

**File #:**

62- 116464

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**Serial Scope:**

59- Bulky

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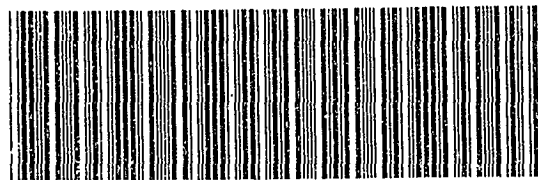
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**BULKY ENCLOSURE****BIN #** 16-D 16G**ROOM 1B-873 17A**XEROX COPY OF <sup>Abstract</sup>COVER LETTER ENCLOSED

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**HQ-116464****BULKY**

Serial 59



62-HQ-116464-E59

**FBI - CENTRAL RECORDS CENTER****HQ - HEADQUARTERS**

Class / Case #	Sub	Vol.	Serial #	
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~~MEMORANDUM~~  
~~FOR THE RECORD~~ 7/75

- I LEGAL AUTHORITIES
- II JURISDICTIONAL AGREEMENTS
- III ORGANIZATIONAL CHART
- IV POLICIES AND PROCEDURES

REQUEST 7-22-75 HSC

7-22-75 T. F. 10-1  
ON RECORD IS HSC

(MATERIAL MUST NOT BE REMOVED FROM OR ADDED TO THIS FILE)

CLASSIFICATION NO.

# FEDERAL BUREAU

*of*

# INVESTIGATION

Bureau File Number

Serials

Volume Number

See also Nos.



62-116464-59

ENCL. 8

16

9-4-75

TJM:1hb 9/4/75

The Attorney General U.S. HOUSE SELECT COMMITTEE  
ON INTELLIGENCE ACTVTS (HSC)

ReHSClet 7/22/75 req'nd materials & documnts pre-  
viously provided by this Bu to SSC. Enclsd for  
ur aprovl & forwrng to Committee is orig of memo  
w/enclsr which is proffered as partial response  
to abov-cited req of the HSC. A cc of this memo  
is being furnshd for ur records. "K."

LEGAL AUTHORITIES



Office of the Attorney General  
Washington, D. C.

September 14, 1967

MEMORANDUM FOR THE DIRECTOR, FEDERAL  
BUREAU OF INVESTIGATION

Although the bulk of criminal offenses occurring in the course of recent riots have been local rather than federal in nature, the question as to whether there was an organization which (a) had made advanced plans for, and (b) was active during any of the riots in the summer of 1967 is one that cannot always be readily resolved by local authorities. In view of the seriousness of the riot activity across the country, it is most important that you use the maximum available resources, investigative and intelligence, to collect and report all facts bearing upon the question as to whether there has been or is a scheme or conspiracy by any group of whatever size, effectiveness or affiliation, to plan, promote or aggravate riot activity.

In this connection the following federal statutes could be applicable depending, of course, upon the factual situation that develops:

Title 18, USC, Section 2383, which proscribes the inciting or engaging in any rebellion or insurrection against the authority of the United States.

Title 18, USC, Section 2384, which proscribes conspiring to overthrow or to destroy by force the Government of the United States or to oppose by force the authority thereof or by force to prevent, hinder or delay the execution of any law of the United States.

Title 18, USC, Section 2385, which proscribes, inter alia, advocacy of overthrowing the Government of the United States or the Government of any state, territory, District or possession thereof, or the Government of any political subdivision therein by force or violence.

Activities Affecting Armed Forces, 18 USC 2388

Selective Service, 50 USC (App.) 462

Travel and Interstate Transportation,  
18 USC 1952 (Arson)  
18 USC 831-33 (Explosive)

Assault and Killing of Federal Officers and Employees, 18 USC 111, 114 and 2231

Destruction of Government Property, 18 USC 1361 et al

Federal Firearms Act, 15 USC 901-909

Crimes on Federal Reservations, 18 USC 13, 81 et al.

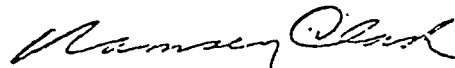
I appreciate that the Bureau has constantly been alert to this problem and is currently submitting intelligence reports to us about riots and about the activity of certain groups and individuals before, during and after a riot. Indeed, the President has said both publicly and privately that the FBI is conducting extensive and comprehensive investigations of these matters.

There persists, however, a widespread belief that there is more organized activity in the riots than we presently know about. We must recognize, I believe, that this is a relatively new area of investigation and intelligence reporting for the FBI and the Department of Justice. We have not heretofore had to deal with the possibility of an organized pattern of violence, constituting a violation of federal law, by a group of persons who make the urban ghetto their base of operation and whose activities may not have been regularly monitored by existing intelligence sources.

In these circumstances, we must be certain that every attempt is being made to get all information bearing upon these problems; to take every step possible

to determine whether the rioting is pre-planned or organized; and, if so, to determine the identity of the people and interests involved; and to deter this activity by prompt and vigorous legal action.

