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FBI Domestic Intelligence Operations: An Uncertain Future.  
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Report to Rep. Don Edwards, Chairman, House Committee on the Judiciary: Civil and Constitutional Rights Subcommittee; by Robert F. Keller, Acting Comptroller General.

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Under the Attorney General's domestic security guidelines which became effective on April 5, 1976, the Federal Bureau of Investigation's (FBI's) domestic intelligence operations have changed significantly in scope, level of effort, and investigative controls. Findings/Conclusions: Despite the improvements in the direction and control of domestic intelligence, there are still few visible results. Only 10 of the 319 sample cases reviewed produced advance information of planned violent activities or information useful in solving related criminal investigations, or led to the discovery of items apparently intended for criminal purposes. The Department of Justice and the FBI have better control over domestic intelligence activities because current policies more clearly distinguish preliminary from full investigative phases in terms of permissible techniques and duration and scope of investigation and require regular reporting by field offices to FBI headquarters and the Department of Justice. However, while the guidelines have gone a long way toward providing direction and control, they are subject to change over time as personnel change. The extent and nature of the controls themselves could also change since they are not specifically mandated by statute. The Congress should clearly mandate what the objectives and scope of domestic intelligence activities should be and what controls should exist. (Author/SC)

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*REPORT OF THE  
COMPTROLLER GENERAL  
OF THE UNITED STATES*

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**FBI Domestic Intelligence  
Operations: An Uncertain Future**

The FBI's domestic intelligence operations have changed significantly in scope, level of effort, and investigative controls.

The Justice Department and the FBI have made efforts to bring domestic intelligence under control by using guidelines delineating specific procedures and by exercising oversight and review. These efforts have directed and narrowed the scope of domestic intelligence operations.

Due to the many subjective judgments involved in intelligence work and the potential for abuse, it is incumbent upon the Congress to clearly mandate what the objectives and scope of domestic intelligence activities should be and what controls should exist. Such a mandate would go a long way toward giving the FBI's domestic intelligence operations a positive direction and control, and preventing a recurrence of past abuses.



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-179296

The Honorable Don Edwards  
Chairman, Subcommittee on  
Civil and Constitutional Rights  
Committee on the Judiciary  
House of Representatives

Dear Mr. Chairman:

In response to your request of June 7, 1976, this report describes and assesses the FBI's domestic intelligence operations under the Attorney General's domestic security guidelines which became effective on April 5, 1976. The report consists of the summary and comprehensive statements given before your Subcommittee on November 9, 1977. Our review was conducted as a followup to a previous report, "FBI Domestic Intelligence Operations--Their Purpose and Scope: Issues That Need to Be Resolved" (GGD-76-50), dated February 24, 1976.

This report culminates almost 3 years of our reviews in the domestic intelligence area. In addition to issuing this report and the February 1976 report, we

- testified before your Subcommittee on September 24, 1975, on the interim results of our first review, and again on February 24, 1976, on the final results;
- testified in executive session on January 19, 1976, before a subcommittee of the now disbanded Senate Select Committee on Intelligence Operations;
- issued a letter report to you on March 29, 1976, commenting on a March 10, 1976, draft of the Attorney General's guidelines for domestic security investigations; and
- issued comments on August 9, 1977, to the Chairman, House Committee on Government Operations, on two domestic-intelligence-related bills (H.R. 4173 and H.R. 6051).

Since we began our first review of the FBI in late 1974, its domestic intelligence operations have changed significantly in scope, level of effort, and investigative controls. As explained in our statement, there are various reasons for this, including the Attorney General's guidelines

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and other valuable efforts of the Department of Justice and the FBI. We approve of the direction of these efforts, but note they are subject to interpretation and change. Thus, we still believe that if domestic intelligence investigations are to continue, legislation is needed to clearly authorize such investigations and set forth the objectives, scope, and controls needed.

This review, like the earlier one, was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), the Accounting and Auditing Act of 1950 (31 U.S.C. 67), and the Legislative Reorganization Act of 1970 (31 U.S.C. 1156). Again, despite our clear authority in those acts to investigate the administration and operation of the FBI, we did not have full access to FBI investigative files and had to use FBI-prepared case summaries. For this latter review, however, we obtained selected copies of file documents to supplement the summaries. We were also able to randomly verify the accuracy and completeness of the summaries against copies of file documents.

The Department of Justice and the FBI were given an opportunity to comment on our statement. They generally agreed with our findings and conclusions, and their comments were considered in finalizing our statement.

Sincerely yours,

ACTING

  
Comptroller General  
of the United States

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                 Department of Justice

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ABBREVIATIONS

FBI            Federal Bureau of Investigation  
GAO            General Accounting Office  
IRU            Investigations Review Unit

United States General Accounting Office  
Washington, D.C. 20548

FOR RELEASE ON DELIVERY  
Expected at 9:30 AM EDT  
Wednesday, November 9, 1977

SUMMARY STATEMENT OF  
VICTOR L. LOWE, DIRECTOR, GENERAL GOVERNMENT DIVISION  
BEFORE THE  
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS  
HOUSE COMMITTEE ON THE JUDICIARY  
ON THE  
FEDERAL BUREAU OF INVESTIGATION'S  
CONDUCT OF DOMESTIC INTELLIGENCE OPERATIONS  
UNDER THE ATTORNEY GENERAL'S GUIDELINES

Mr. Chairman and Members of the Subcommittee:

Our testimony today deals with the results of our review of the FBI's domestic intelligence operations. As you know, this review is essentially a followup of the report we issued to the Committee on February 24, 1976, entitled "FBI Domestic Intelligence Operations--Their Purpose and Scope: Issues That Need to Be Resolved" (GGD-76-59). Also, this is the third time we have testified before the Subcommittee on this important and controversial subject. We will now summarize the results of our completed review work. Our review focused on the conduct of the FBI's domestic intelligence operations under the Attorney General's domestic security guidelines which went into effect on April 5, 1976. The detailed results of our review are contained in a more comprehensive statement which we are submitting separately for the record. (See p. 8.)

Our observations and conclusions today are based primarily on an analysis of 319 domestic intelligence cases randomly selected from 2,431 investigative matters acted on between

April and November 1976 in five FBI field offices--Los Angeles, Miami, Minneapolis, New York, and San Francisco. The Los Angeles, New York, and San Francisco field offices were included in our first review. (See p. 9 and app. II.)

As was true of our first review, we did not have full access to the FBI's investigative files; once again we used summaries of the case files prepared by FBI agents in accordance with our prescribed format, and we conducted followup interviews with the agents. For this latter review, however, to supplement the detailed summaries we obtained copies of selected documents in which sensitive data, such as names of informants, was excised. Also, unlike in our first review, we were able to randomly verify the accuracy and completeness of the FBI-prepared case summaries by using copies of selected file documents but not the original files.

Thus, we believe the observations and conclusions we have today are valid. However, we would have greater knowledge of investigative activities, and thus the Congress would be better served, if we had been provided full access to the investigative files. Such access would be necessary for us to fully evaluate the impact of intelligence investigations on the individual rights of the subjects.

#### SYNOPSIS OF PRIOR REPORT

Our 1976 report concluded:

- The FBI's authority to carry out domestic intelligence operations was unclear, and legislation providing such authority was needed.
- Without clear criteria for initiating investigations, the FBI's domestic intelligence activities were likely to remain too broad in scope and lacking in tangible results.
- A clear distinction between preliminary and full investigations was needed to effectively control the scope and conduct of domestic intelligence activities.
- The FBI needed to improve its practices in maintaining and disseminating intelligence information.
- Regular review by the Justice Department and the Congress was necessary. (See app. III.)

CHANGES AND EVENTS AFFECTING  
DOMESTIC INTELLIGENCE  
OPERATIONS

Since February 1976 many changes and events have occurred which have had an effect on the FBI's domestic intelligence operations. Many of the issues and problems raised in our first report have been at least partially addressed. I will now summarize these changes.

- On April 5, 1976, the Attorney General's guidelines for domestic security investigations became the FBI's principal policy and procedures in the domestic intelligence area. (See p. 10 and app. IV.)
- Simultaneously, the Attorney General established an Investigations Review Unit (IRU) to monitor and review the FBI's domestic intelligence operations. (See p. 11.)
- On August 30, 1976, the FBI adopted its own investigative policy, which was more restrictive than the Attorney General's guidelines. (See p. 11 and app. VI.)
- In September 1976 the FBI's domestic intelligence operations were transferred to the then General Investigative Division, and a review was conducted of all pending domestic intelligence cases with a view toward making the operations more criminal oriented. (See pp. 11 and 12.)
- There has been regular congressional oversight of the FBI's domestic intelligence operations since February 1976 by this Subcommittee and other congressional committees. (See p. 12.)

Although legislation concerning domestic intelligence has not yet been enacted, the Congress and the Department of Justice are at work drafting legislation. Some legislation which has been introduced would restrict the FBI to only the investigation of criminal violations.

DECLINE IN DOMESTIC INTELLIGENCE  
OPERATIONS

Under the Attorney General's domestic security guidelines, the FBI's domestic intelligence operations have changed significantly in scope, level of effort, and investigative controls. We cannot measure exactly just how much

of the change is directly attributable to the guidelines. However, we believe that the guidelines and the accompanying oversight and review by the Department of Justice have played a vital role in redirecting and narrowing the scope of the FBI's domestic intelligence operations.

Under the Attorney General's guidelines, domestic intelligence investigations are now directed at groups and individuals who pose a credible threat--as evidenced not just by their words but by their actions--of resorting to force or violence in violation of Federal law to overthrow or substantially impair Government operations, or to deprive persons of their civil rights. The number of groups and individuals being investigated and the extent of FBI agent and informant resources being devoted to domestic intelligence have declined substantially. (See p. 15.)

The number of pending investigative matters decreased from 9,814 as of June 30, 1975, to 642 as of June 30, 1977. The number of matters initiated decreased from 1,454 in June 1975 to 95 in June 1977. (See pp. 17 and 18.)

While the FBI had investigated 157 organizations and groups and an undeterminable number of individuals during calendar year 1974, only 17 organizations and groups and about 130 individuals were under full investigation during early October 1977.

During July 1977 an estimated 143 special agents were involved in domestic intelligence and related investigations, compared to an estimated 788 special agents during March 1975. As of October 18, 1977, the FBI reported it was operating about 100 domestic intelligence informants, compared to about 1,100 such informants in November 1975.

The decline in domestic intelligence activities, particularly in the last 2 fiscal years, is attributable to

- the lack of militant activity by protest groups;
- the FBI's implementation of the "quality over quantity" management approach in August 1975;
- the implementation of the Attorney General's domestic security guidelines on April 5, 1976, and subsequent Department of Justice review and approval of full investigations;
- the FBI's adoption, on August 30, 1976, of a more restrictive investigative policy than the

Attorney General's guidelines, and a related FBI-wide review of all domestic intelligence cases with a view toward keeping only "quality" cases;

--the transfer of some investigations from the domestic intelligence program; and

--outside inquiries into the FBI's domestic intelligence operations.

CONTROLS OVER DOMESTIC INTELLIGENCE OPERATIONS

The Department of Justice and the FBI have better control over intelligence activities because current policies (1) more clearly distinguish preliminary from full investigative phases in terms of permissible techniques and duration and scope of investigation and (2) require regular reporting by field offices to FBI headquarters and the Department. (See pp. 34 to 36.)

During our first review, when field offices were not required to report the initiation of preliminary investigations to FBI headquarters, we found that 73 percent of the preliminary investigations in our sample lasted more than the 90-day time limit and that FBI headquarters was not aware of about 65 percent of the extended cases. This time, only 7 of the 58 preliminary investigations within our sample, or about 12 percent, were not reported to FBI headquarters; and 5 of these were not reported because they were closed shortly after they were opened.

Also, only 20 of the 58 sample preliminary investigations lasted more than 90 days, and extensions were requested in 13 of these. Extensions were not requested in only 7 cases.

While the guidelines have gone a long way toward providing direction and control, they are subject to change over time as personnel within the Department of Justice and the FBI change. In addition, certain aspects of the guidelines are subject to differing interpretations, including those dealing with (1) the basis for initiating preliminary and full investigations, (2) what constitutes a preliminary investigation, and (3) the use of informants during preliminary investigations. (See pp. 25 to 31.)

Also, the extent and nature of the controls themselves could change, since they are not specifically mandated by

statute. This is witnessed by the fact that the Justice Department's Investigations Review Unit, which is responsible for providing policy guidance on the FBI's domestic intelligence operations, is currently without staff and its future undecided.

#### RESULTS OF DOMESTIC INTELLIGENCE OPERATIONS

Despite the improvements in the direction and control of domestic intelligence, there are still few visible results. Only 10 of the 319 sample cases produced advance information of planned violent activities or information useful in solving related criminal investigations, or led to the discovery of items apparently intended for criminal purposes. Realistically this may be the best that can be expected, particularly in view of the greater investigative restrictions now placed on the FBI and its past record when there were fewer restrictions and less control. (See pp. 41 to 44.)

As pointed out in our earlier report, who is to say that the FBI's continuous coverage of "subversive" or "extremist" groups and their key leaders has not prevented them from achieving their goals? The problem is one of adequately assessing the value and effectiveness of an operation which by its nature is preventive and by its mere existence may be accomplishing its purpose.

#### CONCLUSIONS

The Department of Justice and the FBI have made the effort to bring domestic intelligence under control. The actions they have taken are generally consistent with the conclusions and recommendations in our first report. However, our principal concern is to insure that the present policies, procedures, and controls do not erode. Due to the many subjective judgments involved in intelligence work and the potential for abuse, we do not believe reliance should be based solely on the judgments of the responsible agencies or on guidelines and controls which are subject to change and varying interpretations over time.

Thus, we believe now as we did before that it is incumbent upon the Congress to clearly mandate what the objectives and scope of the domestic intelligence activities should be and what controls should exist. Coupled with (1) diligent congressional oversight, (2) management controls by the Justice Department and FBI, including periodic reviews by their internal audit groups, and (3) citizens' access to records through

the Freedom of Information and Privacy Acts, such a mandate would go a long way toward giving the FBI's domestic intelligence operations positive direction and control, and preventing a recurrence of past abuses.

A decision whether, or to what extent, to authorize domestic intelligence gathering involves a substantial policy judgment. We hope that our testimony today, together with our first report, has provided insight into the problems which need to be considered in making this judgment.

United States General Accounting Office  
Washington, D.C. 20548

FOR RELEASE ON DELIVERY  
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COMPREHENSIVE STATEMENT OF  
VICTOR L. LOWE, DIRECTOR, GENERAL GOVERNMENT DIVISION  
BEFORE THE  
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS  
HOUSE COMMITTEE ON THE JUDICIARY  
ON THE  
FEDERAL BUREAU OF INVESTIGATION'S  
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Mr. Chairman and Members of the Subcommittee:

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Our review focused on the conduct of the FBI's domestic intelligence operations under the Attorney General's domestic security guidelines which went into effect on April 5, 1976. We were particularly interested in the effect of the guidelines on domestic intelligence staffing and case-load trends, and on the major issues and problems raised in our first report.

Our observations and conclusions today are based on an analysis of 319 domestic intelligence cases <sup>1/</sup> randomly selected from 2,431 investigative matters <sup>2/</sup> acted on between April and November 1976 in five FBI field offices--Los Angeles, Miami, Minneapolis, New York, and San Francisco. (The Los Angeles, New York, and San Francisco field offices were included in our first review.) We discussed domestic intelligence operations with Department of Justice and FBI officials and reviewed Department and FBI headquarters' decisions regarding organizations and groups being investigated.

In our testimony today, we will discuss (1) the key changes and events that have taken place since our first report was issued and since the issuance of the Attorney General's guidelines, (2) the concept of domestic intelligence, (3) the decline in resources and caseload levels, (4) current domestic intelligence policies and procedures, (5) conduct and control of intelligence investigations, (6) maintenance and dissemination of intelligence information, and (7) the results of domestic intelligence investigations.

As was true of our first review, conducted during 1975, we did not have full access to the FBI's investigative files. Once again we used summaries of the case files prepared by FBI agents in accordance with our prescribed format, and we conducted followup interviews with the agents. For this latter review, however, to supplement the detailed summaries we obtained copies of selected documents in which sensitive data, such as names of informants, was excised.

Unlike in our first review, we were able to randomly verify the accuracy and completeness of the FBI-prepared case summaries by using copies of selected file documents but not the original files. Based upon the results of the verification procedure and our overall review, we believe the observations and conclusions we make today about the

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<sup>1/</sup>A case, or investigation, represents the total investigative effort spent by the FBI on a specific subject (individual or group). The full results of this effort are maintained in a case or investigative file at the FBI field office primarily responsible for the case or investigation.

<sup>2/</sup>"Investigative matter" is an administrative term used by the FBI to measure workload. It should not be confused with a case or investigation. One case may entail many investigative matters.

FBI's domestic intelligence operations are valid. However, we would have greater knowledge of investigative activities, and thus the Congress would be better served, if we had been provided full access to the investigative files. Such access would be necessary for us to fully evaluate the impact of intelligence investigations on the individual rights of the subjects.

