

## ARMY CASE GOES TO HIGH COURT:

## How Surveillance Chills Speech

The ACLU Foundation in March submitted to the U.S. Supreme Court its reply brief in the case of Laird v. Tatum. The Army is appealing a federal court ruling that it must disclose in court the full extent and nature of its surveillance of civilians so the court can determine the impact on First Amendment activity. Fourteen social scientists wrote an appendix to the Union's brief, explaining "the sociological, political, and psychological processes which result in a chilling effect on political action." An excerpt follows:

The effects of surveillance in academia on political expression have been extensively documented. A classic sociological study, *The Academic Mind*, examined the effect of the measures taken against academics during the McCarthy era on their feelings, subjective experiences, and expectations. The authors constructed an index of apprehension, which consisted of two sets of items — one pertaining to worry about security, the other pertaining to precautionary behavior. The index clearly showed that certain portions of the social science community had been affected.

Herbert Kelman states that *The Academic Mind* illustrates how, by increasing the level of apprehension, the overt behavior of dissenters is inhibited. He notes that those subjected to the pressures of the McCarthy years tended to "disengage themselves from legitimate activities and associations" because these associations were regarded with suspicion by others.

An analogous situation exists today. The University of Minnesota is a case in point. Military Intelligence began a systematic surveillance of campus activities and personnel in 1967 and this surveillance became publicly known. The fear of being surveilled, according to Malcolm Moos, President of the University of Minnesota, hung like "a deadly mist" over the campus community.

## Reorientation

A necessary consequence of this high level of apprehension is the resulting change in the political actor's orientation to political phenomena. The University of Minnesota's administration is gravely worried about the effect which this surveillance has had on the quality of academic and political expression on the campus. Eugene Eidenberg, assistant Vice President for Administration at the University, stressed in his report on military surveillance to President Moos that some faculty members who might privately dissent may well refuse to express this dissent publicly, for fear that the item might be recorded and later used against them.

It is this fear, this apprehension created by the knowledge that extensive surveillance has occurred, which changes the quality of orientation of the actor to his political behavior. This indiscriminate surveillance "detracts from the democratic fabric of our society, destroys mutual trust and chills" the political behavior of those on any campus.

The apprehension is widespread through all levels of academia. In recent testimony, Jerome B. Wiesner has said that:

"... many, many students are afraid to participate in political activities of various kinds which might attract them because of their concern about the consequences of having a record of such activities appear in a central file. They fear that at some future date, it might possibly cost them a job or at least make their clearance for a job more difficult to obtain. . . ."

## Intent Irrelevant

Whether the intelligence gathering unit intends in a specific situation to stigmatize the political actor is irrelevant. The actor's fear is based on reality. Wiesner and Moos note that "they are real fears and that they frequently have caused students to back away from activities which attract them." The activities to which they refer are not violent, planned confrontations or demonstrations, but rather include those activities



Wide World Photo

clearly within the bounds of what have traditionally been defined as *legitimate* political and/or academic behavior (i.e., participation in seminars or political study groups, where participants might subject governmental policies to criticism). The evidence of fear indicates that the process of redefinition has already begun to occur, so that what has been legitimate in the past is now tainted with illegitimacy because of governmental surveillance, and political participation is affected.

Blacks and other minorities have had direct experiences with surveillance. The close watch kept over Dr. Martin Luther King by the FBI and the military while he was alive, even when he was buried, and when the Poor People marched after his death — these and other similar instances have fed what some observers see as a profound fear today among Blacks of surveillance.

Military surveillance of legitimate political behavior creates an apprehension on the part of actual or potential actors which arises from (1) the question of the legitimacy or illegitimacy of engaging in this behavior, and (2) the fear of misuse of the information gathered. This disengagement, both behavioral and psychological, which Kelman identified in the context of the 1950s, is occurring today. Evidence cited indicates that many Americans have redefined as illegitimate or stigmatizing what is, and remains by present democratic political norms, legitimate political expression and behavior.

## Congressmen's Files

Even certain decisions of federally elected officials seem to be affected by the various surveillance and record-keeping systems that abound, and by the fear of misuse which arises. Many members of Congress admit privately that the dossiers maintained by the FBI and other national security agencies are a principal factor in the reluctance of their colleagues to challenge the practices and budgets of the FBI and the House Internal Security Committee (HISC). Representative Drinan, a member of HISC, has confirmed on public record that such dossiers on Congressmen do exist.