As a part of the broad investigation which must necessarily be conducted, it is requested that all available information be reported and analyzed regarding each sniper caught in any riot or extremist activity and regarding those arrested during the course of a riot or significant racial disturbances who were not residents of the general area. Moreover, sources or informants in black nationalist organizations, SNCC and other less publicized groups should be developed and expanded to determine the size and purpose of these groups and their relationship to other groups, and also to determine the whereabouts of persons who might be involved in instigating riot activity in violation of federal law. Further, we need to investigate fully allegations of conspiratorial activity that come to our attention from outside sources such as those reported regarding Newark in Life Magazine for July 28, 1967, and those regarding the Detroit riot which were furnished to the Department by Walter Sheridan of the National Broadcasting Company (summary of latter is attached).



RAMSEY CLARK  
Attorney General

Federal Bureau of Investigation  
United States Department of Justice

Washington, D. C.

August 24, 1936.

CONFIDENTIAL MEMORANDUM

This morning, in accordance with the request of the President conveyed to me personally by him last Wednesday in New York City, I called at the White House at 9:15 and was with the President until 10:15.

He was desirous of discussing the question of the subversive activities in the United States, particularly Fascism and Communism. He had previously received the memorandum which I had prepared covering my conversation with General Smedley Butler and the effort of Father Coughlin to have General Butler head an expedition to Mexico. I informed the President concerning certain recent developments in the Communist activities in the country, particularly the efforts of the Bridges organization in San Francisco and their progressive control of the shipping on the Pacific Coast, the Gulf Coast and their recent expansion to shipping operations on the Atlantic Coast. I told him that while their contract will expire on September 30, 1936, they are endeavoring to have it temporarily extended until April 1, 1937, in order to conform to the same date that the United Mine Workers' contract expires, which organization is headed by John L. Lewis. I told him that the Bridges organization was practically controlled by Communists and that the Communists had now decided to make very definite plans to get control of the Lewis organization.

I called his attention to the activities of the Newspaper Guild headed by Heywood Broun, which has strong Communistic leanings, and which has been responsible for putting out of operation the Seattle Post Intelligencer. I told him that my information was that the Communists had planned to get control of these three groups and by doing so they would be able at any time to paralyze the country in that they could stop all shipping in and out through the Bridges organization; stop the operation of industry through the Mining Union of Lewis; and stop publication of any newspapers of the country through the Newspaper Guild.

I also related to him the activities which have recently occurred within Governmental service inspired by Communists, particularly in some of the Departments and in the National Labor Relations Board.

o. ROOSEVELT

8-24-36

I likewise informed him that I had received information to the effect that the Communist Internationale in Moscow has recently issued instructions for all Communists in the United States to vote for President Roosevelt for reelection and against Governor Landon because of the fact that Governor Landon is opposed to class warfare.

The President stated that he had been considerably concerned about the movements of the Communists and of Fascism in the United States and that while the Secret Service of the Treasury Department had assured him that they had informants in every Communist group, he believed that if that was true it was solely for the purpose of getting any information upon plots upon his life, whereas what he was interested in was obtaining a broad picture of the general movement and its activities as may affect the economic and political life of the country as a whole. I told him that there is at the present time no governmental organization which is getting any so-called "general intelligence information" upon this subject. He inquired what suggestions I might offer relative to this matter. I told him that the appropriation of the Federal Bureau of Investigation contains a provision that it might investigate any matters referred to it by the Department of State and that if the State Department should ask for us to conduct such an investigation we could do so under our present authority in the appropriation already granted. He stated that he is reluctant to have a formal request come through the State Department because of the many leaks therein, but that what he would do would be to put a handwritten memorandum of his own in his safe in the White House, stating he had instructed the Secretary of State to request this information to be obtained by the Department of Justice. He stated he would have the Secretary of State at the White House tomorrow afternoon, and asked me to call at the White House at 1:45 p.m. to see him, the President, and the Secretary of State, at which time the matter could be further discussed and an oral request could be made of me by the Secretary of State for investigation so as to avoid any possibility of any leak.

He suggested that I endeavor to coordinate any investigation along similar lines which might be made by the Military or Naval Intelligence Services. He stated that the Secret Service was not being brought in on this investigation as they should confine themselves strictly to the matter of protecting his life and the survey which he desired to have made was on a much broader field.

John Edgar Hoover.

Federal Bureau of Investigation  
United States Department of Justice

Washington, D. C.

August 25, 1936.

CONFIDENTIAL MEMORANDUM

Today, in line with the request of the President, I called at the White House at 1:45 p.m., and present at the conference were the President, the Secretary of State and myself. The President related to the Secretary of State his concern relative to Communist activities in this country, as well as Fascist activities. He stated that he was very desirous of having a survey made of these conditions and informed the Secretary of State that this survey could be made by the Department of Justice if the Secretary of State requested the Department to conduct the inquiry, as under the Appropriation Act this Bureau would have authority to make such investigation if asked to do so by the Secretary of State. The President pointed out that both of these movements were international in scope and that Communism particularly was directed from Moscow, and that there had been certain indications that Oumansky, attached to the Russian Soviet Embassy, was a leading figure in some of the activities in this country, so consequently, it was a matter which fell within the scope of foreign affairs over which the State Department would have a right to request an inquiry to be made.

