

THE DANGERS OF DISSENT

THE FBI AND CIVIL LIBERTIES SINCE 1965

IVAN GREENBERG



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To my father, Bob, and my son, Andrew

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Ivan Greenberg,
Bronx, New York

Introduction

IN 1970, A FEDERAL GRAND JURY CHARGED Roger Lippman, along with seven other individuals, with conspiracy to organize a riot in Seattle. Lippman, a local leader of Students for a Democratic Society (SDS), recently had quit Reed College to work full time against the war in Vietnam. He remembers unpaid, sixty-hour weeks dedicated to building a social movement for peace and justice. Among his organizing efforts, he attended several political meetings in preparation for a street demonstration to be held on February 17, 1970, outside the federal courthouse to rally support for the defendants in the Chicago Conspiracy trial. The Seattle protest was one of many organized across the nation in response to Judge Julius Hoffman's jailing of the Chicago defendants (Abbie Hoffman, Jerry Rubin, Tom Hayden, David Dellinger, Rennie Davis, Lee Weiner, Bobby Seale, and John Froines) for contempt of court. When about two thousand protestors, led by the Seattle Liberation Front, tried to shut down the Seattle courthouse by throwing rocks, bottles, and paint, an extended melee broke out with police. Lippman later wrote, "Tear gas drifted into a courthouse elevator just as the door was closing to take a prosecutor upstairs. The newspapers reported that a demonstrator threw a grenade at the building."¹ Twenty people were injured in the riot and seventy-six were arrested.

In fact, Lippman did not attend the protest, having moved to San Francisco several weeks earlier to edit *The Movement*, a radical newspaper representing SDS and Friends of SNCC. But he was indicted anyway for conspiracy to cause damage to federal property. The government built its case on the 1968 antiriot statute, which Congress enacted in the wake of urban unrest following the assassination of Martin Luther King Jr. The criminalizing of intent

to create social disorder was a clear attack on political dissent, and Lippman spent a month in jail before the beginning of what became known as the Seattle Conspiracy Trial.²

Lippman believes his arrest was part of an effort to “blame protest leaders for the national chaos caused by the war in Vietnam, as well as to tie up leading organizers and get us off the streets.” As he put it, “The conspiracy indictment was a frame-up, at least as regards me and one or two of the others. I was charged with attending two meetings (and nothing else!), in planning for the demonstration but those two meetings were only tangentially about the demonstration, and I barely participated, if at all.” While he played very little part in organizing the protest, his mere presence at the SLF meetings provided the opportunity for the government finally to pin a criminal charge on him in an effort to curtail his activism. Such “counterintelligence” activity has a long history in the United States and persists into the twenty-first century. Lippman added, “I doubt I said anything publicly in those two SLF meetings I attended, and if so, nothing about The Day After Protests [TDA]. I was there more as an observer. Government spies knew me as an anti-war leader in Seattle; they must have assumed I was involved in planning TDA; and I’m sure they wanted me as a defendant, despite the lack of evidence, because I provided a political target that could be used as part of their scare tactics.” When he later obtained his FBI file under the Freedom of Information Act, he learned that “I was awarded the FBI’s highest rating, Security Index-Level 1, which meant that my activities were under continuous surveillance.”³

In 1968, the FBI began a major counteroffensive against the New Left, opening a new section of its COINTELPRO (Counter Intelligence Program), and the Bureau designated leading New Left leaders as “key activists” subject to intensive surveillance in everyday life. The Bureau defined key activists as “extremely active and most vocal in their statements denouncing the United States and calling for civil disobedience and other forms of unlawful and disruptive acts.” FBI Headquarters told agents to use informers and physical and electronic surveillance to identify “their sources of funds, foreign contacts, and future plans.” By 1971, about half of seventy-three people designated as key activists had been prosecuted in some form by federal or local officials.⁴ Lippman says about his FBI file, “At various times I was flagged as being on the Agitator Index, Rabble-Rouser Index, and Security Index. My FBI file is most notable for demonstrating how little they knew or understood of what I was doing.”⁵

The Seattle Conspiracy Trial garnered substantial public attention and supporters formed the Seattle 8 Defense Collective to raise money and awareness. In a civil lawsuit Lippman later filed against the Justice Department, he charged that a government informant, David Sannes, infiltrated the Defense

Collective for the purpose of spying on the defense lawyers as well as “advocating wild, far-out, and often violent schemes offered ostensibly to aid the defense but in truth designed to discredit the Seattle 8 Defendants and their attorneys.”⁶ Sannes was a former army intelligence officer and urged kidnapping and a bombing, as law professor Paul Chevigny wrote in *Cops and Rebels* (1972). Though as Lippman says, “I don’t think the Defense Collective worried about infiltration—it was an almost unknown phenomenon in those early days. So much was based on personal relationships.”⁷

During the trial, the star witness, an FBI informer, admitted routine lying in his role to neutralize SDS and other groups. According to Lippman, the informer, known as Horace “Red” Parker, “had joined the anti-war movement but remained a peripheral figure. Most activists who knew Parker did not particularly trust him, but nonetheless there was shock in the courtroom that day when we learned that he had become a paid FBI informer. Over the next several days of testimony, Parker spun a remarkable tale of efforts to ingratiate himself with activists by supplying drugs, explosives, spray paint, and firearms training.” For example, Parker admitted he supplied the spray paint used to deface the federal courthouse, one component of the property damage charge brought against the defendants. He was a provocateur arrested during prior demonstrations while working undercover. When defendant Chip Marshall, who acted as his own attorney, cross-examined Parker in court, the informer admitted he engaged in lying to further the prosecution. A problem emerged for the FBI and the Justice Department in this case and in others because informer misbehavior, including illegal acts, was so common that jurors did not know what to believe when these government representatives testified under oath. Undermining the credibility of government witnesses became a key defense strategy and is illustrated in the courtroom exchange between Marshall and Parker:

Marshall: Did you recruit others into violent acts?

Parker: The answer would have to be yes.

Marshall: While with the FBI, have you ever encouraged anyone to violate the law?

Parker: Yes.

Marshall: You feel very strongly that we are bad people and should be brought to justice?

Parker: That is one way of putting it.

Marshall: So you would go to almost any length of trickery to bring us to justice?

Parker: Yes, any length.

Marshall: Are you willing to lie to get us?

Parker: Yes.

