

Enemy Fonda Sues Citizen Nixon

By Harriet Katz Berman

In the wake of President Ford's pardon of his predecessor, an ACLU of Southern California suit against the Nixon Administration's political surveillance of Jane Fonda takes on special significance as one of the few remaining public forums for an in-depth examination of the domestic intelligence operations recently rampant in the White House.

The suit charging the Nixon Administration with violating Jane Fonda's constitutional rights was originally filed a year ago when copies of extensive FBI files on the anti-war activist were given to her and the ACLU by columnist Jack Anderson.

The files reveal detailed monitoring of Fonda's political speeches and associations, with great emphasis on her involvement with the Winter Soldier Investigation, an inquiry in which Vietnam veterans testified about American war crimes in Southeast Asia, and the Free The Army (FTA) Troupe, which put on anti-war shows at many military bases and G.I. coffeehouses. Memos on these topics in the FBI's Fonda dossier include descriptions of Winter Soldier literature taken from a car she had rented, itineraries for the FTA show, and bank records of checks for Winter Soldier and FTA activities (as well as for all her other financial transactions.)

The sources of file material range from the downright pernicious—obtaining bank records, breaking into a car, wiretapping—to the ludicrous—transcribing an interview appearance by Fonda on the Dick Cavett show.

While the maintenance of a political dossier is chilling in the abstract, the truly scary nature of the files comes out in the strange mixture of the actual text: a combination of cloak-and-dagger and bureaucratese. Some excerpts:

—"Source advised on August 23, 1970, FONDA cosponsored a fundraising function held at the home of ABBEY MANN, Hollywood screen writer, who authored the screenplay for the motion picture *Judgement at Nuremburg*."

—"United States Customs found in FONDA's possession a handwritten notebook which contained names, addresses, and telephone numbers of many revolutionary and leftist groups."

—"On November 16, 1970, source advised that FONDA appeared at the Haymarket Square Coffee House, Fayetteville, North Carolina, at 8:00 p.m. There were about 500 people present. She spoke of the G.I. Peace Movement and Women's Liberation, stating that these movements are the most important things happening in America today."

—"The *Atlanta Journal* and the *Atlanta Constitution*, daily newspapers circulated in Atlanta, Georgia, on December 16.



FONDA speaking at VVAW rally in September, 1970.

John C. Goodwin

1970, reflected FONDA received an award from the American Civil Liberties Union (ACLU) on the night of December 5, 1970."

—"On December 28, 1970, source advised FONDA claimed she was a Marxist."

—"On January 4, 1971, source furnished the following information concerning the checking accounts of FONDA at the Morgan Guaranty Trust Company, 15 Broad Street, New York." (List of checks and balance reports follows.)

—"On February 16, 1971, JANE FONDA arrived in Omaha by United Air Lines at 8:10 p.m. Miss FONDA stated for the benefit of the news and television reporters that President NIXON has found a way to turn around his slogan, 'Bring the Troops Home,' and to turn that slogan against us, he is escalating the war in Vietnam by replacing troops with more sophisticated weapons."

—“On March 6, 1971, a Special Agent of the FBI made the following observation: At 12:35 p.m. JANE FONDA was observed sitting in the rear of an open truck parked in a vacant field located on the north side of Keno Lane, midway between Industrial Road and Las Vegas Boulevard South, Las Vegas, Nevada. A large crowd was observed surrounding the immediate area of the truck. Seated with FONDA were the following who have publicly been identified.” (List includes David Dellinger, Rev. Ralph Abernathy; the event was a National Welfare Rights Organization’s protest of summary cut-offs from Nevada welfare rolls.) “JANE FONDA was not observed to speak. . . . JANE FONDA wore a small card near her right shoulder which read, ‘I support a guaranteed adequate income for all Americans.’”

—“In July 1971, a pretext telephone call to FONDA’s temporary address, Berkeley House Hotel, 920 University Avenue, Berkeley, California, by a Special Agent, revealed FONDA’s daughter, VANESSA, was currently attending a school conducted by the Red Family at their communal residence. . . . Source advised that the Red Family was a new revolutionary group made up of individuals who were members of the committee who went to Vietnam in July 1968, as part of the National Mobilization Committee to End the War in Vietnam.”

The file includes numerous summaries of Fonda’s speeches, some from FBI agents and some from “sources.” There are many descriptions of the FTA performances, including one by an agent who saw the show in Monterey, California, and concluded, “Entertainment was anti-military anti-establishment, however, no militant statements were made.”

The FBI Fonda file was circulated to other agencies and also contains information from other agencies, including Secret Service memoranda and, most glaringly, the contents of the personal address book seized by agents of the U.S. Customs Service and turned over to the FBI when Fonda was arrested in 1970 on drug charges that were subsequently dismissed.