The Secretary of State inquired if a request should be made in writing. The President indicated that it should not be since he desired the matter to be handled quite confidentially and that it would be sufficient that the President, the Secretary of State and I should be the ones aware of this request.

The Secretary of State asked that the investigation be made and then made several suggestions - one, relative to the making of a protest, either formally or informally, to the Russian Government relative to its interference with affairs in this country. Discussion was also had as to the information obtained indicating that the Third Internationale had indicated preference for Roosevelt as against Landon. It was the opinion of the President that some statement should be made along this line by the Attorney General at an early date. The President asked that I speak to the Attorney General, upon his return to the city, about this matter, and he suggested to the Secretary of State that he talk over the technique to be followed in this particular aspect, with the Attorney General.

John Edgar Hoover.

X *Subversive activities investigations*



100-100

September 10, 1953.

Strictly Confidential

MEMORANDUM FOR MR. TOLSON

In talking with the Attorney General today concerning the radical situation, I informed him of the conference which I had with the President on September 1, 1953, at which time the Secretary of State was present, and at which time the Secretary of State, at the President's suggestion, requested of me, the representative of the Department of Justice, to have investigation made of the subversive activities in this country, including communism and fascism. I transmitted this request to the Attorney General, and the Attorney General verbally directed me to proceed with this investigation and to coordinate, as the President suggested, information upon these matters in the possession of the Military Intelligence Division, the Naval Intelligence Division, and the State Department. This, therefore, is the authority upon which to proceed in the conduct of this investigation, which should, of course, be handled in a most discreet and confidential manner.

Very truly yours,

John Edgar Hoover,  
Director.

DIRECTIVE OF THE PRESIDENT OF THE UNITED STATES

SEPTEMBER 6, 1939

"The Attorney General has been requested by me to instruct the Federal Bureau of Investigation of the Department of Justice to take charge of investigative work in matters relating to espionage, sabotage, and violations of the neutrality regulations.

"This task must be conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated in order to avoid confusion and irresponsibility.

"To this end I request all police officers, sheriffs, and all other law enforcement officers in the United States promptly to turn over to the nearest representative of the Federal Bureau of Investigation any information obtained by them relating to espionage, counterespionage, sabotage, subversive activities and violations of the neutrality laws."

## REPORT SECURITY MATTERS TO FBI

"On September 6, 1939, I issued a directive providing that the Federal Bureau of Investigation, of the Department of Justice should take charge of investigative work in matters relating to espionage, sabotage and violations of the neutrality regulations, pointing out that the investigations must be conducted in a comprehensive manner, on a national basis, and all information carefully sifted out and correlated in order to avoid confusion and irresponsibility. I then requested all police officers, sheriffs, and other law enforcement officers in the United States, promptly to turn over to the nearest representative of the Federal Bureau of Investigation any such information.

"I am again calling the attention of all enforcement officers to the request that they report all such information promptly to the nearest field representative of the Federal Bureau of Investigation, which is charged with the responsibility of correlating this material and referring matters which are under the jurisdiction of any other Federal agency with responsibilities in this field to the appropriate agency.

"I suggest that all patriotic organizations and individuals likewise report all such information relating to espionage and related matters to the Federal Bureau of Investigation in the same manner.

"I am confident that all law enforcement officers, who are now rendering such invaluable assistance toward the success of the internal safety of our country will cooperate in this matter."



January 8, 1943

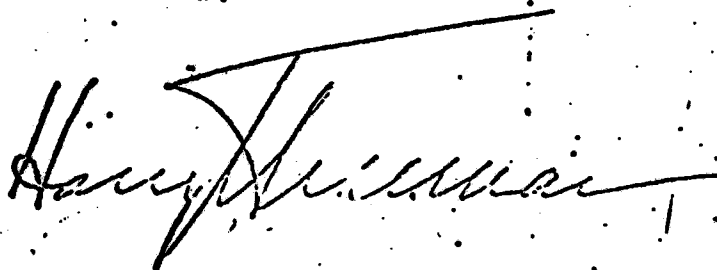
THE WHITE HOUSE  
WASHINGTON

July 24, 1950

INFORMATION RELATING TO DOMESTIC ESPIONAGE,  
SABOTAGE, SUBVERSIVE ACTIVITIES AND RELATED MATTERS

On September 6, 1939 and January 6, 1943 a Presidential Directive was issued providing that the Federal Bureau of Investigation of the Department of Justice should take charge of investigative work in matters relating to espionage, sabotage, subversive activities and related matters. It was pointed out that the investigations must be conducted in a comprehensive manner on a National basis and all information carefully sifted out and correlated in order to avoid confusion. I should like to again call the attention of all Enforcement Officers, both Federal and State, to the request that they report all information in the above enumerated fields promptly to the nearest Field Representative of the Federal Bureau of Investigation, which is charged with the responsibility of correlating this material and referring matters which are under the jurisdiction of any other Federal Agency with responsibilities in this field to the appropriate agency.

I suggest that all patriotic organizations and individuals likewise report all such information relating to espionage, sabotage and subversive activities to the Federal Bureau of Investigation in this same manner.