DOMESTIC INTELLIGENCE OPERATIONS  
SINCE FEBRUARY 1976

Our 1976 report concluded:

- The FBI's authority to carry out domestic intelligence operations was unclear; specifically, legislation providing such authority and setting forth objectives, scope, and functions of domestic intelligence was needed.
- Without clear and interpretable criteria for deciding when to initiate an investigation of groups or individuals, the FBI's domestic intelligence activities were likely to remain too broad in scope and lacking in tangible results.
- A clear distinction between preliminary and full field investigations should be made to effectively control the scope and conduct of domestic intelligence activities.
- The FBI needed to improve its practices in maintaining and disseminating intelligence information.
- Regular review by the Justice Department and the Congress was necessary to insure that the objectives and scope of the FBI's domestic intelligence operations were proper. (See app. III for a digest of our first report.)

Since February 1976 many changes and events have occurred which have affected the FBI's domestic intelligence operations. Many of the issues and problems raised in our first report have been at least partially addressed.

On April 5, 1976, the Attorney General's guidelines for domestic security investigations became the FBI's principal

policy and procedures in the domestic intelligence area. <sup>1/</sup> Two sections of the FBI's Manual of Instructions were consolidated and revised to incorporate the Attorney General's guidelines. The guidelines remedied many problem areas because they clearly distinguished between the different phases of an investigation--preliminary, limited, and full-field--in terms of the duration and scope of investigation, and the investigative techniques permitted. The guidelines also provided mandatory reporting and review requirements.

In conjunction with the implementation of the guidelines, the Attorney General established an Investigations Review Unit (IRU) to monitor and review the FBI's domestic intelligence and counterintelligence operations. The unit is responsible for reviewing FBI justifications for full investigation of individuals and organizations and for making recommendations to the Attorney General. The review unit has completed its initial review of organizations covered by domestic intelligence operations. Originally, this unit was composed of three attorneys, but as of August 30, 1977, they had left and the future of the unit was being reconsidered. Since then its functions have been temporarily performed by senior attorneys in the Attorney General's office and the department's office of legal counsel.

On August 30, 1976, the FBI adopted its own investigative policy which was more restrictive than the Attorney General's guidelines. The policy limited the investigation of individuals to those members of groups under full investigation and even then only permitted the initiation of a preliminary investigation when there was an allegation that an individual was a policymaker or engaged in activities which indicated he or she was likely to use force or violence in violation of Federal law.

During August and September 1976 the FBI reorganized its domestic intelligence operations. The Internal Security Branch of the Intelligence Division was transferred to the General Investigative Division (renamed the Criminal Investigative Division in April 1977) and renamed the Domestic Security Section. This was done to insure that domestic intelligence investigations were oriented toward the prevention or solution of criminal violations.

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<sup>1/</sup>On Mar. 29, 1976, we provided the Subcommittee Chairman a report containing our comments on a draft of the Attorney General's guidelines. (See app. V.)

In conjunction with the reorganization, several headquarters domestic intelligence officials were transferred to other work. An FBI-wide review of all domestic intelligence cases was conducted with a view toward closing those cases without substantial criminal elements and retaining only the truly quality cases in keeping with the FBI's policy of applying its resources to the most pressing crime problems. The result was that many investigations were closed.

In April 1977 domestic security and foreign terrorism functions were merged within the newly created Domestic Security-Terrorism Section of the Criminal Investigative Division. Five of the 21 agents assigned to the section have primary responsibility for supervising domestic security investigations. The remaining agents are responsible for (1) supervising various criminal investigations such as those concerning bombings, sabotage, and protection of foreign officials, (2) investigating the use of false identification, or (3) gathering intelligence on international terrorist groups.

There has been regular congressional oversight of the FBI's domestic intelligence operations since February 1976. This has been done, of course, by this Subcommittee, and by the Senate Select Committee on Intelligence established in May 1976. In addition, the House Permanent Select Committee on Intelligence was established in July 1977 to perform oversight. Although legislation concerning domestic intelligence has not yet been enacted, the Congress and the Department of Justice are at work drafting such legislation. Legislation has been introduced which would restrict the FBI to the investigation of criminal violations only.

#### THE CONCEPT OF DOMESTIC INTELLIGENCE 1/

What is domestic intelligence? In view of Department of Justice and FBI efforts to tie domestic intelligence more

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1/Domestic security, internal security, and domestic intelligence have been used interchangeably to describe the FBI's efforts to detect and gather information on groups and individuals who allegedly attempt to overthrow the Government or deprive others of their civil liberties or rights. For purposes of continuity with our first review, we will use the term "domestic intelligence" except where another term is used officially, such as the Attorney General's "domestic security" guidelines.

closely to criminal violations, and the propensity of some to equate intelligence investigations with criminal investigations, we believe it is important to address this question and in answering it to differentiate domestic intelligence from criminal investigations.

The two differ in terms of (1) the basis for beginning the investigation, (2) the purpose and scope of the investigation, and (3) the investigative techniques used, particularly the use of informants.

Domestic intelligence under the Attorney General's guidelines permits the FBI to initiate an investigation of groups and individuals whose activities are directed toward the overthrow or serious impairment of Government operations or the obstruction of citizens' civil rights with slightly less substantive information than is required to initiate a criminal investigation. The latter requires the commission, or preparation for the commission, of a specific crime. However, preliminary domestic intelligence investigations can be initiated based upon ideological rhetoric coupled with other alleged actions indicating preparations for possible illegal activity. These actions need not necessarily be illegal when viewed alone and may include engaging in firearms practice, accumulating weapons, or studying general security procedures to avoid being detected by law enforcement agencies.

While criminal investigations are directed toward the accumulation of evidence aimed at solving a specific crime, domestic intelligence investigations are oriented toward accumulating background information on the activities of the subject group and individuals, for the purpose of (1) anticipating violence and (2) developing information which might facilitate related criminal investigations, such as bombing investigations.

Intelligence investigations involve monitoring a pattern of activity for as long as it is believed that groups and individuals pose credible threats to engage in violence within the near future. However, they are not intended to be as extensive as criminal investigations in terms of who is investigated. Under the Attorney General's domestic security guidelines, no one is subject to full domestic security investigation unless he or she is directly involved in violence or engaged in activities which indicate he or she is likely to use force or violence in violation of Federal law. However, there is no restriction on investigating persons as part of criminal investigations when they are suspected of being in

some way connected with a crime. The difference is that they are not subject to constant monitoring through informants.

Informants are important in criminal investigations but are essential to intelligence operations. The use of informants in criminal investigations usually involves (1) irregular contact to determine what knowledge the source may have concerning a specific crime or (2) a short-term operation designed to develop the necessary evidence for prosecution.

In contrast, the nature of groups subject to domestic intelligence investigation requires a long-term informant effort. These groups are difficult to penetrate because of their elaborate security procedures and cell-like organizational structure. Such coverage can only be obtained after a lengthy period of observation during which the source gains the trust of the group. The accumulation of intelligence on personal activities and organizations is necessary just to be able to adequately investigate crimes attributed to clandestine groups, and certainly to have any chance of success predicting their violent or terroristic acts.

The relationship of a domestic intelligence investigation to a criminal investigation and their differences can perhaps best be illustrated by the following hypothetical example:

The FBI initiates a civil rights investigation because a black family is terrorized. This investigation develops several suspects and additional allegations that these suspects are members of a white-supremacist, paramilitary group engaged in firearms training. Based upon these allegations, a separate preliminary domestic security investigation is initiated. The preliminary domestic security investigation develops further information supporting the allegations, and after review of the facts, a full investigation is approved for 1 year. The domestic security investigation is directed toward developing adequate informant coverage to permit the identification of all persons involved and the assessment of the potential for violence in violation of Federal law. In the meantime, the original civil rights case is closed because the evidence developed against the suspects is not considered by the Justice Department to be sufficient to permit successful prosecution. In the event that some group members were indicted for a criminal act, the domestic intelligence investigation would be aimed at determining the nature

and objectives of the group and assessing the potential of other members to commit similar or different violent acts.

#### DOMESTIC INTELLIGENCE CASELOAD

Based upon our review of trends in the FBI's total domestic intelligence caseload <sup>1/</sup> and in the caseload trends of related investigative classifications such as bombings and sabotage, we believe that the FBI's domestic intelligence effort has declined substantially. Although it is impossible to attribute the decline to any one reason, a major factor, particularly since April 1976, would be the interpretation given to the Attorney General's domestic security guidelines.

As of June 30, 1977, a total of 642 domestic intelligence investigative matters were pending, compared to 9,814 at the same date in 1975. Similarly, the number of domestic intelligence matters initiated declined from 1,454 in June 1975 to 95 in June 1977.

As of early October 1977, 17 organizations and approximately 130 individuals were under domestic intelligence investigation.

In our first report, we stated that 157 "subversive" and "extremist" organizations were investigated under the FBI's domestic intelligence operations during calendar year 1974. During our first review the FBI did not systematically compile and report on the number of individuals under investigation. However, 800 of the 900 cases we sampled in 10 FBI field offices from cases investigated during calendar year 1974 involved individuals. During July 1977, an estimated

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<sup>1/</sup>In order to maintain consistency with our first review, we focused our followup review on investigations formerly conducted under two investigative classifications--those which involved "subversives" and "extremists." These are also the types of investigations covered under the Attorney General's domestic security guidelines. We did not review investigations of sabotage, bombing, antiriot laws, or protection of foreign official matters. Although the FBI includes these acts in its domestic security operations, we did not consider them to be intelligence-type cases because they mostly involve criminal acts committed before the investigations are initiated.

143 special agents were involved in domestic intelligence and related investigations, compared to an estimated 788 special agents during March 1975. As of October 18, 1977, the FBI reported it was operating about 100 domestic intelligence informants, compared to about 1,100 such informants in November 1975.

The above figures reflect a massive decline in domestic intelligence activities. But what are the reasons for the decline? As shown in the table below, domestic intelligence activity began declining even before our 1975 review.

Percent of Change in Domestic Intelligence  
Investigative Matters Initiated  
from Fiscal Year 1965 to 1977

Investi- gations	1965													
	(Base year)	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	
Subversives	100	95	89	100	94	97	127	142	100	69	52	29	a/	
Extremists	100	109	93	138	190	207	261	227	222	228	121	40	a/	
Combined subversives and extre- mists	100	98	90	108	116	122	157	162	128	105	68	32	8	

a/  
Fiscal year 1977 figures are for the period July 1976 through June 1977 in keeping with past fiscal years. The combined subversive and extremist figures are provided because the FBI decided in December 1976 to combine them.

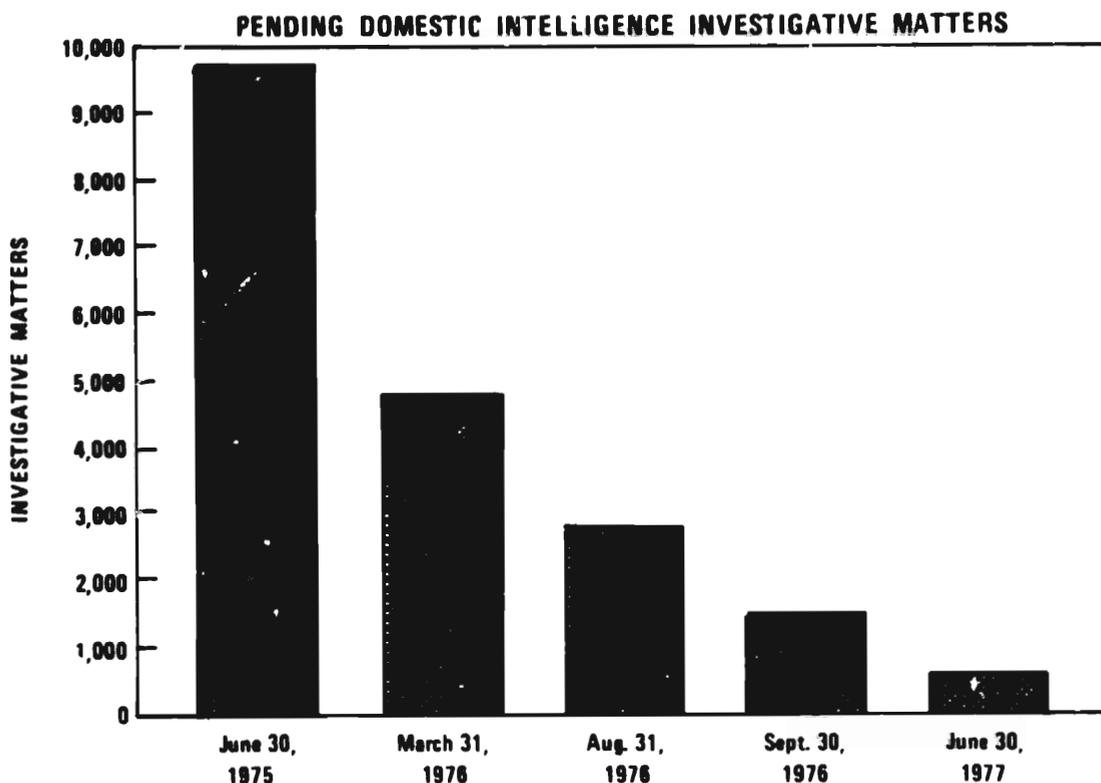
FBI officials attributed the decline during fiscal years 1973, 1974, and 1975 to

- reduced militancy on the part of protest groups,
- tightened criteria for initiating investigations adopted by the FBI in August 1973, and
- more stringent criteria for including names on the administrative index, a program designed to monitor the location and activities of persons thought to constitute a potential or actual threat to the internal security of the United States.

The trend continued downward during fiscal year 1976--a year in which FBI domestic intelligence activities were under review by GAO and the select intelligence committees of the House and the Senate. It has continued to decline through fiscal year 1977. The reasons for the decline in the last 2 fiscal years can be more easily understood by analyzing

the number of domestic intelligence investigative matters pending and initiated during the period.

For example, the table below shows that the number of pending domestic intelligence investigative matters dropped from 9,814 on June 30, 1975, to 642 on June 30, 1977, a decrease of about 93 percent over the 2-year period.



The decline took place in four major increments.

--By March 31, 1976, the pending matters dropped 50 percent to 4,868 about 1 month after issuance of our first report and just a few days before the Attorney General's domestic security guidelines were implemented. The FBI said this decline was hastened due to its implementation, on August 28, 1975, of the "quality over quantity" management approach which is aimed at focusing investigative work and resources on major crime problems. This approach gave field offices greater discretion in closing "marginal" or less important investigations and eliminating case-load as the primary basis for allocating resources among field offices.

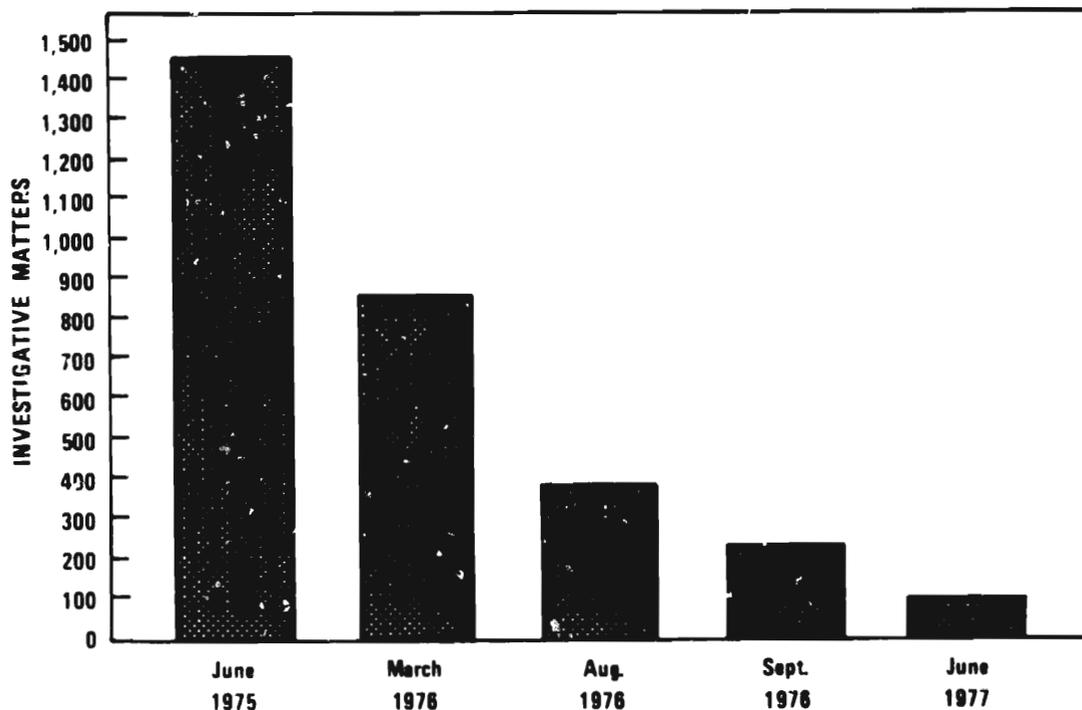
--By August 31, 1976, the pending matters were down to 2,856, or about 29 percent of the June 1975 level. This decline took place primarily because of the Attorney General's guidelines which were implemented on April 5, 1976. Also, the Department's IRU review and approval of specific ongoing investigations started to have an effect on caseload.

--By September 30, 1976, the pending investigative matters had decreased to 1,483, or 15 percent of the 1975 level. This was a result of (1) the adoption of a more restrictive FBI investigative policy under which only group leaders and members engaged in violent or potentially violent activities were subject to investigation and (2) an intensive FBI-wide review of all domestic intelligence cases from the standpoint of "quality."

--By June 30, 1977, the pending matters had decreased to 642. This resulted because (1) the Attorney General closed several organization investigations and (2) the FBI transferred false identity, Communist Party USA, and civil disturbance investigations to other classifications.

