraham Lincoln Brigade of the Spanish civil war.

At the Presidio Army headquarters in San Francisco, the files still contained a listing of local personalities whom the local military intelligence officers regarded as worth watching—Communists, socialists and others.

At Fort Dix, N.J., the inspectors found lists of organizations and people dating back to 1964. In Hawaii, military intelligence was still keeping tabs on "Liberated Barracks," a GI underground newspaper which the files proclaimed was "targeted against the military" and, therefore, subject to surveillance under the new rules.

In Washington, the Pentagon announces periodically that it has discovered yet another file system or computer bank that was supposed to be purged in 1971. Just a few weeks ago, they found a microfilm library on civilians at the Forrestal Building.

In bureaucratic language, when a file is "purged," it does not necessarily mean that it has been "destroyed." Sometimes the material is simply stored elsewhere in a "non-active" status. The CIA, for that matter, has been "eliminating" names from its own counterintelligence files on 10,000 Americans, but that does not really settle things. So far, about 1,000 names have been removed from the active index, but Director William E. Colby noted that these "could be reconstituted should this be required."

Except for official good intentions, there is not much to prevent any of these agencies from again launching a general surveillance of citizens they regard as "dangerous" to the national survival. The CIA, for instance, has acknowledged halting some activities of dubious propriety, but it has not conceded that any of them—from burglary to opening private mail—was illegal.

Attorney General William Saxbe condemned the FBI's COINTELPRO as a deplorable use of government power—but FBI Director Clarence Kelley refused to do so.

The Army's tougher regulations require approval for covert operations at high levels in the civilian management, but the rules still permit something called "Aggressive Counterintelligence Programs," as well as "clandestine" operations defined as "illegal," if Pentagon officials decide the "threat" is serious enough.

The fact is that, despite strong opinions on the impropriety of these activities, the questions of their legality have not been settled by Congress or the courts. One test of sincerity for the various intelligence agencies will be whether they support legislation making political surveillance by them an explicit offense. Last year, when Sen. Ervin proposed such a limitation for the military, the Pentagon helped block the bill. In the meantime, a long list of cases is working its way through the courts, intended to define the citizen's protection against an overly curious government.

Is it legal for any government agency, for instance, to commit a burglary—entering private premises without a warrant—even to ensure that an employee is not leaking national secrets? The Fourth Amendment says not, and there is no law which authorizes such tactics. The CIA might claim some vague authority inherent in its charter responsibilities—"the protection of intelligence sources and methods"—but John Ehrlichman lost in court when he invoked a similar "national security" argument as the defense for the Ellsberg burglary.

Breaking-and-entering, however, is probably the clearest of the issues. Opening private mail, for instance, is widely regarded as forbidden without a search warrant, but one government official says there is a national security exception which might cover the CIA's extended "mail cover" programs.

Conflicting Commands

WHAT ABOUT political spying generally, or keeping files on citizens who have not been charged with any crime, much less convicted of one?

The question, even when applied to the CIA, is more complicated than it seems. It is true that the National Security Act of 1947

"What's the matter . . . you want to stay free, don't you?"

Auth in the Philadelphia Inquirer

prohibits the CIA from any "internal security" functions, but the charter also authorizes the agency not only to protect "intelligence sources and methods" but to perform "such other functions" which the National Security Council assigns it. Thus, the CIA charter has one restrictive command telling the agency to stay out of domestic surveillance—and two loopholes which might be used to justify just about anything in the name of "national security."

The question of what those words mean has been litigated only once, apparently, and the CIA won. According to Thomas B. Ross of the Chicago Sun-Times, co-author of "The Invisible Government," a federal judge held in a 1966 civil libel suit involving a CIA agent that the agency does have authority to collect its foreign intelligence inside the United States.

"The fact that the immediate intelligence source is located in the United States does not make it an 'internal security function' over which the CIA has no authority," Judge Roszel C. Thomsen declared. "The court concludes that activities by the CIA to protect its foreign intelligence sources located in the United States are within the power granted by Congress to the CIA."

When Sen. Ervin's subcommittee investigated Army spying, Ervin concluded: "There is no question that military surveillance of civilian political activity is illegal, at least in the sense that it was not authorized by law."