Lippman recalled, “Chip got Parker to admit that he had lied to us and would do anything to get us. Chip left the clear implication hanging thickly in the courtroom air that Parker was lying in the courtroom.”⁸

Eventually the charges were dropped against Lippman and the others, including a young Michael Lerner, who later became well known as a rabbi and editor of *Tikkun* magazine. Lippman kept at his activism and remained under surveillance. He looked for the opportunity to challenge the FBI and initiated a civil rights lawsuit in 1974 to contest illegal wiretaps and other violations of his constitutional rights in connection with the conspiracy trial and earlier political activism. Initiating a lawsuit was bold: By 1974, very few lawsuits of its kind had been started. He later told me he was encouraged “by the release of information on illegal government wiretapping and other extensive FBI misconduct. This information became public in response to pretrial motions in two major conspiracy cases brought against SDS in Chicago and Detroit. My thinking included the recognition that Watergate was exposing major crimes of the Republicans against the Democrats, and I wanted to show that they had been doing the same sort of thing to the anti-war movement long before Watergate. I wanted to make a political statement of my slant on the Watergate scandal. I had no idea if I would win.”⁹

The civil suit, seeking \$1 million in damages, charged the government with illegal wiretaps and break-ins. Lippman alleged that an FBI “black bag job” or illegal break-in occurred against at least one of the defendants and one of the defense attorneys. Lippman and the defense lawyers also believed the FBI illegally wiretapped their phones at eight locations, including the law office of attorney Michael Tigar in Seattle. Putting the FBI on trial for surveillance crimes was not an easy task. As I write about later in *The Dangers of Dissent*, wiretap lawsuits almost always failed, although other types of anti-spying civil cases were won by plaintiffs. In the case of illegal wiretapping, the government often admitted that they had done such eavesdropping in defense of national security. Federal judges ruled that such illegal conduct did not create damages. Indeed, for judges to rule otherwise would have opened up the government potentially to hundreds, if not thousands, of lawsuits. Tapping the phones of political dissidents (“subversives and “extremists”) was standard practice under J. Edgar Hoover, who ruled the FBI as director for nearly forty-eight years (1924–1972).

Lippman lost his civil case. But he recalls that the suit served a purpose by receiving extensive media coverage: “All of the newspapers covered it, as I recall, and radio and TV too. The roll-out press conference was a big event.”¹⁰

Roger Lippman is one of four brothers who came of age in the 1960s and early 1970s, joined Left social movements, and directly confronted state

power. David Lippman, the second youngest of the Lippman brothers, also sued the FBI—only his lawsuit contested government spying in a different era, the post-9/11 “War on Terror.” Government intrusions on civil liberties were not confined to the COINTELPRO era and constitute a continuing problem for democratic society. In 2003, David Lippman had been working as a freelance journalist for Free Speech Radio News on Pacifica and journeyed to Miami to report on the Free Trade Area of the Americas (FTAA) summit meetings. Free Speech Radio broadcasts a daily news show carried on ninety-three radio stations. The FBI put Lippman under surveillance for being a “known protestor w/history” as he traveled from his home in North Carolina to Miami to cover protests outside the FTAA meetings. The police expected street demonstrations by antiglobalization forces, which emerged as a significant social movement since the World Trade Organization meetings in Seattle in 1999. As federal, state, and municipal agencies braced for protests in Miami, they monitored individuals and groups. On November 19, 2003, Lippman’s car was searched, damaged, and seized by police without probable cause. FBI agents instructed local police to break into his car and take it away, which prevented Lippman from reporting on the protests. Maybe the FBI wanted his computer, which was left in the car. The official reason for seizing the vehicle was to check for a bomb. A police bomb squad team found nothing. According to an FBI report, the Bureau’s “Miami Intel Unit” used a “robot to remove the contents from the rear of the pick-up truck. All items were manually searched as was the interior of the cab.”¹¹ Lippman told journalist Amy Goodman on *Democracy Now!*:

I had just parked in a municipal garage, and it was about two hours later I happened to be standing on a corner when I saw my truck go by behind a tow truck. . . . It took me two days to get it back, and I found padlocks on the back broken and everything quite disordered, so the ACLU came into the case, the ACLU of Florida, and eventually they discovered documents indicating that several different law enforcement agencies have been involved, in not entirely clear ways, including the Miami police, the Broward County Sheriffs, and the F.B.I. . . . It was not the only vehicle taken or damaged, but it does say in the documents that the vehicle was followed from North Carolina, where I live, to Miami, because I’m a protester with a known history.

What type of known history? The FBI report did not describe his past activism, but Lippman said, “I have spent a lot of time as a performing artist, but doing political material. I do music and comedy around the country, but I was involved in North Carolina in local antiwar activities, local organizations, campus, community organizations, starting around 2001, and so I had been doing that for the last two years.”¹²

During the “terror scare,” the FBI did not need much evidence to track dissidents. Lippman’s political activism made him a target. So were others at the protest.

In 2006, Lippman sued the FBI and the city of Miami, with the help of the Florida American Civil Liberties Union (ACLU), for violating his rights to free press, speech, and assembly, as well as for an unreasonable search and seizure. In his legal complaint, ACLU attorneys Rosalind Matos and Jeanne Baker wrote that “multiple protestors, reporters, photographers, film makers, and bystanders” were “illegally searched” in an effort to chill speech. The police security policy deliberately was “designed to limit lawful public expression to preempt wholly speculative violence.”¹³ This type of coercive preemptive strategy by the authorities had become an integral part of the “War on Terror.” All street protest is suspect. As Attorney General John Ashcroft said in a February 10, 2003, speech, “In order to fight and to defeat terrorism, the Department of Justice has added a new paradigm to that of prosecution—a paradigm of prevention.” Law professors David Cole and Jules Lobel in *Less Safe, Less Free* (2007) worried about the development of a “very troubling form of anticipatory state violence—undertaken before any wrongdoing has actually occurred and often without good evidence for believing that any wrongdoing will in fact occur. Such preventive coercion places tremendous stress on the rule of law.”¹⁴ How many civil liberties will be sacrificed in the name of preventing another terrorist attack? Is the terror scare being used cynically to clamp down on liberal and radical dissent?