**DIRECTIVE OF THE PRESIDENT OF THE UNITED STATES**

**DECEMBER 15, 1953**

"On September 6, 1939, January 8, 1943, and July 24, 1950, Presidential Directives were issued requesting all enforcement officers, both Federal and State, to report promptly all information relating to espionage, sabotage, subversive activities and related matters to the nearest field representative of the Federal Bureau of Investigation.

"The Federal Bureau of Investigation is charged with investigating all violations of the Atomic Energy Act, including the illegal export or import of fissionable material, the illegal possession or transportation of fissionable material and the illegal production, transfer, or possession of any equipment or device utilizing fissionable material or atomic energy as a military weapon. 'Fissionable material' means plutonium, uranium-235 or other material which the Atomic Energy Commission has determined to be capable of releasing substantial quantities of energy through nuclear chain reaction. I am requesting that all enforcement officers both Federal and State, report all information relating to violations of the Atomic Energy Act to the nearest field representative of the Federal Bureau of Investigation.

"I suggest that all patriotic organizations and individuals likewise report all such information to the Federal Bureau of Investigation in the same manner."

UNITED STATES GOVERNMENT

# Memorandum

TO : Mr. Dalbey

DATE: 5/16/72

FROM : J. A. Mintz *JAM*

SUBJECT: FBI JURISDICTION: CRIMINAL  
INTELLIGENCE INFORMATION

You requested analysis of the legal authority for FBI criminal intelligence collection and its relationship to our statutory jurisdiction in criminal matters.

"The gathering of criminal intelligence information" describes activity not subject to precise definition. However, its general objective is well understood by those engaged in law enforcement. There exist individuals and groups whose daily occupations are directed toward profit without regard to the restraints of the law. Yet, by the very nature of their associations, little actual participation in criminal acts may be observed by the most astute law enforcement observer. Their existence and contribution to the sum of criminal behavior has been detected and to some degree measured by the collection of data concerning their personal life-styles, property holdings, associates, influence, and access to capital. Such information has been characterized as "criminal intelligence."

For years, the FBI has been aware of the need to identify these resources of the criminal element. Congress responded to this need through the Organized Crime Control Act of 1970. The Congressional findings were that organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and by the illegal use of force, fraud and corruption. Legitimate business and labor unions are infiltrated and corrupted and our democratic processes are subverted. The problem was declared to be of national concern both as to our economy and the domestic security.

*JAM:del*  
(3)

CONTINUED - OVER

Memorandum J. A. Mintz to Mr. Dalbey  
RE: FBI JURISDICTION: CRIMINAL  
INTELLIGENCE INFORMATION

The Act attempted to attack organized crime by making criminal the management of syndicated gambling and by prohibiting racketeering activity characteristic of organized crime including the use of illegal proceeds for investment in legitimate business enterprises.

The long-established suspicions of law enforcement officers were confirmed by the Congressional findings but statutory enactments did not eliminate the conduct described as evil therein. There remains the task of establishing the identities of those constituting the national menace and developing prosecutable evidence of their guilt. "Criminal intelligence" collection is one means by which this responsibility may be fulfilled. It may be the only practical means in view of the scarcity of witnesses willing to testify and of the high mortality potential of those who do appear. A classic example of such intimidation is reported in United States v. Addonizio, 451 F2d 49 (3rd Cir. 1972) where a prospective witness in a corruption case found an anonymous note on the seat of his car which read "This could have been a bomb. Keep your mouth shut."

Accepting the need for intelligence gathering as a practical necessity, the issue remains as to its propriety in the face of Constitutional protections. If the Supreme Court announces that individuals have a Constitutionally protected right of privacy that may be overcome only through established arrest, search, and subpoena procedures, the issue will be settled. But, thus far, the Court has only drawn upon the concept of Constitutional privacy to resolve cases involving special circumstances such as marital affairs (Griswold v. Connecticut, 381 U.S. 479 (1965)) and interception of communications (Katz v. United States, 389 U.S. 347 (1967)).

More specific Constitutional limitations on the criminal intelligence function may be found in the First Amendment protections of speech and assembly; the Fourth Amendment prohibitions of unreasonable searches and seizures; and the Fifth Amendment privilege against compulsory self-incrimination.

The theme consistently found in decisions having a bearing on the relationship between these rights and the collection of criminal intelligence is that, when in direct conflict, the collection efforts must yield. Such is

Memorandum J. A. Mintz to Mr. Dalbey  
RE: FBI JURISDICTION; CRIMINAL  
INTELLIGENCE INFORMATION

not to label criminal intelligence as necessarily the product of malpractice, but to recognize the paramount nature of the Constitutional interests being safeguarded. Other incidents of government regulatory authority have been required to yield as well when confronted with legitimate claims of Constitutional protection, e.g. the administrative search cases, Camara v. Municipal Court, 387 U.S. 523 (1967).