As the table below shows, the number of domestic intelligence investigative matters initiated has followed the same downward trend as pending matters.

#### DOMESTIC INTELLIGENCE INVESTIGATIVE MATTERS INITIATED



The reasons for the decline in matters initiated are the same as those for pending matters. These reasons generally apply to the previously mentioned decline in the number of agents assigned to and informants used in domestic intelligence operations. In addition, two overriding reasons for the decline in this activity during recent years have been (1) the continued relative calm and inactivity of revolutionary groups and protest movements and (2) the questions raised by outside inquiries into the FBI's domestic intelligence operations. This reason in particular may also account for the decline in the activity of the trends in other domestic intelligence-related investigative classifications which we examined for indications that domestic intelligence gathering was continuing in the guise of other investigations. Our examination did not show this to be the case.

CURRENT DOMESTIC INTELLIGENCE  
POLICY AND PROCEDURES

The Attorney General's April 5, 1976, guidelines for domestic security investigations became the principal policy governing domestic intelligence gathering. Restrictive policy judgments made by the Justice Department and FBI headquarters have shaped the domestic intelligence program during the 1-year trial period and resulted in a constricted program.

We regard as crucial to shaping the domestic intelligence effort the interpretations given the following under the new policy: (1) the purpose of and criteria for full investigation, (2) the scope of investigative coverage of persons associated with groups, and (3) the latitude on the use of informants during preliminary investigations.

Purpose of and criteria  
for full investigation

The Department's IRU approved for full investigation only those groups for which the FBI could provide facts indicating they were engaged in or were preparing to engage within the foreseeable future in acts of force or violence in violation of Federal law for the purpose of

"(1) overthrowing the government of the United States or the government of a state;

(2) substantially interfering, in the United States, with the activities of a foreign government or its authorized representatives;

(3) substantially impairing for the purpose of influencing U.S. government policies or decisions:

- (a) the functioning of the government of the United States;
- (b) the functioning of the government of a state; or
- (c) interstate commerce;

(4) depriving persons of their civil rights under the Constitution, laws, or treaties of the United States."

Persons associated with the groups were approved for investigation only if they were group policymakers or active in the violent or potentially violent activities.

The emphasis in the IRU's evaluations was on activities which made violence a credible threat. The result was that investigations of groups and organizations which only advocated violence without engaging in actions to prepare for the use of violence were closed. Investigations of persons who had been subject to FBI full-scale monitoring because they were influential, vocal, or active group members were closed. By focusing totally on violent activities, full investigations of some individuals which FBI officials believed might lead to the solution of criminal cases, such as fugitive or bombing matters, were closed, with instructions to pursue these matters through the respective criminal cases.

A sample of IRU investigative decisions and a brief description of the activities of investigative subjects are helpful in illustrating the present focus of the domestic security program.

The IRU approved for investigation:

- A group whose members and affiliates have been responsible for bombings, attacks on foreign officials, attempted aircraft hijacking, and illegal weapons purchases.
- A group whose members committed assaults on persons, held a Federal agent captive, and took over private property for the purpose of impairing the functioning of the Government of the United States and State governments.

- A group whose members have engaged in bombings, accumulation of illegal weapons and explosives, and alleged neutrality violations for the purpose of impairing State governments.
- A group which planned to go underground to commit acts of violence and which had participated in a demonstration which became violent.
- An organization which had made extensive use of force and violence through massive demonstrations, bombings, and assaults on law enforcement officers for the purpose of influencing Federal governmental policies and decisions.

The IRU has disapproved the investigation of:

- A group which held rallies and published a tract in support of violence by clandestine groups.
- A formerly violent group which experienced a change in leadership and is now engaged in community activities.
- A group which has made clear its intent to use violence to violate Federal law at some time for the purpose of overthrowing the United States Government, but whose only activities to date are printing and publishing ideological tracts and attempting to organize factory workers.
- An individual with a history of associating with radical groups, fugitives from justice, and persons known to be or suspected of providing support to fugitives.
- An individual active within radical groups, including planning and organizing demonstrations and meetings, but who had not been involved in a significant leadership role or activities in direct support of violence.

Scope of investigative coverage of  
persons associated with groups  
under full investigation

The intent of the Attorney General's guidelines is to restrict FBI intelligence gathering by (1) evaluating actual

and potential violence before investigating organizations and individuals and (2) limiting the duration of and the techniques to be used in preliminary investigations. Preliminary investigations are confined to (1) the examination of records of the FBI or Federal, State, or local agencies, as well as public records and other public sources of information, (2) inquiry into existing sources of information and previously established informants, and (3) physical surveillance and interviews for the limited purpose of identifying the subjects of an investigation.

The intent of the guidelines is to permit the FBI to have the discretion to conduct preliminary investigations as it sees fit. Thus, preliminary investigations could be conducted on all members of organizations under full investigation to (1) identify them, (2) determine their involvement with the group, and (3) assess them as informant prospects. However, two Justice Department officials told us such investigative coverage should be employed with discretion. They observed that while such coverage might be necessary in some unstructured groups on which the FBI did not have good investigative coverage, wholesale preliminary investigations might not be necessary in structured groups on which the FBI has good informant coverage.

Recognizing the intent of the guidelines to focus domestic security investigations on the criminal aspects of group activities, the FBI developed a more stringent investigative policy issued on August 30, 1976. That policy states:

"When the basis for investigation of an individual is affiliation with an organization, the investigation may be initiated only where such organization is the subject of a full investigation. Membership or affiliation alone is not an adequate basis for investigation. It must be shown that the individual is in a policy-making position in the organization or has engaged in activities which indicate he is likely to use force or violence in violation of a Federal law. In addition, the investigation should focus on those activities done in active support of the organization and separate violations of law involving the individual."

Under the new policy, preliminary investigations are only conducted when information is received that a person is a leader or has engaged in activities which would make him or

her subject to full investigation. The names of group associates not meeting the criteria for investigation are indexed for future reference. This policy was adopted under the rationale that FBI informant coverage was adequate to provide for the eventual identification of all persons worthy of full investigative coverage. That part of preliminary investigations involving talking to people to learn more about an organization and develop informant coverage was not considered significant.

The FBI's full investigations of groups developed very few allegations that members were individually engaged in activities involving, or probably involving, violence, with the result that very few preliminary investigations of particular members were initiated. For example, one field office did not have a single preliminary investigation approved by the Bureau from September 1976 through January 1977. Another field office initiated just four investigations under the domestic security guidelines during the first quarter of 1977, three of which were closed the month they were opened because of a Justice Department decision closing the organization investigation. A third field office initiated three domestic security cases during the first 4 months of 1977.

Faced with diminished informant resources and the difficulty of assessing the threat of small clandestine groups without greater investigative latitude, the FBI is reconsidering its August 30, 1976, investigative policy and plans to seek the Attorney General's concurrence for terminating this policy.

Informant usage in preliminary investigations

The Attorney General's guidelines, buttressed by supplemental informant guidelines implemented in January 1977, prohibit the development of new informants and restrict the use of existing informants during the preliminary investigative phase. The informant guidelines do permit the use of previously established informants or sources in preliminary investigations for the following purposes:

1. To provide what knowledge they already have concerning a group under preliminary investigation.
2. To make inquiries concerning such a group, without attending the group's meetings or joining in its activities.

3. To attend and report on open meetings of a group under preliminary investigation.
4. To attend and report on closed meetings of a group when (1) the group is a faction or splinter group of a parent organization which is already under full investigation or (2) the invitation to attend is initiated solely by the group itself and that group is already under preliminary investigation.

While the Manual of Instructions, prior to incorporating the Attorney General's guidelines, only allowed the use of established sources during preliminary investigations, this was not a problem by virtue of the fact that, in practice, field agents did not differentiate between preliminary and full investigations. Within the present policy framework, agents are concerned about the prohibition on developing new informants or using existing informants as part of preliminary investigations.

Although agents we questioned could not provide examples of investigations which were hindered by the restrictions, they expressed their concerns that by being prohibited from redirecting informants into groups during preliminary investigations they are hindered in making adequate assessments of the nature of clandestine groups. FBI officials consider the restriction to be a special problem because the FBI now has only about 100 domestic intelligence informants nationwide. The domestic security section chief told us that the FBI agreed to the guidelines' restrictions because it thought its complement of informants would be sufficient to provide information on new groups. However, domestic intelligence informants are almost always operated in organization investigations, and with so many organization cases now closed, there has been a sharp drop in the number of "well-connected" informants.

An assessment shared by FBI agents and officials and an IRU attorney is that present investigative limitations during the preliminary phase mean that the FBI is unlikely to learn of a group's intentions until some crime has been committed. The IRU attorney believes that these investigations will essentially be criminal investigations broadened by the use of informants to monitor group activities so long as the group remains a credible threat to commit violence. The attorney viewed this as a realistic policy judgment based upon the FBI's limited success in developing advance knowledge of violence.

ATTORNEY GENERAL GUIDELINES ARE STILL  
SUBJECT TO CONSIDERABLE INTERPRETATION

The Attorney General's guidelines provide a rather flexible investigative framework and are subject to interpretation and revision. Just prior to their implementation, an internal FBI document observed,

"The guidelines for domestic security investigations contain many subjective criteria and their impact on investigations will depend on the interpretation given them by the Department in specific cases."

FBI agents have noted that the guidelines are relatively noncomprehensive and open to interpretation by agents.

Some of the elements of the guidelines which strike us as subjective or which could involve changes in the near future are presented below.

Criteria for full investigation

The guidelines provide that a determination whether the activities of groups or individuals merit full investigation be made only after consideration of:

1. The magnitude of the threatened harm.
2. The likelihood it will occur.
3. The immediacy of the threat.
4. The danger to privacy and free expression posed by a full investigation.

How these criteria would be weighed by the IRU was not immediately clear in April 1976. The FBI concluded then that decisions as to the basis for full investigations could be reached only by consideration of the facts unique to each case and a balancing of the four factors. In a memorandum to the Attorney General, the FBI stated,

"Thus, if the magnitude of the threatened harm is great, an investigation could be justified even though the threat is not immediate or the likelihood of its occurrence is unclear."

Under this broad interpretation, the FBI could justify the full investigation of any group espousing Marxist-Leninist ideology.

In practice, since that time IRU's decisions approving investigations have required a showing of violence or preparation for violence in the foreseeable future. However, the subjective nature of the guidelines does not assure consistent decisionmaking over time.

This judgmental leeway is illustrated by the circumstances surrounding a recently closed organization case. The FBI recommended closing the case due to the lack of violent activity associated with the group during a 1-year period. The IRU, which had planned to approve the group for full investigation, asked the FBI to reconsider its position. The IRU attorney told us he viewed the group, which has a history of violence, as extremely unpredictable and still capable of resorting to violence at any time. The attorney noted that the guidelines do not require that investigations be closed if there has been no violence associated with investigative subjects during a 1-year time frame. The chairperson of the Attorney General's guidelines committee shared the attorney's interpretation of the guidelines, saying it is a matter of evaluating the credibility of the threat posed by each group. Despite this, the FBI stood by its decision to close the case and the Attorney General approved that decision.

what circumstances justify a preliminary investigation?

Preliminary investigations are undertaken based upon allegations or other information that an individual or group may be engaged in activities warranting full investigation. Justice Department and FBI officials indicate that the justification for each case must be evaluated based upon specific circumstances. However, we detected some differences in interpretation as to what situations justify initiating preliminary investigations.

An attorney at the IRU told us preliminary investigations are to be initiated based upon alleged activities indicating a likelihood of some specific criminal activity. Under his concept, rhetoric alone is not a sufficient basis for initiating a preliminary investigation because rhetoric is a protected first amendment activity. Thus, the attorney advised us that groups would not be subject to preliminary domestic security investigation merely for supporting the cause of violent revolution, supporting bombings claimed

by a politically motivated group, or printing bomb-making instructions. The attorney said such groups or individuals could be checked out in the course of criminal investigations.

This concept was not clearly shared by other officials. In testimony before the House Judiciary Subcommittee on Civil and Constitutional Rights on February 11, 1976, the Attorney General and FBI Director were questioned as to the appropriate investigative action to be taken based upon a publication which says: "The rulers have set the time for the party; let us bring the fireworks." The Attorney General thought a preliminary investigation could be opened, while the FBI Director believed some additional facts were needed before a preliminary investigation could be opened.

Two FBI headquarters officials responsible for the domestic intelligence operations recently indicated their belief that preliminary domestic intelligence investigations could be undertaken based upon rhetorical support for violence. However, two other officials told us rhetoric and ideology are not sufficient.

Finally, the chairperson of the Attorney General's guidelines committee told us that although it is preferable to have allegations of some past or planned criminal activity in addition to rhetoric prior to opening a preliminary investigation, certain circumstances could justify initiating a preliminary investigation because of rhetoric alone. As an example, the chairperson described a situation in which a group publicly claimed credit for violent acts committed in a small city relatively free of violent rhetoric. She expressed the opinion that this situation would offer more reasonable suspicion of group involvement in the violence than would similar rhetoric in New York or San Francisco.

The varying interpretations of what circumstances justify preliminary investigations can be viewed as natural. The requirement that the initiation of preliminary investigations be reported to FBI headquarters will insure that investigative judgments are subjected to review. The 90-day duration of most preliminary investigative phases (extensions are allowed) and the limited investigative procedures allowed during the preliminary phase mean that any preliminary investigations will be of limited scope. Nevertheless, we believe the guidelines would be enhanced by a more precise definition of the circumstances justifying the initiation of a preliminary investigation. These could be drawn from the FBI's own investigative experience. It would provide guidance to

all agents involved in domestic intelligence investigations now and in the future. Additionally, this would provide a means for the Congress to evaluate the investigative decisions being made.

What constitutes a preliminary investigation?

The Attorney General's guidelines state that preliminary investigations may be undertaken on the basis of allegations or other information that an individual or a group may be engaged in activities which involve or will involve the use of force or violence and which involve or will involve the violation of Federal law, for the purposes set forth on pages 19 and 20 of this report. According to the guidelines, preliminary investigations shall be confined to determining whether there is a factual basis for opening a full investigation.

Full investigations of persons associated with groups are only to be conducted on leaders or persons involved in activities indicating they are likely to use force and violence. Therefore, the policy of August 30, 1976, that preliminary investigations may be initiated only on persons allegedly meeting the standards for full investigation seems logical. However, as previously noted, two Department of Justice officials indicated that their interpretation was that the guidelines provide the Bureau with the flexibility to conduct preliminary investigations on all group members for the purpose of identifying them and assessing their informant potential.

Our review showed some instances of confusion as to whether or not a preliminary investigation must be opened to identify individuals. Some examples, which did not constitute a pattern of activity, follow.

--Agents conducted a photographic surveillance of a residence to identify possible fugitives or their supporters. The surveillance led to the initiation of seven preliminary investigations prior to August 30, 1976. Headquarters directed that these cases be closed, but told the field office that it could continue to attempt to determine the relationship of these persons with fugitives as part of a fugitive investigation or as part of the intelligence investigation of a group. Field agents said the cases were closed and no future investigation was conducted, because the individuals did not meet the August 30, 1976, investigative criteria.

--As part of the domestic security investigation of an individual associated with a group under investigation, agents watched the subject's house for 25 days. Agents thought surveillance of the subject would lead them to a fugitive. Within the full investigation of the subject, agents identified visitors to the subject's house by checking license plates through the Department of Motor Vehicles, contact with a neighborhood source, and a confidential source. Agents felt they were permitted to identify within the subject's case persons suspected of being his associates. Headquarters later directed that the domestic security case investigation be closed and investigation pursued under the fugitive investigation.

--During the investigation of an organization approved for a full investigation, the local police provided the FBI with (1) names and addresses of individuals being recruited for membership in the organization and (2) names of individuals and license numbers of vehicles observed by the police at the residence of a known organization member. The FBI field office indexed these names and completed name index checks, Department of Motor Vehicles checks, criminal records checks, contacted its informant in the group, and talked with one subject's landlord who furnished the subject's bank account number. Although the case agent stated that the above information was collected to determine if the individuals were members of the organization, and if they were, what their status was, preliminary investigations (case files) were not opened and FBI headquarters was not notified. The agent contended that this practice is necessary to adequately investigate the organization and to determine which individuals are leaders.

--During a full investigation of an individual who is a member of an organization approved for a full investigation, data was gathered on individuals who were only remotely associated with the subject. Data was obtained from the local police identifying an individual as a close associate of a subject and two other individuals known to the associate. Leads were sent to other field offices requesting identification data on all three individuals, but preliminary investigations were not initiated nor was FBI headquarters notified. In following up the lead on one of the two individuals known to the

subject's associate, one field office made inquiries at the telephone company, Department of Motor Vehicles, voters registration, and the local sheriff and police departments, and telephoned the individual's workplace in order to verify his employment, place of birth, and correct address under the pretext of obtaining information for jury duty. This data was transmitted to the originating FBI field office and placed in the file of the original subject.

These situations seem contrary to an interpretation of the Attorney General's guidelines which FBI headquarters gave in a communication to one field office. FBI headquarters stated that a preliminary investigation should be formally initiated whenever (1) public records and other sources of information or Federal, State, and local records are examined, (2) inquiry is made of existing sources or informants, or (3) physical surveillances or interviews are conducted to identify subjects. Yet in the first example, FBI headquarters directed the field office to close seven ongoing preliminary investigations and gave the office the alternative of investigating the individuals as part of the group investigation. FBI headquarters was not aware of the last three examples because the field offices did not treat them as preliminary investigations, and thus did not notify headquarters.