In the United States, it may seem inappropriate to speak of the “repressive apparatus of the state.” Yet the American government in the twentieth century waged systematic campaigns to chill progressive and radical viewpoints. Government spying and repression formed a major feature of the American political system. Since the founding of the FBI in 1908, several million Americans became the subject of government investigation, often with harmful results, based solely on their political beliefs. The height of FBI abuse of power occurred during COINTELPRO between 1956 and 1971. The mid-1970s U.S. Senate Church Committee concluded about COINTELPRO: “Many of the techniques used would be intolerable in a democratic society even if all the targets had been involved in violent activity, but COINTELPRO went far beyond that. The unexpressed major premise of the programs was that a law enforcement agency has the duty to do whatever is necessary to combat perceived threats to the existing social and political order.”¹⁵ Intrusive spying raises a fundamental issue: What constitutes “protected speech” under the U.S. Constitution? The First Amendment states, “Congress shall make

no law . . . abridging the freedom of speech, or of the press; or of the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.” However, the Constitution does not forbid the FBI from monitoring speech and assembly it finds offensive or dangerous, and harassing individuals and groups based on their political views. The First Amendment generally protects political activists from *arrest* based on speech but does not exempt the government from amassing large dossiers on a wide range of political activity. Presidents and Congress both have sanctioned spying on dissent, finding it a legitimate exercise of government power. The federal judiciary proved reluctant to place limits on secret monitoring and covert action.

In a recent scholarly book on surveillance practices, the authors argue that we need to move beyond the idea of the Panopticon and the writings of Michel Foucault, studying not the ways surveillance is imposed from above as a disciplinary mechanism but rather how it is received by people in everyday society.¹⁶ From an American social-historical perspective, the leading disciplinary agency for surveillance for most of the twentieth century has been the FBI. How political dissidents have been treated by the surveillance state and the ways they adapt to and resist this treatment forms a major approach of *The Dangers of Dissent*. I begin the study in approximately 1965, after the passage of the Civil Rights Act and the emergence of Lyndon Johnson’s Great Society. FBI spying persisted under liberal Democratic leadership, as it had under Republicans in earlier years. As the study moves forward in time into the present, I examine the impact of investigations on subjects, the methods and techniques used against them, and the politics on both sides: FBI versus dissident. This is a study of political contention. Investigations became sites of struggle. Crimes were committed by the state. Police agencies attempted to disrupt political challengers to achieve what political scientists call “dissident demobilization.” This occurred in both “hard” and “soft” forms: the hard forms included violence, false arrests, and economic sanctions; the soft forms included overt and covert surveillance, ridicule, stigma, and silencing.¹⁷

The imposition of “political policing” is a neglected topic. What exactly is political policing? A relatively basic definition holds that the government targets people because it disagrees with their politics. The government framed the subjects of investigation as “threats” to society and demonized them as enemies. The investigations took place at all levels of government. According to the political policing framework, law enforcement combated perceived challenges to the existing political order. The FBI developed a “police science” to guide their efforts to monitor and neutralize those with whom they had strong political disagreements.¹⁸ Remarkably, a constitutional democracy is capable of tolerating a high level of official repression.

While the two leading scholars of the FBI, Athan G. Theoharis and Richard Gid Powers, recently published synthetic histories of the Bureau,¹⁹ neither wrote from the bottom up. Theoharis has published several books on the Hoover era and treats the Bureau as a conservative bureaucracy. As a bureaucracy, he finds the FBI hostile to opening its records, embracing a culture of secrecy to conceal its widespread abuse of power and illegal political intelligence gathering.²⁰ Theoharis privileges the role of Director Hoover, calling him an unaccountable “boss,” and believes the FBI under his leadership broadly undermined the Constitution and broke the law.²¹ But rather than focus on top leaders, I hope to shift the ground to subjects. I’ve never been an advocate of the “great man theory” of history. Historians should not give too much agency to one individual. Both Democratic and Republican party leaders supported broad spying on Americans to contain and suppress movements for social change, thus undermining the notion that political policing reflects the will of one individual or even one party.

Powers, unlike Theoharis, approaches the subject matter as a “conservative” and views FBI secrecy not as an effort to hide misconduct and to stop accountability, but as a necessary ingredient in the fight against internal subversives. He argues for robust spying and secret power to defend the nation against enemies. He calls the FBI “one of the great institutions in American Government.”²² According to this line of thinking, historians too often underemphasize the threat posed by radicals to society. Those who defend the Red Scares, while often criticizing their excesses, argue that the government “exaggerated” only in hindsight because real enemies were intent on undermining the government.

If Theoharis writes as a civil liberties liberal and Powers as a conservative, the controversial Ward Churchill writes unabashedly from the Left about FBI repression of social movements. He and Jim Vander Wall open *The COINTELPRO Papers* with the following salvo: “The FBI documents collected in this book offer a unique window into the inner workings of the U.S. political police. They expose the secret, systematic, and sometimes savage use of force and fraud, by all levels of government, to sabotage progressive political activity supposedly protected by the U.S. Constitution.”²³ I also analyze repression, but my analysis largely shifts the focus to the post-Hoover period. In fact, few historians study the recent past of the FBI, which is more complicated in key respects as previously illegal methods of surveillance became legal. The Bureau now applies for legal warrants for bugs, wiretaps, and break-ins, which courts rarely reject. The complicity of the judicial branch in political policing is greater than in the past. Moreover, both surveillance and harassment is abetted by new forms of technology. Surveillance technology has advanced to the point where the monitoring of cell phones, computers, email, and fax has become routine. The impact on subjects of investigations continues to be great.

Liberating Information

Declassified FBI spy files form the primary research for this book. This material includes dozens of files recently obtained by the ACLU in legal action. I also liberated information on my own: During the last ten years, I filed approximately ninety-five FOIA requests with the FBI and obtained approximately forty-five declassified files constituting about thirty-five thousand pages. These efforts are modest but significant: Most of this material has not been used before in scholarly writing and helps to recast our understanding of spying during the last forty years. Yet there still is much more to be discovered and unfortunately scholars and other writers greatly underuse the FOIA. Regarding the FBI, the government holds an astonishing 4.5 billion pages of records (in 2003) and only a fraction—about six million pages—has been declassified under the FOIA.²⁴ While not all of the material consists of investigatory files, there still remains an untapped well that can be used in writing history in many areas: biography, social movements, the history of the Left and the Right, civil liberties, state power, and the law.