Overt and obtrusive conduct susceptible of being characterized as harassment may well be enjoined as, for example, was the case of an obvious 24-hour-a-day physical surveillance of an individual, his home, relatives, friends, and associates (Giancana v. Johnson, 335 F2d 366 (7th Cir. 1964) cert. den. 379 U.S. 1001. Similar results might be expected where an identified officer loiters in the subject's place of business (Bee See Books, Inc. v. Leary, 291 F. Supp. 622 (SD N.Y. 1968) or openly attends organizational meetings where his presence inhibits communication and the transaction of the business of the assembly (Local 309, United Furniture Workers v. Gates, 75 F. Supp. 620 (ND Ind. 1948) ). However, open photographic surveillance of public gatherings (Donahoe v. Duling, 330 F. Supp. 308 (ED Va. 1971) ) and secret monitoring of criminal activities through the use of undercover agents (Lewis v. United States, 385 U.S. 206 (1966) ) and informants (Hoffa v. United States, 385 U.S. 295 (1966) ) have met with judicial approval.

Obviously, criminal intelligence information gained by unreasonable search and seizure or through compelled self-incrimination is tainted and subject to judicial condemnation upon complaint of one having the requisite standing.

Perhaps, the decision coming nearest to discussing the legality of criminal intelligence collection was Anderson v. Sills, 106 N.J. Super. 545, 256 A2d 298 (1969), (reversed on the ground more complete record was needed to support the decision) 56 N.J. 210, 265 A2d 678 (1970) New Jersey had responded to the threat of continuing civil disorders by collecting intelligence information on persons and events alleged to have some relationship to such activities. The trial court held the collection effort to be unconstitutional because it conflicted with the First Amendment



Memorandum J. A. Mintz to Mr. Dalbey  
RE: FBI JURISDICTION: CRIMINAL  
INTELLIGENCE INFORMATION

However, the court order to destroy the intelligence files excepted instances "where such information will be used to charge persons with specifically defined criminal conduct." 256 A2d at 305. Thus, the decision may be interpreted as drawing a distinction between collection of intelligence information where political or social factors are involved and First Amendment freedoms therefore may be directly inhibited and collection of criminal intelligence information where the objective is the establishment of criminal conduct and the identities of the offenders. While the Fourth and Fifth Amendment may be enjoyed by the guilty and innocent alike, it is improbable that the First Amendment would be stretched so far as to protect freedom of speech and assembly when such speech and assembly constitute elements of a criminal offense. On appeal, the Supreme Court of New Jersey returned the case for further development of the record and observed ". . . the executive branch may gather whatever information it reasonably believes to be necessary to enable it to perform the police roles, detectional and preventive. A court should not interfere in the absence of proof of bad faith or arbitrariness." 265 A2d at 300.

A tentative conclusion may be stated, subject to further development of the case law. The gathering of criminal intelligence information for the purpose of developing evidence of specific offenses characteristic of organized crime is legally justified as well as practically necessary. Where there is diversion from the proper objective and such collection efforts are manipulated to cause harassment or where such activity conflicts with Constitutional rights, to that extent the criminal intelligence program must be reformed.

UNITED STATES GOVERNMENT

# Memorandum

TO : Mr. Dalbey

DATE: 5/18/72

FROM : J. B. Hotis

SUBJECT: FBI AUTHORITY IN DOMESTIC  
INTELLIGENCE MATTERS

You requested an analysis of the Bureau's authority to conduct domestic intelligence investigations. The question of the jurisdictional basis for these investigations is being examined at length by the Domestic Intelligence Division and will not be discussed here.

It is fair to say that the domestic intelligence program is one of the more controversial areas of the Bureau's activities. For one thing, an intelligence investigation casts a broader net than inquiries that are directed toward the proof of a specific offense. A large amount of raw data is collected, much of which has no immediate bearing on potential offenses or offenders. But seemingly trivial information may later become important in the detection and prevention of violence or civil disorder. There are also fears that these investigations may eventually touch upon one's political beliefs, habits or associations; or that information collected for proper purposes may eventually be misused at the hands of Government. Each is a legitimate concern. The notion of Government prying into the personal lives of its citizens is repellent to all of us. And yet there is a strong sense that the Government must acquire necessary intelligence information if it is to meet its responsibilities in connection with the national security.

One of the major concerns about our domestic intelligence activities is that they are not supervised or monitored by any outside agency. The claim is made that the Executive Branch has been left wide discretion to define its own authority, and to choose the directions, methods, and focus of its investigations. For one thing, the law has never made clear what facts and circumstances must be present to authorize an intelligence investigation, nor how far such an investigation may lawfully proceed without being directed toward proof of a specific offense.

~~JBH:deh~~  
(3)

CONTINUED - OVER

Memorandum J. Hotis to Mr. Dalbey  
RE: FBI AUTHORITY IN DOMESTIC  
INTELLIGENCE MATTERS

And unlike the practice in criminal cases, our electronic surveillances in security matters are not submitted for prior court approval. For another, the exclusionary rule which provides the usual method of judicial control over investigative procedures, is not often available in security cases. Since the goal is largely preventive, these cases seldom come before the courts. As a result, the public, the courts, and the Congress have very little information about how we operate in domestic intelligence matters and what we do with the information acquired.