We discussed the last two situations, both of which arose after August 30, 1976, with FBI officials. Two FBI headquarters officials contended that the identifications of individuals in the case examples were not preliminary investigations because there were no allegations that the individuals might be engaged in activities meeting the criteria for full investigation. However, a third official, who had been involved in drafting the August 30 policy, said the intent was that no identification of individuals be undertaken unless there was an allegation that they met the criteria for full investigation. All officials agreed that present policy regarding what constitutes a preliminary investigation is confusing and should be clarified during discussions with the guidelines committee.

We agree that present policy needs clarification. For example, revision is needed to provide that any field office efforts to identify individuals should be subject to FBI headquarters and Justice Department review.

Policy on the use of informants  
during preliminary investigations

As previously discussed, FBI officials are critical of the provisions of the informant guidelines which prohibit development of new informants or redirection of existing informants as part of preliminary investigations. They believe more flexible policies are needed to permit an adequate assessment of the threat posed by groups.

A contrasting view was offered by an IRU attorney who expressed complete opposition to permitting the FBI to direct informants during preliminary investigations, arguing that:

--First amendment considerations are still strong at the preliminary phase until, in his words, "some distinct facts are developed."

--The nature of the allegation which is the basis for a preliminary investigation is not sufficient to allow proper direction of the informant.

--The FBI cannot cite examples of investigations harmed or materially hindered by the prohibition of informants.

--Justice Department control of domestic intelligence investigations is weakened by permitting the FBI to direct informants prior to making a case for full investigation.

The Attorney General's guidelines committee is leaning toward a policy under which informants can be directed during the preliminary investigation of a group which claims credit for illegal activity. FBI headquarters would have to approve the direction. The committee does not anticipate permitting the use of informants against groups when there are no allegations of illegal actions.

We believe that if such a policy is established, the type of situations justifying the direction of an informant during the preliminary phase should be clearly spelled out to provide adequate guidance to agents. This should include consideration of such factors as how the informant is to be directed toward what could be a completely unknown group, and whether the informant could be expected to develop an adequate assessment of the group within 90 or 180 days, the length of a preliminary investigation and one extension.

CONDUCT AND CONTROL OF DOMESTIC  
INTELLIGENCE INVESTIGATIONS

Domestic intelligence investigations continue, as we found during our first review, to be characterized by the largely passive collection of information. This intelligence activity is subject to better control now due to the adoption of policies which (1) distinguish preliminary from full investigative phases in terms of permissible techniques and duration and (2) require regular field office reporting to FBI headquarters and the Department of Justice.

Initiation and conduct  
of investigations

As might be expected, the Attorney General's guidelines have done very little to change how the FBI accumulates domestic intelligence. This is evident from a comparison of the sources and techniques employed by the FBI during 1975 and from April 1976 to March 1977.

Also, there has been very little change in the sources of information which initiated domestic intelligence investigations. Two notable changes, however, are the increased importance of (1) referrals by other FBI field offices and (2) use of the results of other ongoing FBI investigations. FBI headquarters was particularly important as a source of "triggering" information.

The following shows the sources of information now and in the past.

<u>Source</u>	<u>Percentage of cases</u>	
	<u>1975</u>	<u>1976</u>
Informants	48	38
Other FBI offices' investigations	17	32
Police	12	5
Confidential sources	8	13
Other State-local agencies	6	0
Miscellaneous sources	6	12
Other Federal agencies	3	0
Total	<u>100</u>	<u>100</u>

Note: 1975 figures based on 797 investigations of individuals of the 898 sample cases; 1976 figures based on 100 investigations of individuals of the 319 sample cases which were initiated or reopened after April 5, 1976.

We found only minimal differences from our first review in the sources and techniques used during investigations. Thus, while the FBI's domestic intelligence investigations remain generally "passive," they also continue to be all encompassing. Information is gathered from other sources, rather than being developed originally by the FBI. The FBI first contacts a vast variety of routine, established sources to identify the subject and determine his or her activities. If those sources are unable to provide all the information desired, then the FBI uses interviews and other investigative techniques.

Investigative Sources

<u>Source</u>	<u>Sources used at least once</u>	
	<u>Percentage of cases</u>	
	<u>1975</u>	<u>1976</u>
Informants	83	74
State-local police	77	28
Confidential sources	54	34
State divisions of motor vehicles	52	22
Other FBI offices' investigations	49	32
Other State-local agencies	42	15
FBI headquarters indexes	39	21
Credit bureaus	39	6
Other Federal agencies	39	11
Other private sources	33	-
Educational institutions	21	1
Bureaus of vital statistics	20	4
State computers	18	-
Utilities	18	7
Military records	7	1
Banks/other financial institutions	4	5
Other	-	6

Note: 1975 figures based on 797 investigations of individuals of the 898 sample cases; 1976 figures based on 214 investigations of individuals of 319 sample cases, and are independent since more than one source could have been used in each case.

As shown between 1975 and 1976, there was a sharp decline in the contacts with sources. While we can offer no certain reason for this decline, we believe it reflects the prevailing

mood of caution in the field offices during this transition period, which was also characterized by little investigative initiative.

There were 35 interviews conducted in the 214 cases on individuals. Thirteen of the interviews were conducted during preliminary investigations. The Attorney General's guidelines provide for interviews during the preliminary investigative phase for the limited purpose of identifying the investigative subject. Our case reviews and discussions with agents did not disclose any guideline violations.

Other investigative techniques similar to those used in criminal investigations were only used to a limited extent. For example, physical surveillances were employed in 18 cases; photographic surveillances were used in 5 cases; and pretext contacts were made in 5 cases. We found no evidence of the use of techniques such as counterintelligence-type (COINTELPRO) activities, surreptitious entries, or mail openings in any of the cases we reviewed.

#### Investigative controls

The Attorney General's guidelines provide a proper framework for review and control of domestic intelligence investigations. Our first review showed that FBI field offices had not adequately distinguished between the preliminary and full investigative phases in terms of investigative duration or scope. Proper review was not possible because field offices were not required to report preliminary investigations to FBI headquarters.

During our first review, when field offices were not required to report the initiation of preliminary investigations to FBI headquarters, we found that 73 percent of the preliminary investigations in our sample lasted more than the 90-day time limit and that FBI headquarters was not aware of about 65 percent of the extended cases.

Currently all investigations must be reported to FBI headquarters upon initiation. Thus, in 28 of the 58 preliminary investigations within our sample initiated after April 5, 1976, or about 49 percent, FBI headquarters was aware of the initiation within 1 week of the date the investigation began. In 9 cases, or about 16 percent, FBI headquarters was aware of their initiation within 2 weeks. In another 14 cases, notification ranged from 15 to 64 days. FBI headquarters was not notified of 7 preliminary investigations; however, in 5 cases, the investigations were closed

shortly after they were initiated because they did not meet the Attorney General's investigative criteria.

The Attorney General's guidelines establish a 90-day time limit on preliminary investigations, with extensions permitted only with headquarters approval. Thirty-eight of the 58 sample preliminary investigations initiated after April 5, 1976, or 66 percent, were completed within the 90-day time limit. Requests for extensions were submitted for 13 of the remaining 20 cases. No extensions were requested in 7 cases, which lasted from 98 to 151 days. It should be noted that the case lasting 151 days was kept open administratively for all but the first 2 weeks to monitor the outcome of a related prosecutive action.

The Attorney General's guidelines provide for status reports on preliminary and limited investigations after 90 days if they are extended. Reports on full investigations are required 90 days after the investigation is initiated, and at the end of each year the investigation continues. In addition, the guidelines require that FBI headquarters periodically review the results of full investigations and terminate those investigations when the standard for full investigation established in the guidelines can no longer be satisfied and all logical leads have been exhausted or are not likely to be productive. To meet this requirement, the FBI requires 90-day status reports on all full investigations. Meeting these reporting requirements is important to insure that investigations are properly supervised and controlled throughout the year and do not remain open longer than warranted.

We examined the 214 sample cases on individuals to insure that field offices were keeping headquarters apprised of the progress and status of investigations. Field office reporting practices were adequate in 182, or 85 percent, of the cases. Reporting problems found in the remaining 32 cases, 15 percent, can be attributed to the problems and uncertainties characteristic of a transition period.

The Attorney General's guidelines provide for Attorney General approval for full investigations. The basis for each investigation is to be reexamined at 1-year intervals.

The Investigations Review Unit was established and staffed with three attorneys to help the Attorney General supervise the FBI's intelligence programs. By August 30, 1977, all the attorneys had left the Justice Department and

no replacements had been named. Discussions with Justice Department officials indicate that the future of the review function performed by the IRU may be reconsidered in light of the pending nomination of the new FBI Director.

Due to a lack of manpower and time the IRU focused on reviewing the justifications for organization investigations. Some of the initial organization reviews were not completed until August 1977, just before the remaining IRU attorney left. The decision on one group was not made until October 21, 1977. IRU officials told us they have not had the time to review all justifications for the continued full investigation of individuals. Thus, some individual investigations continued as long as 19 months without IRU review after the Attorney General's guidelines were implemented.

#### MAINTENANCE AND DISSEMINATION OF INTELLIGENCE INFORMATION

An understanding of FBI policies on the accumulation, retention, and dissemination of information is important to achieving a full understanding of the intelligence effort. They are important because intelligence investigations, through the use of informants, involve the broad collection of information. Thus, although domestic security investigations are directed at those violent or otherwise criminal activities of the group which justify investigation under the Attorney General's guidelines criteria, first amendment activity is bound to be reported and information on some individuals not subject to investigation is bound to be collected and maintained. This emphasizes the importance of the initial decision whether to investigate a group.

#### Indexing practices

A review of the FBI's August 30, 1976, investigative policy could lead one to believe that the FBI's investigative interest is only in those persons within an organization under investigation who allegedly are leaders or have indicated a willingness to engage in acts of force or violence.

Subsection (e)(7) of the Privacy Act of 1974 states:

"Each agency that maintains a system of records shall maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity."

In regard to domestic intelligence investigations, the FBI and Justice Department have taken the position that "authorized law enforcement activity" pertains to the approved organization investigation and not to the investigation of individual members or associates of the organization. The thinking is that informant information on individual members is a by-product of the organization investigation.

It is left to each FBI agent to decide what information should be retained as part of the investigation, but one FBI official felt the accumulation of background data on rank and file members could be justified because it is necessary to evaluate potential informants and to determine the organization's total active membership. Thus, the names of all group members may be indexed regardless of whether they are subject to separate investigative interest. The index reference can be to the organization file, an individual subject's dead file, 1/ or a closed investigative file.

We did not detect a pattern of questionable indexing practices regarding organization files. There were some instances in which identifying data was collected on individuals as part of the subject investigation. These have been discussed previously.

We did not find excessive use of dead files by any of the five field offices. The most prevalent use of dead files was in one field office which had opened 14 since August 30, 1976. Six of these files involved individuals associated with a group which was subsequently disapproved for investigation. Another six involved individuals associated with a group no longer investigated under the domestic security guidelines. The remaining two cases concerned two separate groups and contained one document each.

Informant reports mentioning an individual's participation in group activities or meetings may still be included in the individual's FBI file when the individual is not under active investigation. This occurred to some extent in 36 percent of our 214 sample cases on individuals. In

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1/A dead file is a noninvestigative file opened on a specific individual or group which the field supervisor believes does not warrant a preliminary inquiry or full-scale investigation at that time but on which he expects to receive additional information in the near future.

26 percent of these cases, five or less documents were added. Another 6 percent of the cases had 6-10 documents added. One percent of the cases had more than 21 documents added. This practice was not as extensive as found in our first review, but then again the level of domestic intelligence activity has been low.

The breadth of intelligence  
collection and retention

As previously discussed, informants provide broad information in their reports, which can be beyond any specific investigative interest. This is exemplified by two sample cases, one closed organization investigation and one active organization investigation. It should be recognized that similar situations are bound to arise again in the course of conducting intelligence investigations.

In the first case an organization investigation ordered closed by FBI headquarters in August 1976 had 45 documents, mostly informant reports, placed into the file after the case was closed. This information was collected as a result of continuing investigative interest in individuals associated with this organization and with a separate group still under investigation.

In the second case data was collected on a front group 1/ of an organization under full investigation even though this group had not been approved for investigation. Information on front group activities, such as demonstrations, classes, and other first amendment activity, was collected as the field office sought to direct an informant through the front group to the secretive parent organization. The informant provided considerable information on the front group but did not succeed in gaining admittance to the target group. Faced with a headquarters directive to either gain immediate access to the parent group or redirect the informant, the field office pulled the informant from the front group.

Collection of personal data

Although the FBI Manual of Instructions states,

"No information should be reported concerning an individual's social or personal affairs or other

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1/A group substantially directed, dominated, or controlled by another group.

background data which is not relevant to an assessment of his activities or affiliation of a domestic security nature,"

we found:

- Information that a former member of a group under investigation had a short affair with a current member of two other groups.
- Information that a subject was a diabetic and was drawing Supplemental Security Income benefits.
- Information that an investigative subject, his spouse, and an associate went to the movies and had a few drinks.
- Information that a social party was held at the residence of a leader of a group by one of the group members.
- Information that a member of a front group not under investigation had a daughter and was on welfare.

Since the FBI summarized for us most file documents, we probably are not aware of all the personal data recorded in the files. However, in our review of FBI summary letters sent to other agencies, we found no instances in which personal data was disseminated. Nevertheless, we question whether the collection of the described types of personal data is either necessary or relevant to the conduct of domestic intelligence investigations.

#### Dissemination practices

During our first domestic intelligence review, we found some questionable dissemination practices. We estimated that 21.6 percent of the cases in which dissemination was made involved individuals who the FBI determined were not associated with a group. We also found that the Secret Service, the principal recipient of FBI dissemination, had maintained files on the subjects of only about 4 percent of the individuals on whom the FBI had disseminated information.

The FBI's restrictive August 30, 1976, investigative policy has resulted in reduced dissemination. Dissemination occurred in 82 of the 214 cases on individuals which we sampled during April through November 1976. Of the 25 cases involving dissemination which were pending on November 30, 1976, only 1 involved a subject not found to be connected with a group under investigation. Twenty-two cases, or 84 percent, were individuals characterized as group leaders or involved in possible violent activities.

The Secret Service continues to be the major recipient of FBI dissemination. We found dissemination to the Secret Service in 78 of the 82 sample cases on individuals. Follow-up of the 78 cases showed that Secret Service field offices retained files on only six subjects, or 8 percent of the cases. Secret Service headquarters files contained records on 19 individuals, or in 24 percent of the cases, some of which were duplicative of the field files.

The Attorney General's guidelines committee, prompted by the findings of our first report, initiated discussions with Secret Service officials to establish new dissemination criteria. The guidelines committee was seeking to establish a balance between privacy rights and security needs. However, in view of the reduced scope of the domestic intelligence program--resulting in a decline in information available for dissemination--the effort has been shelved while the guidelines committee considers more pressing matters.

#### Records retention

Since our first report, the FBI has analyzed its records retention policies. Previously, headquarters files were retained permanently. After the headquarters analysis of retention requirements, a plan was adopted whereby criminal files are maintained for 10 years after active investigation is concluded and security files for 30 years. The study did not involve analysis of past retrieval needs to help define a logical period of retention. Instead, the 30-year period on security data was selected to permit the FBI to meet its information responsibilities under the Security of Government Employees program. One FBI official told us the 30-year time frame basically coincides with the duration of an individual's working life.

More recently, the chairperson of the Attorney General's guidelines committee informed us that the committee intends to recommend the destruction of intelligence files 5 years after an investigation is closed without prosecution and 10

years if an investigation results in prosecution. She said this corresponds with the Privacy Act accounting period for dissemination.

#### RESULTS OF DOMESTIC INTELLIGENCE

What benefits are provided by the FBI's domestic intelligence investigations?

Under the Attorney General's guidelines, the Justice Department and the FBI have two clear objectives for domestic intelligence investigations: to prevent violence through the development of advance knowledge and to facilitate the investigation of related crimes through the development of an information base. As was true of our first review, we noted few tangible results, although some were particularly notable. Domestic intelligence operations are being directed against groups that are potentially violent. However, in view of the nature of the groups involved and the limited success the FBI had when it was operating under less investigative restrictions, it is doubtful that any greater results will ever be achieved.

Only 10 of the 319 cases we reviewed contained tangible results--that is, evidence of having (1) been useful in related criminal investigations or legal proceedings, (2) provided advance knowledge of planned violent activities, or (3) recovered items apparently intended for criminal purposes. 1/ These results are synopsized below.

Case 1--Background information developed during the domestic intelligence investigation facilitated a joint FBI/local criminal investigation resulting in the conviction of five group members in a multi-count indictment in connection with bombings and shootings. This investigation also enabled the FBI to learn of one planned confrontation with the President, one planned action against the President-elect, and plans to perpetrate a bombing. Appropriate agencies were advised but the actions taken are unknown.

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1/Tangible results are not restricted to those achieved after April 5, 1976, when the Attorney General's guidelines were implemented, but include any investigative results and accomplishments associated with the 319 sample cases regardless of the time period.

Case 2--Plans to seize a monument to make a political statement were averted when security was increased on the basis of FBI information. The monument was subsequently occupied but charges against the perpetrators were dropped.