I made my first FOIA request on December 22, 1999, asking for FBI files on John Jay College of Criminal Justice, CUNY. I taught at the college for two and a half years in the early 1990s and know the Bureau runs a large Northeast Regional Training Facility at the school. I had been thinking about writing the letter for some time but I wondered how it might change my relationship with the state. Would the act of requesting secret police files define me as a “troublemaker” by the government? Would the FBI open a file on me simply because I asked them for files? Looking back, the timing seems significant: It was just a week before the new millennium and anxiety gripped the nation. What will happen when the year 2000 arrives? Will computers crash? Will terrorists strike? I began FOIA activism in this nervous environment, embracing the movement for openness and transparency in government.

About four months later I received from the FBI their file on John Jay College. While I expected to receive at least several hundred pages, the Bureau sent me just sixteen pages. And herein lies a problem: The FBI greatly resists releasing their records. Their response to requestors is not trustworthy. Unless one files an administrative appeal with the Justice Department or sues them in federal court, the requestor is not likely to receive a full accounting of records.

My FOIA activism eventually led to litigation, *Greenberg v. FBI*, filed in 2008 to obtain the FBI files on FBI directors L. Patrick Gray III and Clarence M. Kelley. Both served during the 1970s and are deceased. No one yet had requested their files. The dispute began when I filed a simple FOIA request on both individuals. Anyone studying the history of 1970s state surveillance practices would want these files to uncover a broad range of FBI activity. I

knew from reading Hoover's surviving files, which total about 17,700 pages, that key information is collected by the director. Declassification could shed light on a broad range of issues. At first, the FBI offered a "mute response" to my Gray and Kelley requests—that is, they ignored them. Not content with the "mute response," I wrote a follow-up letter to the FOIA office at FBI Headquarters. They ignored this letter as well. It had become clear to me that the FBI did not want to release these files. Their resistance increased my interest in obtaining them. What were they trying to conceal?

Several months later the FBI finally responded to my FOIA requests. Late is better than never. The FOIA office informed me the size of the Kelley file was estimated at fifty-eight thousand pages. I would be charged 10 cents per page, nearly \$6,000. They did not know yet the size of the Gray file but it was expected to be smaller because Gray served less than a year as director. And herein lies a second ruse: As I later found out, the FBI greatly exaggerated the size of the Kelley file. Why? To discourage me from seeking it in terms of the financial costs. But they misfired. The longer the file, the more I wanted it. I did some research and learned that in recent years the FBI has selectively released files in an electronic form on CD-ROM, which greatly reduces the cost to researchers. Why couldn't they release the Gray and Kelley files in this way? I spoke on the phone with a representative from the FBI FOIA office, asking for an electronic release. At first they agreed to my request, indicating that the Gray and Kelley files, once declassified, would be placed in the FBI's Reading Room in Washington, D.C., in an electronic form. However, in a subsequent conversation and in correspondence, the FOIA office reneged on this verbal agreement. Why is unclear. Maybe they still hoped they could evade declassification.

The issue of electronic versus paper record releases is not a minor matter. The FBI tries to pose as many obstacles as possible to obtaining their records. Charging 10 cents per page for large files makes the financial costs a burden for most requestors. It is obstructionism pure and simple in an effort to suppress the historical record. What information might be contained in directors' files? Why is Kelley's so much larger than Hoover's file? Hoover served as director for nearly forty-eight years, while Kelley served only five years (1973–1978). On the one hand, it seemed logical that the total number of records increased in scope over time (i.e., the FBI generated many more documents as it grew in size as an organization). But this is only one explanation. The other, as I noted, was deception to dissuade openness. The total Kelley file later was determined to be about nine thousand pages. Meanwhile, the Gray file was determined to be only about sixty-five hundred pages. There is sound reason for researchers to question the legitimacy of the whole declassification process.

After much thought, I wrote Mark S. Zaid, a prominent FOIA lawyer in Washington, D.C., about initiating a lawsuit. He agreed to take the case. We

sued to get all records declassified in electronic form, as well as to insure that the FOIA office conducted a thorough search and did not overly redact documents. Zaid and assisting attorney Bradley P. Moss won the key point: The FBI agreed to release both the Gray and Kelley files on CD-ROM. Regarding the pace of declassification, the Justice Department signed a Joint Status Agreement whereby they agreed to release a minimum of eight hundred pages a month from the Gray and Kelley files until all the material was reviewed. Moss says, "Ivan's situation was reflective of the unfortunate reality that FOIA requests are routinely obstructed in the administrative process due to lack of agency accountability. . . . Not surprisingly, once Ivan's lawsuit had been filed the FBI swiftly agreed to electronic production and submitted a structured release schedule that was to be overseen by the court."²⁵ Lastly, the lawsuit cost me no money because the law requires the government to pay lawyer's fees if the litigant "substantially prevails." I had prevailed over the FBI and its culture of secrecy on behalf of openness and historical knowledge.

What type of information is contained in FBI files? First, the Bureau severely limits material subject to disclosure when it narrowly defines what constitutes a "record." An FBI agent's working notes during an investigation are not official records and therefore are not subject to release. Nor are most informant reports or written summaries of telephone conversations on a tapped phone. In recent years, the use of email raises additional disclosure questions. Agent email is not subject to declassification. In fact, it routinely is destroyed. In 2002, the National Archives evaluated FBI recordkeeping and reported: "Agents maintain email in their own electronic mailboxes. No one we spoke with prints and files email messages. According to all of the computer specialists we interviewed, audits of Bureau employee electronic mail are not conducted. Consequently, there is no Bureau-wide understanding of how electronic mail is actually being used." The Archives noted there was a ninety-day autodelete function on the FBI's electronic mail system.²⁶

This narrow interpretation of what constitutes a record reduces disclosure to FBI memos, letters between agents, clipped newspaper articles, and sometimes political literature gathered from a group. It becomes difficult for the researcher to assess if the FBI crossed the line from information gathering to active disruption. For example, one rarely can learn how often FBI operatives were posted on the street outside a subject's home or if open surveillance was practiced. We may not know if the FBI worked to enforce a blacklist. In sum, a considerable amount of information gathered during investigations is situated outside the disclosure law. Moreover, the FBI may censor documents that reveal illegal activity. As the law now stands, the task of disclosing improper conduct is left to the agency that has committed the misconduct.²⁷ As a result, FBI personnel may try their best to cover up such information,

especially since they fear that disclosure might lead to civil litigation or critical congressional scrutiny.