At the heart of the ACLU suit on behalf of Fonda is the contention that the surveillance and harassment she was subjected to were not only standard operating procedure for the FBI but also dovetailed with the Nixon Administration’s approach to political dissent as a threat to internal security, rather than a First Amendment right. The dossier on Fonda looks a lot like the so-called Huston plan for intensified covert intelligence operations, against Administration foes, the FBI Counterintelligence Program against anti-war activists, and the White House “enemies list” project.

It is thus no coincidence that the list of defendants being sued in the Fonda case reads like a Who’s Who of Watergate: Richard M. Nixon, L. Patrick Gray, William C. Ruckelshaus, Charles W. Colson, John W. Dean, John D. Ehrlichman, John Mitchell, H.R. Haldeman, Henry Kissinger, Richard Kleindienst, Tom Charles Huston, Robert C. Mardian; and the heads of the FBI, CIA, Bureau of Customs, Attorney General’s Office, Defense Department, State Department, Secret Service, Postal Service and Treasury Department.

The suit charges that the defendants conspired to “destroy her public credibility, weaken her political significance, cause her personal and

professional injury and embarrassment, and punish her for criticism of the United States war effort in Indochina, of the United States Army, and of the Nixon Administration.”

Specific allegations include the seizure and copying of Fonda’s address book; monitoring of her bank records without her consent and without subpoena or warrant; the car break-in; the “pretext” phone calls; wiretapping; surveillance of her mail; and the compilation and maintenance of files containing information obtained through these and other means.

Based on these allegations, the defendants are also sued for “refusal to prevent a conspiracy to deprive the plaintiff of the equal protection of the law.” The defendants “each had knowledge of said conspiracy, and each had the power to prevent or aid in preventing the commission of the wrongs that were the objects of the conspiracy,” but instead “neglected and refused to prevent or aid in preventing the commission of said wrongs.”

In their opening response to the ACLU complaint, the government defendants “admitted much of the sum and substance of our charges,” Southern California staff counsel Mark Rosenbaum points out, “specifically acknowledging the address book, bank records, pretext calls and electronic surveillance incidents.”

The nature of the material in the FBI Fonda file strongly suggest that the Huston Plan for domestic intelligence—proposed in 1970 by then White House aide Tom Huston and personally approved by Nixon in July 1970 but allegedly rescinded 5 days later—was never fully halted but rather was in many respects implemented.

Among the similarities: The Huston plan called for a coordinated network of intelligence agencies—the same agencies to whom the Fonda files were circulated. The plan called for use of mail covers—there are items of Fonda’s correspondence in the file. (Huston’s now-famous memo noted that “covert coverage is illegal and there are serious risks involved. However, the advantages to be derived from its use outweigh the risks.”) The plan urged “selective use” of “surreptitious entry”—which might encompass the Fonda car incident as it did the “plumbers.”

But the key link is conceptual—Huston was supposed to be concerned with “internal security,” and shortly after his plan was circulated and reputedly rescinded, the headings on the FBI Fonda files switched from “subversive” or “anarchist” to “internal security.”

Whether implemented in letter or spirit, the kinds of intelligence activities advocated in the Huston plan were among the kinds of activities that formed the basis for the second Article of Impeachment voted by the House Judiciary Committee. Fonda’s complaint embodies the central dynamic of Article II—that individuals’ rights of privacy and other civil liberties were violated, often through abuse of executive power, because individuals exercised their First Amendment rights.

While challenging the ways the Nixon Administration spied on political critics and activists, the ACLU’s suit has raised, other important constitutional issues. Earlier this year, the federal judge on the case issued an historic first ruling stating that a private citizen did have the right to sue a sitting president for money damages. However, the judge ruled that in this case the president was not “indispensable” to the lawsuit. That ruling was on appeal when Nixon resigned the presidency. The ACLU is amending its original complaint to make him a defendant in his individual capacity now that he is a private citizen.

Also at issue is the question of who controls bank records: the customer, the bank or the government? The Morgan Guaranty Trust Company of New York and City National Bank of Los Angeles, from whom the FBI obtained the records of Fonda’s checking accounts, are also defendants in the litigation.

Ultimately, the suit seeks to limit the degree to which the government may go, in method and content, to inform itself of its citizens’ activities. As Rosenbaum says, “The Anderson file exposes the lengths to which the FBI will extend itself to penetrate the minutiae of so-called dissidents’ lives. It is the hope and expectation of this case that revelation of the gross abuses of power which have taken place and continue to occur will educate the public to the need to stop these practices.”

Harriet Katz Berman corresponds regularly for Civil Liberties from the West Coast