But William Rehnquist, who was then assistant attorney general, argued that the President's constitutional responsibility to see "that the laws be faithfully executed" gives the executive branch not just authority to prosecute crimes, but also to prevent them. Under that inherent power, he argued, surveillance aimed at preventing violence or civil disturbances was legitimate.

Rehnquist, as it happened, got another chance to express his views on the same matter after he became a Supreme Court justice. Over the protest of ACLU lawyers, he cast the deciding vote in *Tatum v. Laird*, ruling against a challenge to Army spying which contended that the mere act of military surveillance "chilled" the First Amendment right of free political expression of Arlo Tatum, an anti-war activist who was "targeted" by military intelligence.

The Supreme Court held that a citizen could sue the government for spying unless he can prove that the surveillance damaged him in some tangible way. Now the American Civil Liberties Union lawyers are moving forward with new cases intended to show just that. Among the plaintiffs are Americans living in Germany who were under Army surveillance in 1972 as members of the Berlin Democratic Club and who had their security clearances held up as a result.

"The Army files," says ACLU lawyer John Shattuck, "all state that these people were doing things that might pose a threat to the military. What these people were doing was campaigning for George McGovern."

Showing "Probable Cause"

DESPITE THE SETBACK of the Tatum case, Shattuck is generally optimistic about the series of lawsuits now aimed at limiting the government's discretion in surveillance, including the one against Secretary of State Henry Kissinger for the 17 "national security" wiretaps authorized by the Nixon administration in 1969 and another to be filed soon against the CIA's counter-intelligence files.

"We're trying to have the courts set standards that would prohibit the CIA, the FBI and the Army from having a free hand to do whatever they want to do," Shattuck says. "They are operating essentially without authority in all of these areas. The only thing they can point to is the kind of generalized authority."

Meanwhile, the ACLU is pushing Congress to draw the toughest standards of all. A variety of reform proposals has been introduced, ranging from flat prohibition of political spying to strict procedural systems requiring a court warrant for any surveillance of private citizens by any agency. Shattuck wants to have both.

Thus, if a government agency perceives a possible crime or even a potential crime, it would have to demonstrate "probable cause" before a federal judge to secure a warrant. "If the executive branch is so paranoid that it believes the courts are a security risk, then we're really in bad shape in this country," Shattuck says.

The Busing Case

INTELLIGENCE AGENCIES in the past have successfully resisted any legislation in that direction, partly on the practical ground that the FBI, for example, might have to take every investigation before a judge to prove that it's criminal, not political.

Beyond that, the distinctions between criminal and political sometimes become highly debatable. In the 1960s, for example, the FBI penetrated and disrupted the Ku Klux Klan without much complaint from liberals.

The anti-busing controversy in South Boston right now offers a better example of the dilemma. Nick Flannery, director of the Lawyers Committee for Civil Rights, wrote to the Justice Department last month, complaining that the FBI was not aggressive enough in its surveillance of an anti-busing organization which he feared would stimulate violence.

"At the very minimum," Flannery wrote,

"the bureau should have developed informants in ROAR [for Restore Our Alienated Rights] and its agents should be at South Boston High and elsewhere, depending on their intelligence data to act upon violations of law, as they are committed, rather than investigating after the fact on the basis of complaints."

Yet that is precisely the sort of rationale which led the Army and the FBI and others to spy on anti-war organizations and black groups in the late 1960s—the fear of violent protest. They were "political" organizations. So is ROAR. The Justice Department is caught in the middle again.

But the close cases are not the heart of the controversy. So much of the surveillance activities of recent years have been so massive and aimless in scope that the connection with possible criminal charges is tenuous or non-existent. Sen. Ervin's admonition to the Internal Revenue Service might just as well apply to the other agencies. "The purpose of the IRS," Ervin warned, "is to enforce the tax laws, not to enforce political orthodoxy."

In a way, the remedy for legitimate law enforcement interests—as opposed to aimless desires for political surveillance—might be just what the ACLU has proposed: a clear definition of the purposes for which a government agency can spy on someone. If that agency cannot convince a third party, such as a federal judge, that it has in mind a legitimate investigation of crime, then it ought to keep hands off. Obviously, this would inhibit the investigators and, no doubt, it would reduce the amount of surveillance undertaken. That is precisely what's needed.