Yet, despite these limitations, one can read FBI files in several useful ways. It is possible to discern FBI motives and methods, as well as information about subject lives. FBI memos issued by the director or others in the top chain of command tell us about overall goals. For example, during the mid-1980s investigation of the Sheriff's Posse Comitatus, a radical right-wing group, the director outlined at least seven aspects to the investigation in a memo to the Minneapolis field office.

(1) Identification of all chapters; (2) Identification of all leaders and violence prone members; (3) Specific actions taken by members of the SPC which would justify continuation of the DS/T [Domestic Security/Terrorism] matter; (4) Information regarding finances; (5) Reports of informants and/or identification of individuals who may be targeted as informants against the SPC; (6) Results of contacts with local law enforcement officials; (7) Threat assessments of the various chapters based on the above information.²⁸

The wide scope of information to be gathered demonstrates the comprehensiveness of investigations. The FBI tracks both leaders and rank-and-file members of groups, their finances, and recruits informers from within target groups and sends in their own people undercover to pose as members. The democratic state thus generates a vast amount of political intelligence used exclusively by the executive branch of the government.

The FBI monitors political activity on the Right as well as the Left, generating full portraits of subjects which can be used in disruptive counterintelligence efforts. While most of this information is not subject to declassification, the bare bones material they disclose can be immensely useful to researchers. In a typical file, we find memos from local agents in the field office, often referred to as SACs (special agents in charge), who write to their superiors in Washington about the progress of surveillance. SACs may describe local protest meetings or demonstrations, detailing future plans. If protestors get arrested, their names are forwarded to FBI Headquarters. This very controversial practice, which attacks the First Amendment, is well documented in the FBI file on the Pledge of Resistance, a mid-1980s group that opposed Reagan's policy toward Nicaragua. I obtained the Pledge file under the FOIA and it shows that after a Pledge rally in Chicago, an SAC wrote the director, "Chicago will provide names of individuals arrested once their names are provided to Chicago FBI." In Boston, the FBI field office reported to the director about arrested protestors but "most refused to give their real names." In Indianapolis, a peaceful Pledge sit-in by college students at Senator Richard G. Lugar's office resulted in four arrests and the FBI memo said, "There was no violence. Indianapolis will maintain the names of the persons arrested."²⁹

I've read dozens of FBI files and it is rare to find statements by SACs about bald political objectives. The FBI rarely acknowledged their own political policing role, finding it unnecessary to repeat what everyone assumed. In general, there is little conjecture or freewheeling language as the rigid format of the memoranda prohibited it. There may be an element of self-censorship as officials worried about public exposure due to declassification. In addition to files on individuals and groups, I access specific FBI and Department of Justice reports providing valuable information. For example, in chapter 6 I cite a 204-page document, "The Impact of the Freedom of Information/Privacy Act on Law Enforcement Activities" (1978–1984), which I also obtained under the FOIA. The FBI's discussion about the use of informers is remarkably candid. A 1983 memo indicates the following:

A Boston informant who has furnished considerable information concerning the Weather Underground and the Prairie Fire Organization advised that he is very upset about the FOIA. He has learned through conversations with members of the counter-culture that former and current extremists are writing to FBI headquarters under the FOIA in an effort to identify and expose informants. The informant indicated he is apprehensive about the Bureau's ability to properly safeguard information furnished by him.

In a case involving the FALN, a Puerto Rican independence group, an SAC wrote,

A former source of excellent quality was recontacted, since his background was such that he could develop information of value concerning the terrorist Puerto Rican independence group known as the FALN. After three hours of conversation, the former source agreed to cooperate with the FBI but only in a very limited manner. He stated that due to the FOIA he no longer believes that FBI Agents can assure his complete protection. He made it clear that he will never again function as deeply as he had previously in behalf of the FBI, noting that disclosure of his identity would most assuredly cost him his life.

But a major problem remains in accessing FBI files: There is no official comprehensive list of subjects of investigation, no full accounting of who the FBI defined as domestic enemies. The FBI has yet to inform the public about who they investigated and why. Yet the knowledgeable researcher, who knows what to ask for, can benefit. For example, in my discussion of 1980s political activism, the FBI files released to me proved critical in documenting social movements and the response of the state. Who knew that small groups critical of U.S. foreign policy were the focus of surveillance? The monitoring of anti-war efforts, including the nuclear freeze, persisted despite the mid-1970s "reform" of the Bureau. Overall, I did not find many "smoking guns"—that is, FBI memos that reveal big, unknown state secrets. Rather, the declassified material revealed patterns of government behavior.

Bottom-Up Responses to Repression

A bottom-up study of government repression analyzes the varied response of political activists to efforts to disrupt their political activity. Generally, activists react in four ways. The first response is to ignore the repression as best as possible and continue activism at the same level, although one's paranoia may increase. For example, Martin Luther King Jr. knew the FBI had him under intense surveillance—a knowledge that became acute in 1964 when he received the notorious anonymous letter urging him to kill himself along with a tape recording documenting his sexual encounters. King assumed the FBI was the likely source of such a recording.³⁰ Yet King did not succumb to such harassment and withdraw from activism. He remained steadfast, unwilling to be intimidated. What some scholars point to as a more radical King in his last years, as he spoke out against the Vietnam War and focused on poverty issues, may be in part a reaction to his experience of police repression.

Ruth Rosen describes the FBI-induced paranoia inside the women's rights movement of the late 1960s and early 1970s. The FBI targeted women's groups with informers, wiretaps, and physical surveillance. Rosen notes that "activists often imagined that agents were everywhere," and they were right: "Porous and inviting, the movement permitted easy access and infiltration. For feminists, it was next to impossible to distinguish between informers and ordinary women who behaved oddly, suggested weird actions, held rigid positions, had poor judgment, or created dissension every time they opened their mouths. . . . Clearly, the FBI's infiltration intensified paranoia and provided one explanation for unresolvable differences" that developed within the women's movement, especially tensions between straight and gay women. "What we can ask is how much the *belief* in FBI infiltration affected the thought and behavior of movement activists. . . . Did the FBI's infiltration decisively alter the trajectory of the women's movement?" She concludes it did not: "Although it intensified paranoia, the FBI did not really change the movement's course." A small number of activists may have withdrawn from politics, but most remained committed to the ideals of equal rights and liberation.³¹