In response to this situation, some members of the Congress have pressured for tighter controls over the Bureau, perhaps in the form of a watchdog committee to oversee our operations. Senator Ervin, who chairs the Senate Subcommittee on Constitutional Rights has expressed particular concern about the right of privacy and the authority of the Government to gather information. In an exchange of correspondence with the Department of Justice, the Senator has requested specific documentation of the Department's guidelines for the gathering and retention of domestic intelligence information. He has also suggested that legislation might be enacted, requiring a showing of probable cause before an investigation can be initiated by the Government. It is doubtful that any such measure would pass the Congress, but the proposal does show the mood of the times.

A parallel trend may be developing in the courts. In several recent cases, plaintiffs have made the claim that Government information gathering, which goes beyond the effort to apprehend criminal suspects, may have a "chilling effect" on the exercise of First Amendment rights. These challenges thus far have not been successful. Anderson v. Sills, 56 N.J. 210, 265 A2d 678 (1970); Donahoe v. Duling, 330 F. Supp. 308 (E.D. Va. 1971); American Civil Liberties Union v. Westmoreland, 323 F. Supp. 1153 (N.D. Ill. 1971).

The courts have generally recognized that one of the principal functions of the Bureau is to gather information law violators, agitators of violence and possible subversives.. Tatum v. Laird, 444 F2d 947, 957 (D.C. Cir. 1971) cert. granted, 404 U.S. 955 (1971); The Fifth Avenue Peace Parade Committee, et al. v. J. Edgar Hoover, et. al., 70 Civ. 2646 HRT, decided February 16, 1972. The Court of Appeals for the District of Columbia Circuit, has observed that the identity of the agency gathering such information is determinative of the significance of any alleged chill to

Memorandum J. B. Hotis to Mr. Dalbey  
RE: FBI AUTHORITY IN DOMESTIC  
INTELLIGENCE MATTERS

to First Amendment rights. Thus, in Davis v. Ichord, 442 F2d 1207 (D. C. Cir. 1970) although appellants allegedly felt chilled by a Congressional Committee's investigation of them, the Court of Appeals found there was insufficient justiciability in their claims to create a viable case or controversy. This was because appellants had "failed to bring the fear of investigation by the present Committee home to themselves," their fears were wholly speculative; there were no criminal proceedings confronting them; nor was any action pending. Moreover, the Court in Davis found that the power of a Congressional Committee began and ended with the investigation; whenever a Committee of the Congress seeks punitive action, the Judiciary must become involved, and thus every investigation has a judicial check which operates to guarantee the protection of constitutional rights.

This latter aspect of the Davis decision was given perspective by the Court of Appeals in Tatum. In contrasting the potential impact on First Amendment rights occasioned by investigations conducted by the military with investigations conducted by a civilian investigative agency, such as the Federal Bureau of Investigation, the Court observed:

The compilation of data by a civilian investigative agency is thus not the threat to civil liberties or the deterrent on the exercise of the constitutional right of free speech that such action by the military is, because a civil investigative agency has no inherent power always being subject to the well-defined restrictions of law and the approval of the courts. \* \* \*

There, the Court pointedly examined the "source of the chill" as it had in Davis, and in applying the "chilling effect doctrine", singled out the FBI as a source which does not generate a reasonable basis for inhibitions or apprehensions. In this connection the Court stated,

Memorandum B. Hotis to Mr. Dalbey  
RE: FBI AUTHORITY IN DOMESTIC  
INTELLIGENCE MATTERS

Referring to our holding in Davis that the "source of the chill" is important in determining whether there is any inhibiting effect on the exercise of First Amendment rights, we think that there is a significant difference between investigative actions taken by a military agency in reference to civilians and similar investigative actions taken by a regular investigative agency of a civilian branch of the Government.

One of the functions of a civilian investigative agency, such as the Federal Bureau of Investigation, is to compile information on law violators, agitators of violence, and possible subversives. It has always been recognized that this is a delicate function, and it is exercised under the direction of the Attorney General. Investigation is performed by men a majority of whom are under the direction of lawyers in the Justice Department, and the information compiled is only usable and effective through court action. The FBI is powerless to imprison or to affect his liberty in any way except through the action of the courts.

As to the surveillance of public meetings through the use of informants, it has been held that such surveillance is not per se actionable. See Donahoe v. Duling, 330 F. Supp. 308 (E.D. Va. 1971) (police surveillance of street demonstrations held not to offend First Amendment rights).

The Supreme Court in Hoffa v. U.S., 385 U.S. 293 (1966), held that the use of secret informants is "not per se unconstitutional", and does not violate the Fifth Amendment privilege against self-incrimination, nor the Fourth Amendment prohibition against unreasonable searches and seizures. The Court upheld, as reasonable under the Fourth Amendment, admission at trial of evidence obtained by an undercover informant to whom a defendant spoke without knowledge that he was in the employ of the police. 385 U.S. at 300-303. See also Lewis v. U.S., 385 U.S. 206 (1966) and Lopez v. U.S., 373 U.S. 427 (1963).

Memorandum J. B. Hotis to Mr. Dalbey  
RE: FBI AUTHORITY IN DOMESTIC  
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Moreover, the Supreme Court in U.S. v. White, 401 U.S. 745 (1971), recently held that the use of secret informants does not violate any constitutionally justifiable expectation of privacy under the Fourth Amendment, even when an informant uses electronic equipment to transmit his conversations with defendants to other agents.