Case 3--The FBI learned of a plan to:

--Kidnap a relative of a high elected official in State government; police were notified and protection was provided.

--Kill a witness; police were notified, but the witness was already in protective custody.

In this case, the FBI also developed allegations that the subject may have participated in a murder and unidentified group members may have murdered a policeman. This information was provided to the local police but the use made of the information is unknown.

Case 4--Information provided by the subject permitted the FBI to locate a weapon, ammunition, false identification, drugs, and bombing literature.

Case 5--The FBI determined that a group planned a demonstration during the Presidential debates. The Secret Service was notified, but the use made of the information is unknown.

Case 6--The FBI learned of planned disruptions of Bicentennial activities in a city. The activities were not disrupted. This was coordinated with local police, but the use made of the information is unknown.

Case 7--The FBI learned of a planned violent demonstration against local elected officials. The demonstration occurred, but additional security had been provided.

Case 8--Domestic intelligence aided the identification and conviction of seven persons for a series of bombings.

Case 9--Domestic intelligence identified bombing suspects and led to the indictment of one subject on Federal explosive charges.

Case 10--The FBI learned a group planned to hold a demonstration despite the withdrawal of permission

by local authorities. Police were contacted and they prepared for the demonstration, which was held without incident.

The FBI claimed accomplishments in 16 other cases. However, we questioned these because (1) they occurred through separate criminal investigations or as a result of criminal investigations which were conducted from the domestic intelligence case file but which were triggered by information from citizens or law enforcement officials, (2) they were peripheral to the objectives of domestic intelligence, or (3) the FBI merely served as a conduit of information.

As in the last review, many of the 319 cases did contain extensive information about the nature, capability, and mood of the organizations, and naturally, background data on individuals. This included advance knowledge of routine organizational events, and indications of discussions of violent actions. For example, one case contained reports on ideological disputes within a group, discussions of the necessity for armed struggle to overthrow the Government, and discussions of terroristic methods. Another case contained considerable information relating to the activities, thinking, speeches, and contacts of the organization's leaders and influential members. There was also considerable information concerning purchases of guns, ammunition, and explosives and/or threats to destroy buildings and facilities, but no evidence of efforts to carry them out.

Another measure of the effectiveness of domestic intelligence is the extent to which the FBI establishes the association of individuals with groups under investigation. In our first review we estimated the FBI was only able to do this in 50 percent of the cases it initiated on individuals. This has improved significantly, probably because of the stricter requirements for initiating investigations.

In the 67 sample cases which the FBI initiated on individuals after April 5, 1976, it was able to identify the subject as being a leader or a member or violence-prone in 48 instances, or 72 percent of the time. Finally, of the 14 cases initiated after August 30, 1976, under the FBI's more restrictive criteria for initiating investigations, 13 cases led to the establishment of an individual's association with a group.

Justice Department and FBI officials recognize that the current scope of domestic intelligence operations severely limits the FBI's opportunity to anticipate crimes. They

realize that a crime is likely to have been committed before a group comes to the FBI's attention. As such, the operations, as handled by the FBI's recently established Domestic Security-Terrorist Section, are aimed primarily toward the collection of evidence for criminal prosecution. This involves greater coordination between intelligence and criminal investigations and giving priority investigative attention to the most violent groups. Just recently a two-agent terrorist research center was established within the Section to support field and headquarters supervisors through file reviews and studies aimed at developing ideas to solve crimes.

Basically, under the Domestic Security-Terrorist Section's current approach, group members will be subject to criminal investigation, broadened by the targeting of informants and by the continuation of the intelligence investigation beyond any specific criminal investigation for as long as the group remains a credible threat to commit future violence. An IRU attorney felt this policy recognized the Government's responsibility to attempt to protect citizens but also recognized that broad intelligence gathering has never really been successful in developing advance knowledge of violence.

Although current emphasis is on solving terrorist-related crimes, the FBI would like to improve its capability to prevent violent and terroristic acts. In order to do this, it wants to develop new informants through preliminary investigations of individuals associated with groups and re-target existing informants during preliminary investigations of groups. Without this latitude, FBI officials see domestic intelligence operations continuing to shrink as the investigations of groups are closed due to lack of activity and informant coverage is lost.

#### CONCLUSIONS

Under the Attorney General's domestic security guidelines, the FBI's domestic intelligence operations have changed significantly in scope, level of effort, and investigative controls. We cannot measure exactly just how much of the change is directly attributable to the guidelines. However, we believe that the guidelines and the accompanying oversight and review by the Department of Justice have played a vital role in redirecting and narrowing the scope of the FBI's domestic intelligence operations.

Under the Attorney General's guidelines, domestic intelligence investigations are now directed at groups and individuals who pose an immediate threat--as evidenced not just by their words but by their actions--of resorting to force or violence in violation of Federal law to overthrow or substantially impair Government operations, or to deprive persons of their civil rights. The number of groups and individuals being investigated and the extent of FBI agent and informant resources being devoted to domestic intelligence have declined substantially. The Department and FBI have better control over intelligence activities because current policies (1) more clearly distinguish preliminary from full investigative phases in terms of permissible techniques and duration and scope of investigation and (2) require regular reporting by field offices to FBI headquarters and the Department.

Improvements have been made in dissemination practices. However, these are more attributable to the overall decline in intelligence activity than any particular change in policy. The amount of information maintained has declined just by the fact that the number of organizations and groups under investigation has decreased. However, so long as intelligence gathering exists, information will necessarily be collected on persons associated with groups but technically not subject to investigation. Thus, some personal information will continue to be collected. Such collection can be controlled by making proper decisions as to what groups should be monitored. However, this collection of personal information cannot be stopped without completely cutting off the intelligence information pipeline.

While the guidelines have gone a long way toward providing direction and control, certain aspects are subject to varying interpretation as personnel within the Department of Justice and FBI change. The extent and nature of the controls themselves could change since they are not specifically mandated by statute. This is witnessed by the fact that the Justice Department's Investigations Review Unit, which is responsible for providing policy guidance on the FBI's domestic intelligence operations, is currently without staff and its future undecided.

Despite the improvements in the direction and control of domestic intelligence, there are still few visible results. Although the FBI has improved its record of establishing who the leaders and associates of groups are, only a few cases produced advance information of planned

violent activities or information useful in solving related criminal investigations. Realistically, this may be the best that can be expected, particularly in view of the greater investigative restrictions now placed on the FBI and its past record when there were fewer restrictions and less control.

Further, as pointed out in our earlier report, who is to say that the FBI's continuous coverage of such groups and their key leaders has not prevented them from achieving their subversive or extremist goals? The problem is one of adequately assessing the value and effectiveness of an operation which by its nature is preventive and by its mere existence may be accomplishing its purpose.

The Department of Justice and the FBI have made the effort to bring domestic intelligence under control. The actions they have taken are generally consistent with the conclusions and recommendations in our first report. However, our principal concern is to insure that the present policies, procedures, and controls do not erode. Due to the many subjective judgments involved in intelligence work and the potential for abuse, we do not believe reliance should be based solely on the judgments of the responsible agencies and on guidelines and controls which are subject to change and varying interpretations over time.

Thus, we believe now as we did before that it is incumbent upon the Congress to clearly mandate what the objectives and scope of the domestic intelligence activities should be and what controls should exist. Coupled with (1) diligent congressional oversight, (2) management controls by the Justice Department and the FBI, including periodic reviews by their internal audit groups, and (3) citizens' access to records through the Freedom of Information and Privacy Acts, such a mandate would go a long way toward giving the FBI's domestic intelligence operations positive direction and control and preventing a recurrence of past abuses.

A decision whether, or to what extent, to authorize domestic intelligence gathering involves a substantial policy judgment. We hope that our testimony today, together with our first report, has provided insight into the problems which need to be considered in making this judgment.

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June 7, 1976

The Honorable Elmer B. Staats  
 Comptroller General of the United States  
 General Accounting Office  
 441 G Street, N. W.  
 Washington, D. C. 20548

Dear Mr. Staats:

Now that the Attorney General has implemented the guidelines for Domestic Security Investigations, it seems appropriate that the Congress should be informed as to the effects of such implementation at all levels of the FBI.

I trust that your office will have a great interest in this area inasmuch as the guidelines were, in large measure, an outgrowth of your analysis of the FBI's domestic intelligence activities.

It would seem advisable to allow some months to pass so that the effects of the guidelines might permeate the field offices. We would hope that the passage of time will provide samples which reflect more accurately the many judgments that will have to be made by both the Bureau and the Department of Justice.

I would like to have your advice as to when might be an appropriate time to commence such an analysis and when the results of that study might be available. I appreciate that unforeseen events often affect timetables, but your best estimate would be helpful to us in planning our oversight activities for the balance of this calendar year.

The Honorable Elmer B. Staats  
Comptroller General of the United States  
General Accounting Office  
441 G Street, N. W.  
Washington, D. C. 20548  
Page 2

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Thank you for the continued high quality of professional services rendered by your office.

Sincerely,



Don Edwards  
Chairman  
Subcommittee on Civil and  
Constitutional Rights

DE/bb

SCOPE OF REVIEW

The findings and conclusions presented in this statement are based on (1) our review and analysis of 319 randomly selected domestic intelligence cases in five FBI field offices and (2) discussions with officials at the Justice Department, FBI headquarters and field offices, and U.S. Secret Service headquarters and field offices.

Field work was performed between December 1976 and May 1977 in Los Angeles, Miami, Minneapolis, New York, and San Francisco. We selected the field offices based upon our analysis of caseload figures in the FBI's 59 offices for calendar year 1974--the time frame from which we selected cases during our first review--and April-November 1976--the first 8 months the domestic intelligence program was subject to the Attorney General's guidelines. The Los Angeles, New York, and San Francisco offices were included in our first review.

We limited our review to cases investigated under the Attorney General's domestic security guidelines between April 5 and November 30, 1976. These consisted primarily of investigations of groups or individuals formerly described as "subversive" or "extremist." They also included investigations formerly done under the FBI's foreign counter-intelligence program but which the Attorney General directed be investigated under the domestic security guidelines because the subjects were not under foreign control. Although the Attorney General decided in October 1976 that investigations concerning the Communist Party USA should be done under the foreign counterintelligence program, we still included them in our review because they came under the domestic intelligence program during most of the time period covered. We excluded false identity investigations, which were included in our first review, because the Deputy Assistant Attorney General, Legal Counsel Division, decided in April 1976 that they should be handled separately as criminal investigations and not be subject to the Attorney General's domestic security guidelines.

Upon initiating review work in the five field offices, we were given a listing by case file number of all the cases which each office investigated between April and November 1976 under the domestic security guidelines as office with prime responsibility. This included (1) initially opened cases on new subjects, (2) reopened cases on subjects already investigated, and (3) ongoing investigations opened before April 5, 1976.

During the 8-month period, the five field offices investigated 2,431 cases. This figure represents the best possible accounting we could make of the cases investigated under the Attorney General's domestic security guidelines. Since the FBI does not systematically measure its investigative activity by case, we cannot provide a comparable figure for the total cases investigated by all 59 FBI field offices during the same period. However, using the FBI's workload measure, investigative matters--more than one of which can be generated by a case--we estimate that the five field offices we reviewed encompassed 44 percent of the domestic intelligence investigative matters opened and/or reopened by all FBI field offices as the responsible offices between April and November 1976. We also estimate that they encompassed 55 percent of all domestic intelligence matters pending as of November 30, 1976.

The total number of cases investigated by each of the five FBI field offices and the number of cases we sampled follow.

<u>Field office</u>	<u>Total cases</u>	<u>Sample cases</u>
Los Angeles	609	80
Miami	71	32
Minneapolis	230	44
New York	642	80
San Francisco	<u>879</u>	<u>83</u>
Total	<u>2,431</u>	<u>319</u>

Our sample covered about 13 percent of the total cases.

Our analysis of the 319 cases was directed at the investigative activity after April 5, 1976. Although in individual cases we requested information regarding prior investigative activity to clarify questions arising during the review, we routinely sought only information on the circumstances concerning the initiation of investigations pending on or opened after April 5, 1976. We did, however, seek any information on investigative results and accomplishments arising from the investigations, regardless of the time period.

As with our first domestic intelligence review, we did not have access to FBI investigative files. Again we had to rely on summaries of the case files, which were prepared by FBI agents in accordance with our prescribed format. However, this time we were able to obtain selected documents from the files to supplement the summaries. Sensitive data, such as the names of sources, was excised from the documents.

We reviewed each summary in detail and held followup interviews with FBI agents. Also, unlike in our first review, we worked out a procedure for verifying the accuracy and completeness of the case summaries. The verification procedure we followed was similar to the one we proposed during our first review. (See app. II of our first domestic intelligence report.) However, we had to verify the summaries to copies of file documents rather than to the original files. Under these procedures, we randomly selected about 30 percent of the sample cases for review. For each of these cases we then randomly selected for verification about 10 percent of the documents for review.

Based on the results of the verification process and our discussions with FBI agents we believe that the information provided by the FBI was generally accurate and complete, and that our findings and conclusions are valid.

In addition to the sample cases for this review, we followed up on the status of the 292 cases we sampled in Los Angeles, New York, and San Francisco during our first review. Six cases were pending as of March 1, 1977; however, 5 of them were being investigated under the Attorney General's foreign counter-intelligence guidelines.

Finally, we reviewed the Attorney General's decision-making process with respect to the full investigations of 25 organizations and groups. Those which we selected covered the majority of the 319 cases in our sample. We examined the FBI memorandums justifying the investigation of each organization or group, and the corresponding Justice Department decision memorandum.

COMPTROLLER GENERAL'S  
REPORT TO THE HOUSE  
COMMITTEE ON THE JUDICIARY

FBI DOMESTIC INTELLIGENCE  
OPERATIONS--THEIR PURPOSE  
AND SCOPE: ISSUES  
THAT NEED TO BE RESOLVED  
Federal Bureau of Investigation  
Department of Justice

D I G E S T

Changes are needed in the FBI's domestic intelligence operations. The operations are too broad in terms of the number of individuals investigated and the scope of the investigations.

Few would deny that some elements or groups within our Nation pose threats to our domestic security. But, differences appear on questions of the exact natures, intents, and threats of certain groups; the techniques used to identify and monitor them; and the scope of coverage applied to specific investigations.

It is a matter of deep concern to the security of our country and to the liberty of our citizens. Only through public debate, inherent in the legislative process, can the issues be adequately addressed.

GAO's recommendations are directed towards resolving problems in five main areas of concern:

- Authority for domestic intelligence operations.
- Initiating and continuing investigations and their results.
- Use of sources and techniques.
- Collection, dissemination, and retention of investigative information.
- Oversight and control.

The recommendations are based on GAO's analysis of 898 domestic intelligence cases randomly sampled from a universe of 19,659

GGD-76-50

Note: Chapter, appendix, and page references in this digest refer to our previous report, not the present one.

cases acted on by the FBI during 1974 in 10 field offices.

AUTHORITY FOR DOMESTIC INTELLIGENCE OPERATIONS (Ch. 3)

Findings

The FBI appears to have carried out its domestic intelligence operations during the past 40 years within the broad framework of Presidential statements and directives, statutes, Executive orders, and Attorney General directives.

The FBI asserts that statements attributed to President Roosevelt in 1936 authorized and directed it to conduct intelligence investigations of subversive activities. But, alleged Presidential authorization is unclear as is the meaning of the term, subversive. What is clear is that in 1936 the FBI began intelligence investigations of the Communist and Fascist movements at the Secretary of State's request, pursuant to statutory authority in the FBI's appropriation act. Moreover, although the President had instigated the Secretary of State's request, the surrounding circumstances suggest that the President's concern was limited to organizations having some connection with a foreign government.

Subsequent Presidential directives in 1939, 1943, 1950, and 1953 did not explicitly delegate authority to the FBI to conduct intelligence investigations of subversive activities. To the extent, if any, that they fixed responsibility on the FBI for such investigations, they did not explicitly indicate that all types of domestic groups and individuals were subject to investigation or clearly indicate what constitutes subversive activities or subversion.

The FBI asserts parallel and preexisting statutory authority for domestic intelligence operations by contending that the

"detect and prosecute" language of 28 U.S.C. 533 authorizes intelligence investigations of groups and individuals who have violated or who are engaged in activities that may violate a substantive criminal statute, such as that pertaining to seditious conspiracy, 18 U.S.C. 2384. A precise definition of the duties intended to be encompassed by the phrase "detect and prosecute" is not possible because documentation related to congressional intent is either not available or does not provide an explanation. Therefore, the FBI's interpretation cannot be said to be incorrect.

Several directives from Attorneys General and other Justice Department officials, apparently issued pursuant to other provisions of 28 U.S.C. 533, also resulted in the FBI conducting certain domestic intelligence investigations. Additionally, Executive orders relating to the Security of Government Employees Programs have been cited as a basis of such investigations.

#### Conclusions

The FBI's authority to carry out domestic intelligence operations is unclear. It must be distilled through an interpretive process that leaves it vulnerable to continuous questioning and debate. There is a need for legislation that clearly provides such authority and delineates it in terms of objectives, scope, and functions encompassed.

#### Recommendations

GAO recommends that the Congress enact legislation concerning domestic intelligence operations clarifying the authority under which the FBI would be able to initiate and conduct such operations. In doing this, the Congress should (1) define the extent to which domestic intelligence investigations should be predicated on existing criminal statutes relating to the overthrow or advocating the overthrow of the Government and (2) specify the activities that should be investigated solely so appropriate Government officials can be aware of them.