A variant of this response is that the subject continues activism but moderates their social criticism. They partly censor themselves out of fear, hoping that by presenting a more moderate tone the FBI will leave them alone. Elijah Muhammad, leader of the Nation of Islam (NOI), suffered incessant FBI harassment from the 1940s until his death in 1975. The FBI wiretapped his phone, planted listening devices in his home, and placed dozens of informers inside the NOI. Muhammad suspected that some surveillance was ongoing, but he did not know the depth of the monitoring. His response, according to historian Claude A. Clegg III, was to publicly expose the surveillance in

speeches and publications: “To Elijah Muhammad, all of the spying, contempt, and criminality that federal and state agencies were inflicting on his movement were consistent with the inherently wicked and crafty nature of White people. . . . Despite these sentiments, he personally had maneuvered well within the confines of government surveillance. . . . Nonetheless, state scrutiny and harassment did have a noticeable impact on Muhammad and his movement.” By the 1960s, he avoided political engagement and social activism: “[T]he fear of arousing the full wrath of the government kept him from offering much more than a black-skinned Islam, petty capitalism, and back-to-Africa dreams to his followers.”³²

A second response, in marked contrast to the first, is for the subject to undergo militant radicalization. Government repression reinforces the idea that the system is corrupt and illegitimate and some activists may turn to violence. The Black Panther Party spawned the violent Black Liberation Army after government crackdowns on their legitimate political activity.³³ Students for a Democratic Society spawned the violent Weather Underground Organization in 1969 in part due to government repression of the New Left. As Jeremy Varon concludes, state repression “caused those skeptical about violence to seriously contemplate it and those persuaded of the need for violence to take the radical leap into action.”³⁴ The right-wing Christian Identity movement spawned the violent Order of the Silent Brotherhood in 1983 after the shooting of a prominent right-wing leader, Gordon W. Kahl. Within Kahl’s group, the Sheriff’s Posse Comitatus, his killing in a shootout with U.S. Marshals, who were pursuing him on a charge for probation violation, served to further radicalize members. According to an FBI memo one year after Kahl’s death, “Recent investigation indicates that the Kahl incidents have further increased the militancy of the SPC, and at times SPC members have joined with other well-known right-wing extremist groups such as the Ku Klux Klan and Minutemen, each of which has a history of violence to advance their objectives. The group has also manifested its maturity by enhancing its internal discipline and philosophical rigidity. The escalating reliance of the group on violence as a means of achieving its goals is becoming more evident.”³⁵ The rise of right-wing paramilitary militia groups after 1994 came in response to the federal law enforcement killings at Ruby Ridge (1992) and Waco (1993). Timothy McVeigh’s bombing at Oklahoma City in 1995 explicitly was carried out as revenge for repression at Waco.

A third response is to fight back through legal means by suing the FBI for harassment or, in a lesser way, filing a FOIA request to get the government to give up information on the repression. Litigating against the FBI is increasingly a means to try to hold the FBI accountable. This bottom-up, social justice tactic developed in the late 1960s and continues into the present. I analyze it in depth in chapters 6 and 7.

A final and all too prevalent response is for activists to withdraw from politics. Repression scares ordinary people away from political engagement. To elicit this demobilization, the FBI conducts conspicuous surveillance, telling the target that he is being watched, and the repression often includes bringing into doubt the safety of the individual through the use of death threats or other menacing behavior. How often this occurs is difficult to determine with precision. One writer also suggests, “As with crime victims, victims of oppression often blame themselves for their suffering, even when they clearly bear no responsibility.”³⁶

I would like to think that we live in a society based on the “rule of law.” The rule of law means government is restrained from exercising arbitrary power. The norms of the legal system are publicly defined and laws are administered in an impartial manner. Government power is exercised with predictability and certainty.³⁷ In theory, there is no room for an illegal FBI under the rule of law. The secret police have to follow the same rules as everyone. If they violate the law, they are held accountable for their crimes. No agency or individual is above or outside the law. In fact, governments based on the rule of law can tolerate bottom-up civil disobedience more than they can tolerate top-down illegality by government leaders. Why the difference? Because when people take to the streets and block traffic or sit down on the sidewalk—civil disobedience—they have the intention to get arrested and to face the legal penalties imposed on them. They are working within the rule of law.³⁸ But when a top-down agency such as the FBI breaks the law it is done secretly and rarely exposed. No FBI official ever served a day in jail for political intelligence transgressions.

Oversight and Accountability

The rule of law exists in a very restricted way once the government invokes “national security.” The government may stalk its targets despite the fact that anti-stalking laws protect private individuals and groups from such behavior. The government may engage in a “conspiracy”—a coordinated effort involving more than two people—to violate civil rights and the private individual cannot go to the city police to get justice. Nor can subjects go to court to get a “cease and desist” order against the FBI. The law is constructed to give the FBI vast surveillance powers, and when they cross the line from information gathering to disruption, no one in government questions their tactics. It has been going on to varying degrees since the FBI’s founding about one hundred years ago.

The FBI operates under its own standards and rules to a greater extent than any other federal agency. This is demonstrated with reference to the status

of whistleblowers. In 1989, Congress passed the Whistleblower Protection Act to protect government employees who expose corruption and abuse. Remarkably, the FBI is exempted from the law. The FBI establishes its own guidelines and they discourage FBI employees from reporting corruption to anyone but FBI internal investigators. If an FBI employee reports misdeeds to a member of Congress, for example, the whistleblower is not protected from reprisals from his FBI superiors. While other federal workers can have an administrative hearing if they believe they have suffered retaliation for turning in coworkers or superiors, it is entirely up to the FBI director whether Bureau workers get a hearing. According to FBI culture, employees should not come forward to tell the truth about abuse of power.³⁹

Vigilant congressional oversight is not the full answer and new laws which limit the FBI to only “criminal investigations” provide only a partial answer since the FBI has shown it falsely will investigate and harass political dissidents under the guise of a criminal inquiry. As Chip Berlet notes, “Since this ultimate ideological goal of the FBI cannot be legally (and certainly not publicly) articulated, the FBI has developed an artful use of coded language to obscure and justify its actions.”⁴⁰ One solution, short of abolishing the Bureau altogether, is to provide for an outside independent monitoring mechanism with the authority to investigate and judge FBI abuses. This might take the form of a civilian complaint review board for the FBI with statutory powers to investigate FBI activity as it occurs, rather than merely after an investigation ends. During the Waco hearings before the Senate, Professor James Fyfe, a professor of criminal justice at Temple University, complained that there was “No FBI to investigate the FBI.” He noted that uniformed police are routinely investigated for abuses by civilian and government agencies. Fyfe called for the creation of a civilian advisory and review panel, along the lines of the Civil Rights Commission, to oversee federal law enforcement actions.⁴¹