If the use of undercover government informants without a warrant does not violate the Fourth Amendment and invade a defendant's constitutionally justifiable expectations of privacy, Hoffa v. U.S., supra, and such informants may write down their conversations with defendants and testify concerning them, or simultaneously record and transmit such conversations to others, who may testify against them, On Lee v. U.S., 343 U.S. 747 (1952); U.S. v. White, supra, then clearly mere visual "surveillance" of plaintiffs in plain view by informants at public meetings would not violate their constitutional rights.

It would seem that those who elect to present their views actively in the public arena deliberately expose themselves to the public. See Associated Press v. Walker, 388 U.S. 130 (1967). Any recording of their activities by the defendants does not invade their privacy any more than does a newspaper, radio, or television story, and, indeed, much less since any information compiled is usable and effective only through court action. Tatum v. Laird, 444 F2d 947, 957 (D.C. Cir. 1971).

More difficult questions are presented where the investigation delves into the private affairs of the individuals or organizations. But even here, the courts have generally sustained our procedures so long as they comport with the restrictions of the Fourth, Fifth and Sixth Amendments. The Fifth Avenue Peace Parade Committee, et. al. v. J. Edgar Hoover, et. al., 70 Civ. 2646 HRT, decided February 16, 1972. (examination of bank records) U.S. v. Gerhart, 275 F. Supp. 443 (S.D. W. Va. 1967) (examination of bank records); Minker v. U.S., 312 F2d 632 (3d Cir. 1962) (trash covers); Cohen v. U.S., 378 F2d 751 (9th Cir. 1967) (mail covers); U.S. v. Van Leeuwen, 397 U.S. 249 (1970) (detention and examination of packages in the mail); Mancusi v. DeForte, 392 U.S. 364 (1968) (seizure of union records); Hoffa v. U.S., supra; U.S. v. White, supra; (use of informants).

Memorandum J. B. Hotis to Mr. Dalbey  
Re: FBI AUTHORITY IN DOMESTIC  
INTELLIGENCE MATTERS

In summary, it is premature to say that the First Amendment line of cases, dealing with the "chilling" concept offers any substantial impediment to our intelligence investigations. There is less reason for optimism, however, with regard to congressional intervention. We should be prepared, therefore, to meet arguments regarding the need for outside supervision. The sound answer, which should satisfy governmental needs and individual rights, is found in tight internal controls and carefully developed guidelines.

**POSITION PAPER**  
**DOMESTIC INTELLIGENCE DIVISION**

**INVESTIGATIONS OF SUBVERSION**

**May 19, 1972**

**OVERVIEW**

This paper deals with the conduct by the FBI of intelligence-type investigations supervised by the Domestic Intelligence Division. Authority for these investigations is documented and outlined, including situations where there is no direct violation of law. Criteria and controls and dissemination policies implementing this authority are detailed.



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### INTELLIGENCE COLLECTION

The FBI's intelligence function is well established and documented. Yet, our work in gathering intelligence has been the subject of continuing criticism from segments of the press with charges being made ~~that~~ the FBI is conducting without authority security investigations of persons who are not in violation of the law. It has also been charged that our intelligence collection is uncontrolled, capricious and dwells on personal idiosyncrasies without there being any security interest involved. Fragments of information, distorted and twisted to convey the false impression that the FBI is wantonly disregarding the privacy of citizens, have been published.

The FBI does not conduct security investigations of individuals without clear-cut authority and tight controls. Critics have taken fragments of intelligence which have come to their attention and built them up into what is represented as the end product of security investigations with political overtones. In these instances, the items upon which such importance was placed have been fragmentary intelligence from substantive

investigations and could not be viewed in their real significance, except as they fit into the overall perspective of the case.

This is indicative of the danger of using piecemeal intelligence taken out of context; properly used, however, intelligence is a legitimate and necessary part of all security investigations.

Intelligence is information and the collection of it is inseparable from efficient investigative operations. In fact the two--investigation and intelligence--are mutually dependent.

In the security field, it is vital that the Federal Government detect factors which have a direct bearing on possible violations of law related to the overthrow or destruction of the Government. Intelligence developed to identify individuals who have a propensity for revolutionary or racial violence or have affiliations with subversive or revolutionary groups is essential in the enforcement of the laws designed to protect the integrity of the Government. Intelligence is also essential to the detection of attempts or conspiracies to move against the Government, actions which may themselves be crimes.

No constitutional provisions, statutory enactments or judicial rulings have attempted to deprive law enforcement of its intelligence function, although various attempts have

been made to define or limit the areas encompassed by intelligence and particularly the techniques of collection. It is also recognized that some intelligence gathering activities may have an incidental "chilling" effect on individual citizens. The spectre of the Government's investigatory presence may cause a reaction in citizens, inhibiting the exercise of their full constitutional rights. Therefore, a balance between the requirements of the Government and the constitutional rights of citizens must be maintained.