Agency Comments

The FBI agreed that legislation is needed clarifying its authority to conduct domestic intelligence investigations. (See p. 163 and app. V.)

INITIATING AND CONTINUING INVESTIGATIONS AND THEIR RESULTS (Ch. 4, 5, 6, 7, 9, and 10)Findings

FBI policy emphasizes that investigations are primarily made of groups and individuals whose actions may result in violations of criminal statutes, especially those dealing with rebellion or insurrection, seditious conspiracy, or advocating the overthrow of the Government. In practice, investigations of individuals occur because of their associations with groups the FBI has characterized as "subversive" or "extremist" regardless of whether the group is violent. (See pp. 27 to 42.)

The FBI primarily appears to justify domestic intelligence investigations on the need to provide the Attorney General and other officials with information upon which to make assessments and policy recommendations regarding the national security.

The FBI field office squad supervisor is responsible for day-to-day control of domestic intelligence investigations. He is responsible for insuring that (1) investigations are in accord with policy, (2) there is a sound basis for opening the investigation, and (3) results are achieved and reported to headquarters.

FBI officials stressed that investigative decisions are based upon the judgment of the agent. GAO believes decisions have to be made this way because the basis for such investigations is ambiguous and specific criteria delineating when to initiate them is lacking.

FBI officials stated that the rhetoric of a group or individual is sufficient to attract initial investigative interest if it could result in criminal violations and adversely affect the Nation's security.

Noticeable membership growth by a group advocating revolution would warrant an investigation as would such actions as buying and storing arms, engaging in firearms practice, or purchasing survival equipment.

Investigations can be initiated either at the preliminary or full-scale level, depending on the available facts and circumstances. The multilevel headquarters review of investigative decisions indicates the FBI's desire to strongly control field office investigations. What is lacking is an adequate independent assessment of the FBI's domestic intelligence policies and procedures.

The FBI believes its domestic intelligence programs fit within the policy framework for such investigations. GAO categorized the programs that came to its attention into five groups:

- Lists of individuals intensively investigated, which included the Security Index, the Communist-Reserve Index, the Administrative Index, and the Key Extremist and Key Activist Programs. (See pp. 66 to 75.)
- Special efforts to locate or follow certain individuals, which included the Stop Index, Computerized Telephone Number File, and the computerization of foreign travel effort. (See pp. 75 to 79.)
- Special liaison programs to focus attention on investigative problem areas, which included the False Identities Program and the efforts to be aware of extremist revolutionary, terrorist, and subversive activities in penal institutions. (See pp. 79 to 83.)
- Counterintelligence Programs. (See pp. 84 to 86.)
- Special reporting efforts of things such as civil disturbances and the "new left's" activities. (See pp. 86 to 90.)

Generally, the FBI's greatest consideration in developing such efforts has been the efficiency and effectiveness of them, rather than their

propriety in terms of protecting individuals' civil liberties. Although the FBI usually did not seek Justice Department approval for the programs, they largely coincided with Department interests.

GAO's review of the 797 randomly sampled cases on individuals showed that many investigations were opened on the basis of weak evidence concerning the nature and extent of the subjects' involvement with a subversive or extremist organization or activity and resulted in establishing either no or minor involvement by the subject.

GAO estimates, on the basis of its sample results, that about 32 percent of the 17,528 cases on individuals were initiated on the basis of hard evidence, about 32 percent on the basis of medium evidence, and about 36 percent on the basis of soft evidence.

--In the 263 sampled cases which the FBI initiated on the basis of hard evidence, it established that the subject was either a leader, member, or a violence prone person in 81 percent of the cases.

--In the 263 sampled cases initiated on the basis of medium evidence, the FBI established leadership, etc., in 49 percent.

--In the 271 sampled cases initiated on the basis of soft evidence, it established leadership, etc., in only 12 percent and found no association in 86 percent. (See pp. 99 to 103.)

Informants, the most common source of information, resulted in initiating 48 percent of the cases on individuals, compared to the next highest source, other FBI field offices, which provided such information in only 17 percent of the cases. (See pp. 103 to 106.)

State and local police, the principal outside sources used by the FBI to initiate investigations, were used in 12 percent of the cases. The remaining 23 percent of the cases were initiated on the basis of information received from confidential sources, other

Federal, State, or local agencies or from miscellaneous sources.

The strongest evidence by far was provided by the most common source of initiating information--FBI informants. Eighty-three percent of the cases initiated on the basis of such information were opened with either hard or medium evidence while only 17 percent were opened with soft evidence.

Overall, about 19 percent of the matters investigated by the FBI related to intelligence, domestic and foreign, from fiscal years 1965 through 1975. A further breakdown is classified because of the need to prevent disclosure of the FBI's counter-espionage effort. But, the percentage has not varied greatly over the last decade, despite the increased emphasis given to domestic intelligence operations between fiscal years 1967-72. By fiscal year 1975, domestic intelligence operations had declined close to the 1965 level. (See pp. 131 to 137.)

FBI and Justice Department officials also estimate that the FBI spent about \$82.5 million on general intelligence in fiscal year 1975. The estimated amount includes money spent on FBI staff involved in criminal as well as domestic and foreign intelligence operations but does not include all funds spent on certain technical support functions associated with such operations.

The purposes of the FBI's domestic intelligence investigations are to (1) prosecute and convict subjects for violating appropriate statutes, (2) continuously keep appraised of the strength, danger, and activities of subversive and extremist groups, and (3) provide information to assist executive branch officials in making decisions affecting national security.

There have been few tangible results from such investigations. This is not to say that domestic intelligence is unnecessary or of no value.

GAO estimated, on the basis of its random sample, that, of the 17,528 individual cases investigated by the 10 FBI field offices during 1974:

- 3 percent (533) were referred for prosecution.
- 1.6 percent (281) were prosecuted.
- 1.3 percent (231) were convicted.
- 2.7 percent (476) resulted in the FBI obtaining advance knowledge of planned activities. (See pp. 138 to 144.)

GAO also analyzed the 101 organization, or control and miscellaneous cases it sampled to determine whether any contained instances where the FBI obtained advance knowledge of planned activities. Twenty-one cases contained specific instances of advance knowledge. The number of instances in each case varied from 1 to 51. GAO considered 12 percent of such instances to be of a potentially violent nature. Others involved speeches, conferences, and demonstrations.

Furthermore, on the basis of its sample results, GAO estimates that:

- In 50 percent of 17,528 cases the FBI was unable to establish the individual's association with a group or its activities.
- In 44 percent (7,772), the FBI established that the individual was a leader, member of an organization, or violence prone individual. (See pp. 145 to 146.)

There was also a lack of evaluation and analysis capability in connection with the FBI's domestic intelligence operations. (See pp. 146 to 147.)

Other than effectively identifying and gathering information on groups and affiliated individuals that espouse and carry out subversive and extremist activities, the FBI's domestic intelligence operations do not appear to have achieved many tangible results. However, this may be sufficient, because who is

to say that the FBI's continuous coverage of such groups and their key leaders has not prevented them to date from achieving their ultimate subversive or extremist goals? The problem is one of adequately assessing the value and effectiveness of an operation which by its nature is preventive and by its mere existence may be accomplishing its purpose.

#### Conclusions

An essential difficulty with the domestic intelligence investigations has been the FBI's failure to adequately distinguish the extent to which groups are likely to use force or violence to achieve their goals and to investigate and use certain techniques accordingly. Priorities for such investigations are not systematically determined. Moreover, no outside organizations have effectively held the FBI accountable for such decisions.

Violent groups, such as the present-day Weatherman, or previously the Ku Klux Klan, warrant the FBI's full attention. Rather than concentrating on the most violence prone groups, the FBI has diffused its domestic intelligence investigative coverage to the point where many investigations do not lead to positive results. Perhaps if the FBI concentrated its efforts on those groups and individuals who represent the highest priority from a standpoint of a national security threat as determined by the Attorney General and FBI, the domestic intelligence program would be more productive.

GAO assumes that in any intelligence-type investigation, one objective must be to merely gather information. Such an objective is appropriate, but only within the confines of a clearly defined policy setting out the nature of groups and individuals to be investigated. Thus, the key decision must be that of deciding when to investigate a group or individual.

Recommendations

GAO recommends that the Congress enact legislation concerning domestic intelligence operations:

- Limiting such investigations only to groups that have used or are likely to use force or violence: a determination that must be made at least annually by the Attorney General or Deputy Attorney General in accordance with specific criteria issued by the Attorney General.
- Limiting investigations of individuals who are merely members of groups classified as warranting investigation, but which have only shown a likelihood of violence, to instances when information indicates the individuals may be involved in or are likely to become involved in specific criminal acts.
- Allowing the FBI to conduct yearlong, extensive investigations of individuals associated with, or suspected of associating with, groups that have proven abilities to commit violent acts and have been classified annually by the Attorney General or Deputy Attorney General as being grave threats to the public well-being. The phrase "proven ability to commit violent acts" could be defined by the frequency of acts and time period in which they were committed.
- Allowing the FBI to (1) establish and operate informants who could penetrate properly classified groups which have evidenced a likelihood of violence or used violence and (2) investigate leaders of such groups or potential groups to determine their identities, extent of their followings, and propensities for violence.

Agency Comments

The FBI did not agree that domestic intelligence operations should be directed only to those groups engaged in or likely to

engage in force or violence. The FBI essentially believes that it should be allowed to investigate groups that evidence a possibility of using violence, regardless of the probability that they will do so.

The Justice Department committee drafting FBI domestic intelligence guidelines stated in the guidelines that such investigations should be of activities which involve or will involve use of force or violence and the violation of Federal law.

The FBI also stated that GAO did not specifically address the need to investigate individuals unaffiliated with groups, which the FBI characterized as anarchists or terrorists.

No GAO recommendation would preclude the FBI from investigating any individual plotting the imminent use of force or violence in a specific criminal act. Moreover, GAO questions how the FBI presumes it could effectively obtain such knowledge of violent acts planned by individuals affiliated with no group when GAO results showed that the FBI obtained advance knowledge of actions--violent or otherwise--in few of the affiliated cases GAO sampled. (See pp. 163 to 165 and app. V.)

#### SOURCES AND TECHNIQUES (Ch. 7)

##### Findings

The FBI's domestic intelligence investigations are generally "passive" but all encompassing. Information is gathered from other sources, rather than being developed originally by the FBI.

The FBI first contacts a vast variety of routine, established sources to identify the subject and determine his or her activities. If those sources are unable to completely provide the required information, then the FBI uses interviews and other investigative

techniques. The use of special investigative techniques and programs seemed to depend on the results of the investigation. They were used once a subject's involvement in subversive or extremist activities was confirmed.

Informants and State and local police were by far the most common sources contacted during investigations. Informants were used in about 83 percent of the individual cases while police sources were contacted in about 77 percent. Confidential sources were used in 54 percent; credit bureaus, in 39 percent; educational institutions, in 21 percent; utilities, in 18 percent; and banks and other financial institutions, in 4 percent of the cases. (See pp. 106 to 108.)

With the exception of using certain minor investigative techniques to identify a subject, special or unusual techniques or programs were used infrequently. For example, the most common active investigative techniques used were pretext contacts and physical surveillance, which were both used in only about 20 percent of the cases. Photo surveillance was used in only 4 percent, while mail covers were used in only 1 percent of the cases. (See pp. 108 to 111.)

Interviews were conducted by the FBI in about 42 percent of the investigations of individuals. The subjects of the inquiries were interviewed in about 22 percent of the cases. Friends and associates were interviewed in 12 percent; neighbors, in 11 percent; employers, in 9 percent; relatives, in 9 percent; and others (including landlords, businessmen, attorneys and school officials), in 15 percent of the cases.

Information was obtained from electronic surveillances in only about 8 percent of all cases GAO sampled. In all but two of the cases, the information was obtained as the result of "overhears" on surveillances targeted against the subjects of cases not included in GAO's sample. Most electronic surveillances were targeted at the headquarters or chapters of subversive or extremist organizations. All were approved by the Attorney General.

There were only 6 cases in which the subjects were targets of neutralizing or disruptive actions under the FBI's counterintelligence programs. The actions consisted primarily of sending anonymous materials to the subjects and leaking nonpublic or disseminating public information to media sources. "Surreptitious entries" were used in nine sampled cases, and in one of those cases mail was opened. All but one of the cases were conducted by the FBI New York field office against groups or individuals classified as "subversive" by the FBI.

FBI policy has officially distinguished between preliminary inquiries and full-scale investigations since September 1973, to limit the impact of domestic intelligence investigations on the subjects and give headquarters greater control. Preliminary inquiries are to be undertaken through established sources, are not to exceed 90 days, and are to establish whether there is evidence to warrant a full-scale investigation. FBI field offices, however, did not distinguish between preliminary inquiries and full-scale investigations in practice.

GAO estimates that 7,562 of the 8,392 cases opened after December 31, 1973, were opened as preliminary inquiries. Moreover, the 10 FBI field offices generally used the same sources in preliminary inquiries as in full-scale investigations. Further, GAO estimates that inquiries lasted longer than 90 days in 72.5 percent of the cases and FBI headquarters was aware of such cases only about 35 percent of the time. Thus, many cases were not properly controlled. In December 1975 the FBI revised its policy to provide for better headquarters control of preliminary inquiries. (See pp. 111 to 116.)

#### Conclusions

Generally the FBI appeared to use appropriate techniques and sources during its investigations. Questionable actions were the use of counterintelligence techniques and surreptitious entry. Preliminary and full-scale

investigations, if properly implemented, could be an effective administrative aid and control. This concept, together with stricter, more specific requirements for opening investigations could help to limit the scope and conduct of the FBI's domestic intelligence operations.

#### Recommendations

GAO recommends that the Congress enact legislation concerning domestic intelligence operations limiting the extent to which the Attorney General may authorize the FBI to take nonviolent emergency measures to prevent the use of force or violence in violation of Federal law. Preventive measures should only be used when there is probable cause that violent actions pose real and immediate threats to life or property and would interfere substantially with the functioning of Government.

GAO recommends that, until guidelines or further legislative changes are enacted, the Attorney General direct the FBI to enforce its current requirements that (1) only established sources be contacted during preliminary inquiries and (2) preliminary inquiries be completed within the required 90-day time frame or that FBI headquarters approval be sought for an extension.

#### COLLECTION, DISSEMINATION, AND RETENTION OF INVESTIGATIVE INFORMATION (Ch. 8)

##### Findings

Overall, the FBI appears to have adequately controlled the dissemination of investigative information. However, the FBI had not adequately examined its procedures for maintaining information.

The FBI assumes that anything pertinent to an intelligence investigation will be included in a report and placed in a headquarters file. This information will be retained indefinitely because of the possibility that such data might be useful in future investigations. But,

neither the FBI nor the Justice Department has adequately determined the frequency and purposes of using investigative information after a case is closed. (See pp. 118 to 129.)

There was no indication that the collection of personal data was widespread. When it was recorded, agents generally indicated that it was unsolicited but included it in the file because it was provided by an informant or obtained through an electronic surveillance. (See pp. 120 to 121.)

There was some dissemination in 399--or about half--of the individual cases GAO sampled. Information was disseminated orally in only 6 percent of the cases, in writing in 79 percent, and both orally and written in 15 percent.

The U.S. Secret Service was the most frequent recipient of FBI-provided information--in 89 percent of the cases. But the Secret Service had intelligence files on the subjects of only about 4 percent of the cases GAO followed up with them. It destroyed the rest. Both FBI and Secret Service officials stressed the need to maintain the procedures governing the exchange of information between them, because it assures that there is little doubt that, if an individual investigated by the FBI meets Secret Service criteria, the Service would be aware of it.

Generally, the FBI appeared to adequately control the dissemination of information. But, improvements could be made. In 47 percent of the cases on individuals GAO sampled, the FBI could not establish any associations on the part of the subjects with subversive or extremist groups. Yet, in 21 percent of these cases the FBI disseminated reports identifying the individuals to other Federal, State, or local law enforcement agencies. Furthermore, in 71 percent of the cases opened in 1974 with dissemination, the dissemination was made during preliminary inquiries or during the preliminary stage of full-scale investigations.

### Conclusions

GAO questions the need for disseminating information on individuals whom the FBI has not determined to be leaders, active members, or violence prone individuals because once the FBI disseminates information it loses control over how it is used, interpreted, and how long it is retained.

### Recommendations

GAO recommends that the Attorney General direct the FBI to:

- Limit the type of information that can be collected by any source to that pertinent and necessary to the investigation.
- Establish a limit for the retention of all information obtained in domestic intelligence investigations after completing a study showing how, and the frequency with which, this information is used in subsequent investigations.
- Review, with appropriate agencies, current agreements regarding dissemination and exchange of information to assess the usefulness of FBI-provided information and if possible, reduce the amount of information exchanged.
- Only disseminate information relevant to an appropriate agency's organizational interest in the case, and in usual circumstances disseminate no information on individuals whose associations with a properly classified group or propensities for violence have not been established.

### OVERSIGHT AND CONTROL (Ch. 5, 6, and 11)

#### Findings

Department of Justice officials exercised virtually no policy direction of FBI domestic intelligence investigations. In most instances when the Department requested particular investigations by the FBI, the request paralleled FBI efforts already underway.

Normally, Department of Justice policy guidance was provided only when the FBI requested it. However, the Department did not independently assess the extent to which the FBI was adhering to the guidance it did provide.