Before 9/11 changed the political landscape, there were some calls for reform of the Bureau. In July 1999, the top Justice Department inspector general took the unusual step of advocating the creation of an outside watchdog to monitor the FBI. “It’s very important that there be an external oversight body that has full and unlimited jurisdiction to conduct whatever investigations it thinks appropriate,” Michael R. Bromwich said. Congress seemed unwilling to do the job: “Because of the FBI’s enormous power and support, particularly in Congress, the issue of expanding oversight of the FBI has never gotten any traction.”⁴²

Several specific reforms are needed to protect rights from abuse. In addition to a civilian complaint review board, the FBI should be required to inform every individual or group if they come under investigation. Notification should occur after an investigation is closed so the subject can file a FOIA request to obtain their file. Americans have the right to know if the FBI has been investigating

them. In addition, the FBI should have to apply for a legal warrant for the use of undercover informers. The Congress should pass an FBI Charter Act to impose restrictions on Bureau conduct. The last two points first were proposed in the mid-1970s but never enacted. They remain just as relevant today. Moreover, the government should pay reparations in cases where the FBI engaged in harassment. There is a precedent: Puerto Rico, a U.S. commonwealth, recently agreed to award \$6,000 to each of the thousands of victims of government spying since the late 1940s.⁴³ Americans deserve to be compensated for past FBI transgressions, including victims of the 1950s blacklist, as well as targets of active counterintelligence under COINTELPRO and beyond.

Too often in the past the FBI, and by extension the federal government, distrusted popular political activity. Any protest that includes civil disobedience is suspect—provoking notions that demonstrators have guns in storage, ready to commit violence. There is an irony here that while the American government supports nonviolent direct action overseas when it is done to promote democracy, such nonviolent political action in the United States remains a source of intense suspicion. In the twentieth century, people worldwide have embraced peaceful protest to challenge government abuses and demand social reforms. In recent years, the number of such “people power” movements has increased with success in changing repressive regimes.⁴⁴

The sentiments of Supreme Court Justice William O. Douglas, writing in 1972, should be a warning for us at the dawn of a new millennium.

We are currently in the throes of another national seizure of paranoia, resembling the hysteria which surrounded the Alien and Sedition Acts [1798], the Palmer Raids [1919], and the McCarthy era. Those who register dissent or who petition their governments for redress are subjected to scrutiny by grand juries, by the FBI, or even by the military. Their associates are interrogated. Their homes are bugged and their telephones are wiretapped. They are befriended by secret government informers. Their patriotism and loyalty are questioned. . . . More than our privacy is implicated. Also at stake is the reach of the Government’s power to intimidate its critics.⁴⁵

In the early 1990s, many of the nation’s law professors urged a major overhaul of the FBI’s intelligence operations. More than five hundred law professors, including twenty law school deans, signed a petition circulated by the National Committee Against Repressive Legislation (NCARL) to object to unconstitutional political policing. Speech cannot be considered “protected” if the FBI secretly monitors it.

Our fears that the FBI will stray beyond legitimate law enforcement into the realm of protected speech and association are grounded in recent experience . . . this petition is focused on the FBI because, as the most significant federal law en-

forcement agency, it sets an example when it establishes the range of acceptable investigative activities . . . there is still no federal legislation specifically authorizing and limiting the investigative activities of the FBI. . . . Having witnessed the inadequacy of internal guidelines to restrain the FBI's excesses, we conclude that federal legislation is needed to ensure that the FBI (and, through its example, other federal law enforcement agencies) not use its investigatory powers to intrude upon political activities protected by the Constitution.⁴⁶

As Rutgers law professor and ACLU leader Frank Askin wrote, "Trying to stop the FBI from engaging in political surveillance can only be compared to cleaning out the Augean stables. It seems to be a never-ending task. Each time the FBI is caught doing something it shouldn't be, it says that it will stop, but there's always a next time."⁴⁷

The legacy of this repression contributes to popular distrust of government, especially distrust of law enforcement. On the Far Right, white militia groups and others view "the feds" with derision and anger. On the Left, the idea that "COINTELPRO Lives" into the present is widespread. People of color, and especially black Americans, widely hold the view that the government is intent on destroying their leaders and civil rights organizations, and even worse, the government may be behind a conspiracy to spread disease, such as HIV, within their community, or to encourage drug addiction, believing that the crack epidemic was encouraged by the government.⁴⁸ The mounting anxiety over privacy as the Bush administration came to an end is in large part a response to the revelation of past and present government spying.



The Dangers of Dissent is organized topically. Chapter 1 presents a recent history of "state crimes": law violations and unconstitutional actions by the Bureau to neutralize individuals and groups based on their politics. When does government spying qualify as a state crime? How often does government spying cross the line from intelligence gathering to criminal disruption? The FBI calls its aggressive actions to disrupt and weaken groups "counterintelligence." In turn, I explore the response of the post-COINTELPRO protest community to spying and infiltration, which includes their use of "leaderless" structures. Politically active Americans now recognize the FBI's methods to suppress activism. Since the mid-1980s, books and pamphlets advise on how to resist harassment.

State crimes include misconduct within the legal system. How often does the FBI engage in perjury or obstruction of justice? Does conduct change once an investigation enters a legal proceeding phase? While recent studies document the practice of "testilying," or perjury by city police, I find such a pattern also for federal law enforcement. I point to broader obstructionism and deception by the FBI in its dealings not only with the public and the media but also with

Congress, which may try to hold them accountable. The role of the informer, especially the perjury of informers called on to testify during high-profile political trials, constitutes a major problem. For example, several leaders of the Black Panther Party were framed by the police and the FBI, and served long prison sentences before being cleared, based on perjury by informers. In several cases, we also know the FBI compromised the confidentiality of attorney-client communications to secure an advantage in criminal trials. Manipulation of court proceedings became part of a campaign to suppress social change.

Chapter 2 studies the evolution of spying during the 1970s. In the early part of the decade, COINTELPRO came to an end and Hoover died. Both of these changes impacted spying on Americans: The number of security investigations began to decline. However, Hoover's successors as director did not change substantially the political policing function of the Bureau. The FBI still kept extensive records on lawful movements for social change. Case studies of such monitoring, focusing on the history journal *Radical America* and the progressive think tank the Institute for Policy Studies (IPS), demonstrate that the government still tracked intellectual activity (and lobbying in the IPS case) it found dangerous.