Representative Abner J. Mikva of Illinois, who was himself (as was brought out in public disclosure) the subject of a political intelligence file developed by the Army, agrees with Senator Ervin that "The objection to this program is not that a U.S. Senator may have been subject to surveillance, or that a special file was or was not kept on him. . . . The harm comes rather

when the ordinary citizen feels he cannot engage in political activity without becoming a 'person of interest,' without having his name and photo placed in a file colloquially, if not officially, labeled 'subversive.'" But Representative Mikva continues to add, "... who can say that in future months or future congresses there will be none who will have second thoughts about a vote on military affairs? Who can be certain that his judgment will not be swayed, perhaps even unconsciously, by the belief that he is being watched? Even the possibility of surveillance raises the specter of subtle political interference. The scenario might go something like this. Those who speak out strongly in opposition to the policies of those in power are subjected to precautionary surveillance by the military. Constituents learn that their elected representative is under Army surveillance. The inference is made, either explicitly or implicitly, that he must be doing something wrong, or at least questionable, and that suspicion will be evident in the next election results. After all, who wants to be represented by a man who is so disreputable that the Army feels that the national security requires that his activities be monitored . . . it is entirely likely that some elected officials will exercise greater caution than they otherwise would in speaking their minds in order to be sure that their political future is not imperilled by a military spy."

## Caution

The knowledge of the consequences of surveillance leads to these "second thoughts," these unconsciously altered judgments, this "greater caution" that threatens to reduce social and political dialogue. The public's fear of surveillance is rooted in the knowledge of the costly impact it has had on the communities of scientists, entertainment figures, labor groups and workers, and Blacks, among others.

Because science has become an instrument of national policy, scientists have learned either to be cautious about their political associations, or to accept being watched as potential loyalty or security risks. A study by Walter Gellhorn of the untold consequences of McCarthyism on scientists reported that the system of political and speech accountability had been misused to such an extent "that the atmosphere of suspicion surrounding scientists in government was an effective deterrent to procurement and use of their services." Fewer scientists enlisted in public service because they felt compelled to avoid the

uncertain situation where intelligence information could be misused against them.

"In the field of science, the crudities of the loyalty program discourage efforts to draw into public service the live-minded and experienced men whose talents are needed in many agencies. The distress occasioned by an unwarranted inquisition by a loyalty board is felt by a wide circle of friends and fellow-workers. Especially in the case of scientists there is a realization that even after a man has been exonerated following a hearing, he may still be subjected to a renewal of the charges and a dusting off of the same evidence if the winds of politics continue to blow strongly. . . . What [eight of America's great scientists] said publicly has been echoed privately by scientific men of every level of eminence."

## Entertainers

Political surveillance in the past has ruined careers and haunted the lives of many in the entertainment world. Private groups and public legislative bodies combined their investigative techniques against an industry which (they accused) tolerated political deviants. Under the threat of denunciation and boycott, the entirety of the entertainment industry in the late 1940's altered its usual course of conduct, and purged its own house of those suspected on unorthodoxy. Blacklists of all who would not cooperate with legislative inquiries were established, and many entertainers went underground or left the country. Others broke relations with their families and friends. Many survived but only by naming names and pledging to stay clear of politics. Actress Judy Holliday, testifying before the McCarran Committee in 1952 about her support of Henry Wallace for President in 1948, summed up the "greater caution" which investigated subjects feel: "I don't say 'yes' to anything now except cancer, polio, and cerebral palsy, and things like that."

Surveillance was a recognized fact of life also in early union activities. Company tactics, including labor spies and informers whose authority derived from the standing threat of industry-wide blacklisting, and harassment by police and citizen front groups have in the past been employed to intimidate union organizers and other potential union members in the textile, mining and other industries. Companies threatened to close plants, to lay off workers, and even to move main plants if workers supported any "outside" agitation for unionization. Use of the surveillance technique in this situation labeled unionists as a deviant group *per se*, and discouraged (and retarded) the growth of associations which today are regarded as unquestionably legitimate.

. . . The societal consequence of surveillance was well described by Judge Learned Hand during the McCarthy era:

"God knows, there is risk in refusing to act till the facts are all in; but is there not greater risk in abandoning the conditions of all rational inquiry? Risk for risk, for myself I had rather take my chance that some traitors will escape detection than spread abroad a spirit of general suspicion and distrust, which accepts rumor and gossip in place of undismayed and unimpeded inquiry. I believe that that community is already in process of dissolution where each man begins to eye his neighbor as a possible enemy, where nonconformity with the accepted creed, political as well as religious, is a mark of disaffection; where denunciation, without specification or backing, takes the place of evidence; where orthodoxy chokes freedom of dissent; where faith in the eventual supremacy of reason has become so timid that we dare not enter our convictions in the open lists, to win or lose. Such fears as these are a solvent which can eat out the cement that binds the stones together; they may in the end subject us to a despotism as evil as any we dread; and they can be allayed only in so far as we refuse to proceed on suspicion and trust one another until we have tangible ground for misgiving. The mutual confidence on which all else depends can be maintained only by an open mind and a brave reliance upon free discussion. I did not say that these will suffice; who knows but we may be on a slope which leads down to aboriginal savagery. But of this I am sure: if we are to escape, we must not yield a foot upon demanding a fair field and an honest race to all ideas."