FBI investigations were not conducted in a vacuum. FBI internal documents frequently refer to the many inquiries from Government officials concerning the activities of individuals or groups. (See pp. 44 to 63.)

The Attorney General's draft guidelines for controlling domestic intelligence investigations are a step in the right direction and indicate a firm commitment to try to begin exercising proper departmental control of FBI operations. GAO believes the guidelines adequately address some of the problems associated with past and current domestic intelligence operations.

Under current FBI policy and the draft guidelines, preliminary inquiries are opened essentially to determine whether individuals associated with groups may be engaged in activities in which there is a likelihood that their actions will involve the use of violence. But, GAO found that many such inquiries did not result in positive information regarding the subject's association with a subversive or extremist group. There is a basis for questioning the need for such investigations. The draft guidelines do not adequately address the problem. (See pp. 148 to 157.)

Until recently, there has also not been any systematic or continuous congressional oversight of the FBI's domestic intelligence operations.

#### Conclusions

There must be continuous and conscientious oversight of domestic intelligence operations by the Justice Department and the Congress to help assure that the FBI's investigative efforts

are consistent with any legislative or administrative changes. Such decisions will, of necessity, be subjective to a certain extent, based on perceptions of domestic security at the time they have to be made. A broad spectrum of views should be marshaled in deciding the extent to which certain domestic intelligence efforts are needed.

#### Recommendations

GAO recommends that the Congress enact legislation requiring the Attorney General to periodically advise and report to the Congress on such matters as (1) the focus of current domestic intelligence operations, (2) groups under investigation, (3) anticipated actions of such groups and how they might affect policy decisions, and (4) the extent to which certain sensitive techniques, such as mail covers and preventive action, were approved and used.

GAO also recommends that the Attorney General publish specific rules and regulations establishing a systematic process for providing proper departmental control and oversight of FBI operations.

Some of these recommendations could be implemented by carrying out sections of the Attorney General's draft guidelines on FBI domestic intelligence operations. Others would require additional actions.

DOMESTIC SECURITY INVESTIGATIONSI. BASES OF INVESTIGATION

- A. Domestic security investigations are conducted, when authorized under Section II(C), II(F), or II(I), to ascertain information on the activities of individuals, or the activities of groups, which involve or will involve the use of force or violence and which involve or will involve the violation of federal law, for the purpose of:
- (1) overthrowing the government of the United States or the government of a State;
  - (2) substantially interfering, in the United States, with the activities of a foreign government or its authorized representatives;
  - (3) substantially impairing for the purpose of influencing U.S. government policies or decisions:
    - (a) the functioning of the government of the United States;
    - (b) the functioning of the government of a State; or
    - (c) interstate commerce
  - (4) depriving persons of their civil rights under the Constitution, laws, or treaties of the United States.

II. INITIATION AND SCOPE OF INVESTIGATIONS

- A. Domestic security investigations are conducted at three levels -- preliminary investigations, limited investigations, and full investigations -- differing in scope and in investigative techniques which may be used.
- B. All investigations undertaken through these guidelines shall be designed and conducted so as not to limit the full exercise of rights protected by the Constitution and laws of the United States.

Preliminary Investigations

- C. Preliminary investigations may be undertaken on the basis of allegations or other information that an individual or a group may be engaged in activities which involve or will involve the use of force or violence and which involve or will involve the

violation of federal law for one or more of the purposes enumerated in IA(1)-IA(4). These investigations shall be confined to determining whether there is a factual basis for opening a full investigation.

- D. Information gathered by the FBI during preliminary investigations shall be pertinent to verifying or refuting the allegations or information concerning activities described in paragraph IA.
- E. FBI field offices may, on their own initiative, undertake preliminary investigations limited to:
  - 1. examination of FBI indices and files;
  - 2. examination of public records and other public sources of information;
  - 3. examination of federal, state, and local records;
  - 4. inquiry of existing sources of information and use of previously established informants; and
  - 5. physical surveillance and interviews of persons not mentioned in E(1)-E(4) for the limited purpose of identifying the subject of a investigation.

#### Limited Investigations

- F. A limited investigation must be authorized in writing by a Special Agent in Charge or FBI Headquarters when the techniques listed in paragraph E are inadequate to determine if there is a factual basis for a full investigation. In addition to the techniques set forth in E(1)-E(4) the following techniques also may be used in a limited investigation:
  - 1. physical surveillance for purposes other than identifying the subject of the investigation;
  - 2. interviews of persons not mentioned in E(1)-E(4) for purposes other than identifying the subject of the investigation, but only when authorized by the Special Agent in Charge after full consideration of such factors as the seriousness of the allegation, the need for the interview, and the consequences of using the technique. When there is a question whether an interview should be undertaken, the Special Agent in Charge shall seek approval of FBI Headquarters.

- C. Techniques such as recruitment or placement of informants in groups, "mail covers," or electronic surveillance, may not be used as part of a preliminary or a limited investigation.
- H. All preliminary and limited investigations shall be closed within 90 days of the date upon which the preliminary investigation was initiated. However, FBI Headquarters may authorize in writing extension of a preliminary or limited investigation for periods of not more than 90 days when facts or information obtained in the original period justify such an extension. The authorization shall include a statement of the circumstances justifying the extension.

#### Full Investigation

- I. Full investigations must be authorized by FBI Headquarters. They may only be authorized on the basis of specific and articulable facts giving reason to believe that an individual or a group is or may be engaged in activities which involve the use of force or violence and which involve or will involve the violation of federal law for one or more of the purposes enumerated in IA(1)-IA(4). The following factors must be considered in determining whether a full investigation should be undertaken:
  - (1) the magnitude of the threatened harm;
  - (2) the likelihood it will occur;
  - (3) the immediacy of the threat; and
  - (4) the danger to privacy and free expression posed by a full investigation.

#### Investigative Techniques

- J. Whenever use of the following investigative techniques are permitted by these guidelines, they shall be implemented as limited herein:
  - (1) use of informants to gather information, when approved by FBI Headquarters, and subject to review at intervals not longer than 180 days; provided,
    - (a) when persons have been arrested or charged with a crime, and criminal proceedings are still pending, informants shall not be used to gather information concerning that crime from the person(s) charged; and

- Informants shall not be used to obtain privileged information; and where such information is obtained by an informant on his own initiative no record or use shall be made of the information.
- (2) "mail covers," pursuant to postal regulations, when approved by the Attorney General or his designee, initially or upon request for extension; and
  - (3) electronic surveillance in accordance with the requirement of Title III of the Omnibus Crime Control and Safe Streets Act of 1968,

Provided that whenever it becomes known that person(s) under surveillance are engaged in privileged conversation (e.g. with attorney), interception equipment shall be immediately shut off and the Justice Department advised as soon as practicable. Where such a conversation is recorded it shall not be transcribed, and a Department attorney shall determine if such conversation is privileged.

NOTE: These techniques have been the subject of strong concern. The committee is not yet satisfied that all sensitive areas have been covered (e.g., inquiries made under "pretext;" "trash covers," photographic or other surveillance techniques.)

### III. TERMINATING INVESTIGATIONS

- A. Preliminary, limited, and full investigations may be terminated at any time by the Attorney General, his designee, or FBI Headquarters.
- B. FBI Headquarters shall periodically review the results of full investigations, and at such time as it appears that the standard for a full investigation under II(I) can no longer be satisfied and all logical leads have been exhausted or are not likely to be productive, FBI Headquarters shall terminate the full investigation.
- C. The Department of Justice shall review the results of full domestic intelligence investigations at least annually, and shall determine in writing whether continued investigation is warranted. Full investigations shall not continue beyond one year without the written approval of the Department. However, in the absence of such notification the investigation may continue for an additional 30 day period pending response by the Department.

IV. REPORTING, DISSEMINATION, AND RETENTIONA. Reporting

1. Preliminary investigations which involve a 90-day extension under IIR and limited investigations under IIF, shall be reported periodically to the Department of Justice. Reports of preliminary and limited investigations shall include the identity of the subject of the investigation, the identity of the person interviewed or the person or place surveilled, and shall indicate which investigations involved a 90-day extension. FBI Headquarters shall maintain, and provide to the Department of Justice upon request, statistics on the number of preliminary investigations instituted by each field office, the number of limited investigations under IIF, the number of preliminary investigations that involved 90-day extensions under IIR, and the number of preliminary or limited investigations that resulted in the opening of a full investigation.
2. Upon opening a full domestic security investigation the FBI shall, within one week, advise the Attorney General or his designee thereof, setting forth the basis for undertaking the investigation.
3. The FBI shall report the progress of full domestic security investigations to the Department of Justice not later than 90 days after the initiation thereof, and the results at the end of each year the investigation continues.
4. Where the identity of the source of information is not disclosed in a domestic security report, an assessment of the reliability of the source shall be provided.

B. Dissemination1. Other Federal Authorities

The FBI may disseminate facts or information obtained during a domestic security investigation to other federal authorities when such information:

- (a) falls within their investigative jurisdiction;
- (b) may assist in preventing the use of force or violence; or

- (c) may be required by statute, interagency agreement approved by the Attorney General, or Presidential directive. All such agreements and directives shall be published in the Federal Register.

## 2. State and Local Authorities

The FBI may disseminate facts or information relative to activities described in paragraph 1B to state and local law enforcement authorities when such information:

- (a) falls within their investigative jurisdiction;
  - (b) may assist in preventing the use of force or violence; or
  - (c) may protect the integrity of a law enforcement agency.
3. When information relating to serious crimes not covered by paragraph 1A is obtained during a domestic security investigation, the FBI shall promptly refer the information to the appropriate lawful authorities if it is within the jurisdiction of state and local agencies.
  4. Nothing in these guidelines shall limit the authority of the FBI to inform any individual(s) whose safety or property is directly threatened by planned force or violence, so that they may take appropriate protective safeguards.
  5. The FBI shall maintain records, as required by law, of all disseminations made outside the Department of Justice, of information obtained during domestic security investigations.

## C. Retention

1. The FBI shall, in accordance with a Records Retention Plan approved by the National Archives and Records Service, within \_\_\_\_\_ years after closing domestic service investigations, destroy all information obtained during the investigation, as well as all index references thereto, or transfer all information and index references to the National Archives and Records Service.

NOTE: We are not yet certain whether empirical data exists to help define a period of retention for information gathered in preliminary or full investigations. Whatever period is

determined should take into account the retention period for other categories of information (e.g. general criminal, organized crime, and background checks); since we have not yet considered these areas we cannot fix a period for retention at this time.

NOTE: It may also be possible to establish a sealing procedure to preserve investigative records for an interim period prior to destruction. After being sealed, access would be permitted only under controlled conditions.

2. Information relating to activities not covered by paragraph 1A obtained during domestic security investigations, which may be maintained by the FBI under other parts of these guidelines, shall be retained in accordance with such other provisions.
3. The provisions of paragraphs one (1), and two (2) above apply to all domestic security investigations completed after the promulgation of these guidelines, and apply to investigations completed prior to promulgation of these guidelines when use of these files serves to identify them as subject to destruction or transfer to the National Archives and Records Service.
4. When an individual's request pursuant to law for access to FBI records identifies the records as being subject to destruction or transfer under paragraph one (1), the individual shall be furnished all information to which he is entitled prior to destruction or transfer.



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-179296

MAR 23 1976

The Honorable Don Edwards  
Chairman, Subcommittee on Civil  
and Constitutional Rights  
Committee on the Judiciary  
House of Representatives

Dear Mr. Chairman:

In response to your Subcommittee's request, we are furnishing you herewith our comments on the draft guidelines for controlling the FBI's domestic intelligence operations which were released on March 10, 1976, by the Attorney General.

In chapter 11 of our February 24, 1976, report on the FBI's domestic intelligence operations, to the Chairman, House Committee on the Judiciary, and in testimony before your Subcommittee on the same day, we discussed the various sections of the January 1976 draft of the Attorney General's guidelines.

Our comments on what we consider to be major changes in each section of the March 1976 draft guidelines follow.

INITIATING AND CONTINUING INVESTIGATIONS

Prior to March 10, 1976, the Domestic Security Investigations draft guidelines contained references to antiriot law violations and FBI reporting on civil disorders and demonstrations. The March draft completely revised this approach with the issuance of a separate set of guidelines entitled, "Reporting on Civil Disorders and Demonstrations Involving a Federal Interest."

Basically, these guidelines were designed to separate domestic security investigations from other FBI functions of gathering information to (1) assist the President in determining whether Federal troops are required at civil disorders, (2) provide limited information to the Department of Justice relating to demonstration activities, and (3) provide information for the purpose of assisting the Secret Service in its

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protective responsibilities. The civil disorders guidelines will allow the FBI to initiate narrow investigations only at the request of the Attorney General or at the written request of the Secret Service Director or his designee.

The separation of the FBI's investigative role in domestic intelligence cases from actions relating to civil disorders and demonstrations is advantageous. The separation more clearly defines the scope and purpose of domestic intelligence investigations. The civil disorder guidelines recognize that the FBI's investigation of such matters is in fulfillment of certain duties and responsibilities of the Justice Department other than those related to domestic intelligence. Moreover, the civil disorder guidelines adequately address the need to restrict the scope of such investigations and provide for guidance by the Attorney General to the FBI as to when it is allowed to initiate such investigations.

The January guidelines allowed two types of investigations--preliminary and full. The revised guidelines provide for three types of investigations--preliminary, limited, and full.

During preliminary investigations the FBI is allowed to secure information from the following: (1) FBI indices and files, (2) public records and sources of information, (3) Federal, State, and local records, (4) existing sources of information and informants, and (5) physical surveillance and interviews of persons for the limited purpose of identifying the subject.

The January guidelines allowed the use of interviews and surveillances in preliminary investigations for purposes other than identifying the subject, but only on the condition that the Special Agent in Charge or FBI Headquarters provided written authorization for the interviews. The March guidelines prohibit the use of interviews and surveillance in preliminary investigations for purposes other than identifying the subject. The March guidelines, however, create a new level of investigative effort--the limited investigation. Limited investigations may only be used after it has been determined that preliminary investigative techniques are inadequate to determine if there is a factual basis for a full investigation.

One advantage of using the limited investigation is that it provides the Special Agent in Charge of the field office and FBI Headquarters with an additional point at which a decision must be made concerning the continuance of the investigation and the consequences of certain investigative techniques. Furthermore, it provides the Department of Justice with another level to measure FBI investigative effort.

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The use of full investigations was not substantially revised by the March guidelines.

The March guidelines state that preliminary investigations must be related to allegations that activities involve or will involve the use of force or violence and involve or will involve the violation of the cited Federal laws. As such, the focus of preliminary investigations is more clearly aligned with our recommendations that domestic intelligence investigations focus on groups that have used or are likely to use violence.

The March guidelines, however, still do not adequately address the recommendations on pages 160 and 161 of our report that restrict the circumstances under which the FBI could investigate individuals associated with groups and that call for the Attorney General to be involved in deciding under what circumstances the FBI should be allowed to initiate investigations of individuals associated with groups.

Our recommendations designed to restrict when the FBI can open investigations of individuals associated with groups were based on our finding that about 87 percent of the cases on individuals included in our sample were initiated because the individuals were associated with groups characterized by the FBI as warranting domestic intelligence investigation. Thus, our recommendations started from the premise that the domestic intelligence operations of the FBI would be group oriented. Accordingly, we believed it necessary for the Attorney General to be involved in determining the groups warranting investigation before the FBI would be allowed to initiate investigations of individuals associated with the groups.

The March guidelines still allow the FBI to initially determine when to initiate investigations of individuals. The Attorney General and the Department generally will not be involved in the process until the FBI has, at least, investigated an individual for 90 days. We continue to believe it is important to involve the Department in the initial decision to allow the FBI to initiate domestic intelligence investigations and that our recommendations referred to previously are an appropriate way to do this.

In other words, if our recommendations were enacted into law, we assume that on the day they became effective the FBI would have to present to the Attorney General the names of all organizations it has under investigation as part of its domestic intelligence operations and the circumstances warranting the investigations.

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Our recommendations would permit the FBI to investigate a group if the Attorney General had determined that the group possessed a possibility for using violence. Leaders of such groups could also be investigated. However, individual members or persons suspected of being members of such groups would not be investigated unless the FBI had information that a member has committed or is likely to commit an act of violence. The FBI could continually assess the group's propensity for violence by use of informants or confidential sources.

The second type of group that could be investigated would be those that the Attorney General had determined possessed a probability of using violence. Our recommendations will allow the FBI to investigate all individuals associated with these groups.

No groups or individuals should be investigated merely because of their beliefs. However, our recommendations would not preclude the FBI from investigating any individuals whom the FBI learns may be plotting the imminent use of force or violence. We assume any such investigation would be a criminal investigation.

#### SOURCES AND TECHNIQUES

One of the major changes in the guidelines involves the deletion of preventive action measures contained in the January draft. The provision, according to the Attorney General, was removed from the March guidelines because it had widely been misinterpreted as being an affirmation of COINTELPRO. We never believed the preventive measures section of the guidelines would have legitimized such actions. The elimination of this technique, however, removes the most controversial section of the guidelines.

Nevertheless, we still believe it is necessary to legislate that certain types of actions are not permissible. Our recommendation relating to preventive action took a positive tone in terms of saying that nonviolent emergency measures could be taken when there was probable cause to believe violent actions posed an immediate threat to life or property and would substantially interfere with the functioning of Government. We assumed that by legislating what could be done, all other types of preventive actions would not be sanctioned by law. If the issue of preventive action is not addressed legislatively, there could still be disagreements as to what type of action is legal and appropriate. Legislation could clarify the situation.