The intelligence function of investigation, must be both reasonable and practical. It varies in scope and intensity with the seriousness of the provision it seeks to enforce. It is neither reasonable nor practical to launch an aggressive intelligence collection effort concerning the activities of those who might potentially violate a local antilittering ordinance. Detection of a conspiracy to bomb the White House, on the other hand, certainly justifies a continuous and intensive intelligence effort to identify the participants and gain knowledge of any specific plans.

It is mandatory that a Government protect its integrity and this has been recognized by judicial authorities. Ordinary crimes victimize an individual or groups; crimes against the existence of the government victimize society. Carrying these crimes to their ultimate produces the ultimate crime against society--the destruction of that society.

It is clear that the aspirations of most revolutionary groups far exceed their capability to achieve their ultimate objectives. They are, however, quite capable of eroding the integrity of the democratic system by lesser acts and, if not discouraged or thwarted, might well accumulate the will and power for more decisive action. The dramatic success of the Castro revolution is a sufficient example. Consequently, continuing intelligence collection relating to all revolutionary individuals and organizations, commensurate with the immediate threat posed, is imperative to proper vigilance.

The FBI serves as a prime producer of intelligence for the Executive Branch. Over the years it has provided information concerning hostile actions directed against the U. S.

by foreign governments, their intelligence services and others acting in their behalf. On the domestic scene the FBI has penetrated conspiracies ranging from the communist underground to the hooded night riders of the Klan who terrorized our black citizens. But, in the 1960's explosive changes occurred in the internal security problems faced by the country. These changes were reflected in both the scope and nature of the FBI's response and in the intelligence requirements levied upon the FBI by the Executive Branch.

In the decade of the '60's, social change and upheaval added to the critical areas of the FBI's intelligence responsibilities the problems of revolutionary and extremist activities. America was stunned by violent student disruptions, bombings and riots. Spanning the decade were civil rights protests, reactions against them, and tragically, the burning and looting of Watts in 1965 and the conflagrations in Detroit, Newark and Washington, D. C. And, what had been the youthful idealism of the emerging new left in the 1962 Port Huron Statement was drowned out by the obscene Weatherman war cries

as they took their revolution to the streets of Chicago in 1969 during their "Days of Rage."

As the tide of crime and disruption swelled, it brought with it new and pressing problems on the domestic security scene. FBI domestic security investigations increased accordingly. There was also an immediate increase in FBI intelligence collection concerning the lawlessness and violent tactics of these emerging revolutionary elements.

Intelligence collection was essential in contending with these new domestic security problems. This fact was recognized by the reports of two Presidential Commissions. The report of the National Advisory Commission on Civil Disorders (Kerner Commission, 1968) stressed that the absence of accurate information before and during disorders created special control problems. It emphasized that law enforcement organizations must develop the means to obtain adequate intelligence for planning purposes and that law enforcement should "gather, evaluate, analyze and disseminate information on potential as well as actual civil disorders."

Similarly, the President's Commission on Campus

Unrest (1970) took special note of the need for intelligence in effective law enforcement. The Commission stated in its report, "It is an undoubted fact that on some campuses there are men and women who plot, all too often successfully, to burn and bomb, and sometimes to maim and kill." The report concluded that the best, ~~AND~~ sometimes the only, means law enforcement has to thwart or prevent such plots is through "clandestine intelligence work."

Prevention is the very essence of the proper use of intelligence. To be forewarned is to be placed in a position to carry out countermeasures to meet a threat. During the mass actions and violent confrontations of the 1960's, FBI intelligence collection was crystallized in dissemination of information to other government agencies. This intelligence provided them with an essential working tool to contend with public disorders and activities of a revolutionary nature.

In a memorandum to the Director of the FBI, 9/14/67, Attorney General Clark stressed the importance of intelligence. The Attorney General asserted, "It is most important that



you use the maximum available resources, investigative and intelligence, to collect and report all facts bearing upon (riot activity)." Elaborating on this point, he said, "In these circumstances we must be certain that every attempt is being made to get all information bearing upon these problems; to take every step possible to determine whether the rioting is pre-planned or organized; and, if so, to determine the identity of the people and interests involved; and to deter this activity by prompt and vigorous legal action." The Attorney General's evaluation of the importance of intelligence in this instance applies with equal force to other areas of the FBI's security work.

In December, 1967, the Department of Justice, aware of the high priority of intelligence in dealing with civil disorders, created the Inter-Division Information Unit. This is a repository for "reports which relate to individual or organizational activities which may play a part in instigating or spreading civil disorders" and includes intelligence "relating to black power and black nationalist organizations,

officers and members thereof, racial incidents throughout the country, and any specific demonstrations which are being planned and are of such nature as to render them subject to the possibility of violence." Quick retrieval of this intelligence was emphasized through the use of computers.

Attorney General Mitchell wrote to the FBI Director on May 17, 1971, concerning the Intelligence Evaluation Committee, created to analyze and evaluate intelligence for the guidance of the White House and other departments of the Executive Branch. In this memorandum, the Attorney General stated, "Intensified activities on the part of militant groups here in Washington, D. C., and elsewhere in the country clearly point up the need not only for the gathering of the highest quality intelligence available but also for an expert analysis and evaluation of the intelligence product itself."