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TERMINATING INVESTIGATIONS

The previous guidelines allowed preliminary investigations to be extended for one 90-day period. The March revision stated that preliminary and limited investigations together may take 90 days and may be extended by FBI Headquarters for 90 days, but placed no limit on the number of 90-day extensions that could be granted. Under this revision there is a potential for preliminary and limited investigations to continue well over the previously set maximum of 180 days when, in fact, the purpose is to obtain information within a relatively short period of time to determine if a full investigation is warranted. Therefore, this change is inappropriate.

The Department review process of full investigations has been improved in the March guidelines by requiring the Department to state in writing that continuing a full investigation is warranted. Previously, written notification was not necessary. The revision thus places the Department on record concerning its decision and will require the Department to evaluate each investigation.

DISSEMINATION AND RETENTION OF INVESTIGATIVE INFORMATION

Guidelines concerning civil disorders and demonstrations state that information may not be indexed in a manner which permits retrieval of information by reference to a specific individual. These guidelines also note our concern as stated on page 125 of the report, that the Secret Service, the major recipient of FBI information, is not retaining the information. The guidelines provide that the Department should review its dissemination agreements with the Secret Service. They do not, however, indicate that the FBI or Department intends to review dissemination agreements with other recipients of FBI information or the usefulness of FBI-provided information to them.

Neither set of guidelines--domestic security or civil disorder--mention when information relating to an individual's activities will be disseminated. We have expressed concern, particularly regarding the possibility that disseminated information might indicate the subject's association with a properly classified group when, in fact, the subject's association has not yet been established. We believe the issue should be addressed and that our recommendation on page 162 of our report is a proper way to do it.

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The guidelines do not consider our recommendation that the FBI limit the type of information collected to that which is relevant to the case and that personal or social data should not be collected unless it is justified to the Special Agent in Charge of the field office that the information is pertinent and necessary to the investigation. We believe this should be addressed.

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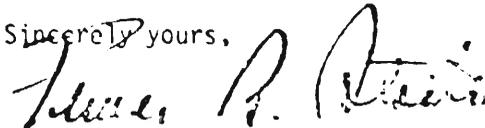
The Deputy Assistant Attorney General in charge of the committee responsible for preparing the Attorney General's FBI guidelines told us that on April 1, 1976, the FBI will begin implementing the March 1976 drafts of the domestic security and civil disorders guidelines on a test basis for 1 year.

The Deputy Assistant Attorney General stated that FBI investigations in the domestic security area will be monitored by a Departmental oversight unit of about five persons. The unit, presently being formed, will be in the Department's Office of Policy and Planning but will report directly to the Attorney General. The unit will be primarily responsible for reviewing all investigative reports received from the FBI on domestic intelligence matters and making decisions on all investigations of such matters requiring Departmental approval. During the test period the unit will also be responsible for continuously reviewing the Attorney General's draft guidelines for problem areas and notifying the guidelines committee so that appropriate revisions can be made and implemented whenever necessary.

The Deputy Assistant Attorney General told us that various options involving the oversight unit and its relationship to the Department's Criminal and Civil Rights Divisions regarding the handling of civil disorders and demonstrations were still being considered. We were also advised that the permanent role and functions of the unit would be studied and more clearly defined during the test period.

Although the March guidelines are a positive step toward defining the purpose and scope of domestic intelligence operations, we continue to believe legislation is needed. If you believe further discussion of these matters would be worthwhile, please advise us.

Sincerely yours,



Comptroller General  
of the United States

8/30/76

To: SAC, Albany

From: Director, FBI

DOMESTIC SECURITY INVESTIGATIONS  
BUDED: 9/16/76

The transfer of domestic security investigations from the Intelligence Division to the General Investigative Division has taken place to insure that these cases are tied as closely as possible to actual or potential violations of Federal law.

The matters transferred from the Intelligence Division to the General Investigative Division are black extremists, white-hate groups, Indian extremists, Spanish-American extremists, individuals affiliated with such groups, and the development and operation of extremist informants. Also being transferred are the civil unrest and demonstration matters. All of the foregoing are in the 157 or 170 classifications.

In addition, basic revolutionary groups, such as the Communist Party and the Socialist Workers Party, violence-oriented groups dedicated to the overthrow of the Government, such as Weathermen and National Caucus of Labor Committees, individuals without organizational affiliation but possessing revolutionary tendencies, and security informants are being transferred to the General Investigative Division.



Office of the Attorney General  
Washington, D. C. 20530

DEC 15 1976

TO: Clarence M. Kelley  
Director  
Federal Bureau of Investigation

FROM: Edward H. Levi *E. H. Levi*  
Attorney General

SUBJECT: USE OF INFORMANTS IN DOMESTIC SECURITY, ORGANIZED  
CRIME, AND OTHER CRIMINAL INVESTIGATIONS

Courts have recognized that the government's use of informants is lawful and may often be essential to the effectiveness of properly authorized law enforcement investigations. However, the technique of using informants to assist in the investigation of criminal activity, since it may involve an element of deception and intrusion into the privacy of individuals or may require government cooperation with persons whose reliability and motivation may be open to question, should be carefully limited. Thus, while it is proper for the FBI to use informants in appropriate investigations, it is imperative that special care be taken not only to minimize their use but also to ensure that individual rights are not infringed and that the government itself does not become a violator of the law. Informants as such are not employees of the FBI, but the relationship of an informant to the FBI imposes a special responsibility upon the FBI when the informant engages in activity where he has received, or reasonably thinks he has received, encouragement or direction for that activity from the FBI.

To fulfill this responsibility, it is useful to formulate in a single document the limitations on the activities of informants and the duties of the FBI with respect to informants, even though many of these limitations and duties are set forth in individual instructions or recognized in existing practice.

As a fundamental principle, it must be recognized that an informant is merely one technique used in the course of authorized investigations. The FBI may not use informants

where it is not authorized to conduct an investigation nor may informants be used for acts or encouraged to commit acts which the FBI could not authorize for its undercover Agents. When an FBI informant provides information concerning planned criminal activity which is not within the investigative jurisdiction of the FBI, the FBI shall advise the law enforcement agency having investigative jurisdiction. If the circumstances are such that it is inadvisable to have the informant report directly to the agency having investigative jurisdiction, the FBI, in cooperation with that agency, may continue to operate the informant.

#### A. Use of Informants

In considering the use of informants in an authorized investigation, the FBI should weigh the following factors --

1. the risk that use of an informant in a particular investigation or the conduct of a particular informant may, contrary to instructions, violate individual rights, intrude upon privileged communications, unlawfully inhibit the free association of individuals or the expression of ideas, or compromise in any way the investigation or subsequent prosecution.

2. the nature and seriousness of the matter under investigation, and the likelihood that information which an informant could provide is not readily available through other sources or by more direct means.

3. the character and motivation of the informant himself; his past or potential involvement in the matter under investigation or in related criminal activity; his proven reliability and truthfulness or the availability of means to verify information which he provides.

4. the measure of the ability of the FBI to control the informant's activities insofar as he is acting on behalf of the Bureau and ensure that his conduct will be consistent with applicable law and instructions.

5. the potential value of the information he may be able to furnish in relation to the consideration he may be seeking from the government for his cooperation.

**B. Instructions to Informants**

The FBI shall instruct all informants it uses in domestic security, organized crime, and other criminal investigations that in carrying out their assignments they shall not:

1. participate in acts of violence; or
2. use unlawful techniques (e.g., breaking and entering, electronic surveillance, opening or otherwise tampering with the mail) to obtain information for the FBI; or
3. initiate a plan to commit criminal acts; or
4. participate in criminal activities of persons under investigation, except insofar as the FBI determines that such participation is necessary to obtain information needed for purposes of federal prosecution.

Whenever the FBI learns that persons under investigation intend to commit a violent crime informants used in connection with the investigation shall be instructed to try to discourage the violence.

**C. Violations of Instructions and Law**

1. Under no circumstances shall the FBI take any action to conceal a crime by one of its informants.

2. Whenever the FBI learns that an informant used in investigating criminal activity has violated the instructions set forth above in furtherance of his assignment, it shall ordinarily notify the appropriate law enforcement or prosecutive authorities promptly of any violation of law, and make a determination whether continued use of the informant is justified. In those exceptional circumstances in which notification to local authorities may be inadvisable, the FBI shall immediately notify the Department of Justice of the facts and circumstances concerning the investigation and the informant's law violation, and provide its recommendation on reporting the violation and on continued use of the informant. The Department shall determine:

- a. when law enforcement or prosecutive authorities should be notified of the law violation;

- b. what use, if any, should be made of the information gathered through the violation of law, as well as the disposition and retention of such information; and
- c. whether continued use should be made of the informant by the FBI.

**NOTE:** Since the FBI has a special responsibility to control the activity of informants collecting information for the Bureau, and is ordinarily familiar with these activities, a comparatively minimal degree of certainty on the part of the FBI (i.e., "learns") is required before the FBI must report informant misconduct to the appropriate law enforcement authorities.

3. Whenever the FBI has knowledge of the actual commission of a serious crime by one of its informants unconnected with his FBI assignment, it shall ordinarily notify the appropriate law enforcement or prosecutive authorities promptly and make a determination whether continued use of the informant is justified. In those exceptional circumstances in which notification to local authorities may be inadvisable, the FBI shall promptly advise the Department of Justice of the facts and circumstances concerning the investigation and the informant's law violation, and provide its recommendation on reporting the violation and on continued use of the informant. The Department of Justice shall determine:

- a. when law enforcement or prosecutive authorities should be notified of the law violation; and
- b. whether continued use should be made of the informant by the FBI.

**NOTE:** Because the criminal activity described in this provision is independent of any government assignment, and since the FBI will have no special knowledge to determine such informant malfeasance, a substantial degree of certainty on the part of the Bureau is required before it must report to other authorities. The standard of certainty is derived from the federal Misprision of Felony statute, 18 U.S.C. 4, "Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined

not more than \$500 or imprisoned not more than three years, or both."

4. In determining the advisability of notifying appropriate law enforcement and prosecutive authorities of criminal activity by FBI informants the FBI and the Department of Justice shall consider the following factors:

- a. whether the crime is completed, imminent or inchoate;
- b. seriousness of the crime in terms of danger to life and property;
- c. whether the crime is a violation of federal or state law, and whether a felony, misdemeanor or lesser offense;
- d. the degree of certainty of the information regarding the criminal activity;
- e. whether the appropriate authorities already know of the criminal activity and the informant's identity; and
- f. the significance of the information the informant is providing, or will provide, and the effect on the FBI investigative activity of notification to the other law enforcement agency.



## UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

NOV 8 1977

Address Reply to the  
Division Indicated  
and Refer to Initials and Number

Mr. Victor L. Lowe  
Director  
General Government Division  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Lowe:

This letter is in response to your request for comments on the draft report entitled "FBI Domestic Intelligence Operations: An Uncertain Future."

We have carefully reviewed the draft report and are cognizant that GAO has performed a unique and vital task in their follow-up audit of the Federal Bureau of Investigation (FBI) domestic security programs. We commend your staff for their adherence to the procedures agreed upon regarding access to and sensitivity of information. We also commend their perseverance in striving to comprehend changes in our domestic security investigations resulting from the adoption of the Attorney General's guidelines for the conduct of these investigations and an even more stringent policy with respect to investigations of individuals adopted by the FBI in August 1976. These factors, along with those enumerated in the report, have resulted in a significant, if not drastic, reduction in domestic security matters handled by the FBI. This is demonstrated by the fact that as of June 30, 1977, the FBI had 642 pending domestic security investigative matters as opposed to 9,814 on June 30, 1975.

With respect to the substantive matters of the report, we take issue with the "uncertain future" of FBI domestic security investigations suggested by the report title. The increasing number of terrorist acts being carried out in the country today leads us to believe there is a continuing need for these investigations. Dramatic evidence of this is seen in the sharp increase in recent years of terrorist bombing attacks against individuals and institutions in this country. Terrorist acts have increased from 65 bombing attacks in calendar year 1976 to 79 through October 15, 1977. These statistics include incidents involving incendiary devices as well as explosives.

The above increase in terrorist attacks demonstrates the need for a preventive intelligence-gathering capacity in the form of a controlled domestic security program, as well as an aggressively pursued, reactive capability for developing evidence on which to base Federal prosecutions where violations of Federal law occur. In addition, a viable domestic security program is needed to provide continuous information to the Attorney General for use in discharging his delegated responsibilities under Executive Order 10450.

We agree with CAO's views regarding the existence of varying interpretations of the Attorney General's guidelines for the conduct of domestic security investigations, both within the FBI and the Department. The report cites a number of instances where it appears that an FBI field office conducted inquiries concerning certain individuals who were identified as contacts of, or associates of some degree, with individuals or organizations being investigated under an approved full domestic security investigation without initiating separate preliminary investigations of the individuals. The existing Attorney General's guidelines do not provide authority for the identification of these individuals except by conducting an active preliminary investigation. It is our view that the identification and establishment of some degree of information on persons peripherally related to the subject of a full domestic security investigation authorized by the Attorney General should be valid. The minimal inquiry needed in most of these cases can establish a degree or nature of relationship to an individual or group under investigation, which by its mere discovery negates the necessity of additional inquiry in the form of an active investigation.

We recognize that the transitional phase of our domestic security investigative activities resulting from the adoption of the Attorney General's guidelines has resulted in varying degrees of interpretation and implementation of investigative procedures. We have recognized from the beginning that modifications of the guidelines might become necessary in light of our experience in administering them. Of particular significance to us is the fact that the report clearly indicates there were no violations of the guidelines.

In discussing the results of domestic security investigations, the report states that "Only 10 of the 319 cases we reviewed contained tangible results--that is, evidence of having (1) been useful in related criminal investigations or legal proceedings, (2) provided advance knowledge of planned violent activities, or (3) recovered items apparently intended for criminal purposes." Later, the report indicates that the above represents "few visible results" from domestic intelligence operations. We disagree with that conclusion and consider any single situation or number of situations where domestic security information is developed and subsequently results in the prevention of violent, terrorist acts to be extremely significant and well worth the investigative effort directed at its development. We also are inclined to believe any citizen, group of citizens, or corporate establishments which are forewarned of pending violent action being directed at them by virtue of a domestic security investigation would agree with this position. In this same vein, we also note GAO's comment in the report which most appropriately expresses our views by stating "who is to say that the FBI's continuous coverage of such groups and their key leaders has not prevented them from achieving their subversive or extremist goals. The problem is one of adequately assessing the value and effectiveness of an operation which by its own nature is preventative and by its mere existence may be accomplishing its purpose."

In conclusion, we reiterate our support of the continuing need for a strong domestic security program as one of our nation's chief weapons in the detection and prevention of planned acts of violence and violation of Federal law. While it is our view that we have been able to adequately discharge our responsibilities in the domestic security area since adoption of the Attorney General's guidelines, we are supportive of GAO's restated position "that it is incumbent upon the Congress to clearly mandate what the objectives and scope of the domestic intelligence activities should be and what controls should exist." Our support of this position has been publicly stated by the Attorney General as well as by FBI Director Clarence M. Kelley.

The following comments and word changes are suggested to improve the accuracy and clarity of the report:

1. Summary Statement, Page 4, Next to Last Line

The phrase "violating federal law by" should be inserted between "of" and "resorting." Throughout the report--except in this instance--domestic security investigations are tied to criminal violations. This concept holds true because the guidelines require a showing that the conduct will involve a violation of Federal law. This suggested change is necessary to conform to the guidelines and to actual practice.

2. Summary Statement, Page 7 and Full Report, Page 5

Before the "Results" section on page 7 of the summary, and again at the end of the second paragraph on page 5 of the full report, some mention should be made of the fact that senior attorneys in the Office of the Attorney General and Office of Legal Counsel have been performing the functions of the Investigations Review Unit (IRU) since August 30, 1977. Otherwise, it would appear that no one in Justice is executing the review function previously done by IRU.

3. Full Report, Page 12, Line 6

The date should be "early October 1977" since a Departmental review on October 21, 1977, resulted in certain changes in the groups being investigated.

4. Full Report, Pages 12 to 18

Throughout pages 12 to 18 certain statistics are cited to show trends in domestic security investigations. These figures appear to be FBI total figures, not figures for the five field offices specifically reviewed in this study as identified on page 2. It should, in any event, be clarified to show exactly what these trend figures represent, i.e., FBI actual total, projected total, totals for the five field offices, samples, etc.

5. Full Report, Page 28, Line 13

The clause "and the Attorney General approved that decision." should be added at the end of the paragraph. The addition reflects the Attorney General's October 21, 1977, decision.

6. Full Report, Page 29

In the last full paragraph dealing with the February 1976 testimony, it should be noted in the text or by footnote that this testimony was given prior to finalization of the guidelines.

7. Full Report, Page 37, Line 16

The word "how" should be changed to "the methods by which." As phrased, the sentence leaves an impression that the guidelines had little impact on the scope of domestic security investigations--an impression contrary to fact and to the GAO conclusions. What GAO apparently intended to say is that the guidelines had very little impact on the methods and techniques by which investigations were conducted. The suggested change would clarify that point.

We appreciate the opportunity given us to comment on the draft report. Should you have any further questions, please feel free to contact us.

Sincerely,

  
Kevin D. Rooney  
Assistant Attorney General  
for Administration

GAO note: Page references in this appendix refer to the draft report and do not necessarily agree with the page numbers in this report.