The convening of the Church Committee in the U.S. Senate in 1975 led to further changes in government spying. After many of the crimes of COINTELPRO were exposed for the first time, the Justice Department issued the first-ever Attorney General Guidelines for the FBI placing restrictions on spying. Soon afterward, the Justice Department initiated an internal inquiry into illegal "black bag jobs" by the Bureau, focusing on the investigation of the Weather Underground Organization, and indicted three top FBI officials (W. Mark Felt, Edward S. Miller, and Gray). The break-in investigation and indictments, which few scholars have studied before, showed the Carter administration tried to impose accountability on the Bureau. Yet such changes proved to be short-lived.

Chapter 3 poses the question, did the FBI really change? President Ronald Reagan revived spying as part of his intensification of the Cold War. Based on declassified documents, I detail how critics of U.S. policy fell under the watchful eye of the state. The Hoover-era pattern of surveillance and harassment continued on a smaller scale. Even this reduced role for political policing may surprise some readers who mistakenly assume that the post-Hoover Bureau abandoned spying in politics. In a new development, the FBI equated many forms of lawful dissent with terrorism. The FBI investigated as terrorists not only anti-nuclear and peace movements. They went after human rights workers at Amnesty International and just about anyone who had contact with the Soviet Union. On the Right, the FBI tracked neo-Nazis, Aryan Nations, and the Ku Klux Klan, reviving the emphasis of COINTELPRO to contain radical white supremacists.

By 1989, a senate committee found that FBI spying on peaceful protest had become a “fairly routine practice.” Information about protest demonstrations by a wide range of groups across the political spectrum was acquired by the FBI and most of the demonstrations reported on posed no threat to the public safety. The reforms of the mid-1970s largely had been undone. According to the House Subcommittee on Civil and Constitutional Rights, which issued a critical report on FBI undercover operations, “Many of the values reflected in our Constitution are directly threatened by these operations . . . and the very disturbing impact that they have had on the lives of innocent people.” The Reagan administration unleashed undercover operatives and once again it was standard practice for the FBI to use “the infiltration of government agents, or criminals who are financed by the government, into the private lives of citizens; the spectacle of the United States Government spending large sums of money to tempt people into committing crimes; and the atmosphere of fear, suspicion and paranoia which develops as the use of the technique expands, are all anathema to the values protected and cherished in our Constitution.” The report is a searing critique: “Because agents create crime, rather than merely detect it, they hold the power to create the appearance of guilt . . . it is clear that the FBI and the Justice Department are incapable of adequately implementing their own safeguards and guidelines.”⁴⁹

The prospect of a post-Cold War “peace dividend” reformulating the role of the FBI was debated before two incidents—the first World Trade Center bombing (1993) and the Oklahoma City bombing (1995)—prompted a vast expansion of FBI powers. Chapter 4 focuses on the framing of the terrorist threat by President Bill Clinton. In the tradition of liberals before him—Franklin D. Roosevelt, John F. Kennedy, Lyndon B. Johnson—Clinton empowered the FBI to spy on Americans. There are strong Clintonian roots of the post-9/11 War on Terrorism. His administration demonized dissent, looking for enemies and establishing scapegoats, well before the second Bush presidency conducted a full-fledged “terror scare.” In the Oklahoma bombing investigation, for example, the FBI studied the Far Right to find possible ties—a conspiracy—between Timothy McVeigh, Terry Nichols, and white supremacist groups. The Bureau examined the records of ten thousand telephone calls to or from radical Right groups to determine if any came from McVeigh or Nichols. Their mammoth investigation included about twenty-six thousand interviews and the investigation of right-wing groups continued after the McVeigh and Nichols cases were settled without finding a conspiracy.⁵⁰

The use of the “terrorist” rubric to describe most political investigations—whether on the Right or Left—is especially pernicious because the public is led to believe that the terrorist is a violent Wild Man, the ultimate taboo figure of our time. Moreover, the hyped terrorist threat is used by the intelligence

community to legitimize their spying. Scare the public and Congress so in this way no one tries to limit spying. The FBI response to the coming of the millennium is typical. Did the FBI respond legitimately to millennial anxiety by political groups or was the government guilty of promoting millennial anxiety and paranoia in their efforts to control the population? While only a few political groups exhibited heightened rhetoric before the year 2000, the Bureau on the other hand trumpeted a great fear of violence, sounding an alarm about weapons of mass destruction (WMDs), a wholly new government discourse in the post-Cold War era. No longer worried about invading Communist armies, it is a formless enemy armed with WMDs who posed danger to the homeland. Between 1995 and 1998, the federal government conducted about 130 WMD military-oriented exercises to respond to a potential attack. Half of these exercises involved a scenario involving chemical weapons. At a time when a realistic assessment might view the United States as safer than at any time since the end of World War II, the intelligence and military community remained on high alert committed to scare politics. Despite dire predictions, no violence erupted anywhere in the United States when the year 2000 arrived.

The search for enemies intensified in the twenty-first century. In chapter 5, we see that the FBI began to restructure itself right after the 9/11 attacks. In a dramatic fashion, the “War on Terror” increased domestic spying; the number of FBI investigations tripled within a year and the number of FBI requests to surveil suspected terrorists quadrupled. The revival of warrantless surveillance poses a severe threat to civil liberties, as does the use of new watch lists and computerized intelligence and criminal databases. From 2003 through 2006, the FBI issued almost two hundred thousand National Security Letters (NSLs) in terrorism investigations to access such records as telephone, email, and financial accounts.⁵¹ In 2007, ten federal agencies utilized terrorist watch list data gathered by the FBI. One master list, first established in 2003, covered all suspects related to international terrorism, which is known as the Terrorist Identities Datasmart Environment (TIDE). The rapid growth of TIDE, from one hundred thousand names in 2003 to over five hundred thousand names by 2007, reflected the widening pool of suspects.⁵²

Brief case studies of surveillance in Denver and New York City demonstrate the broad range of spying. My overview of protest and suppression surrounding the 2004 presidential election also shows the long hand of the police in monitoring protest activity. Expecting violence at the GOP Convention, which was held in Manhattan, federal investigators infiltrated organizations and monitored plans for protests on the Internet. Six weeks before the election, the FBI announced an “October Plan” including “aggressive—even obvious—surveillance” to fight potential terrorism before Election Day. What constitutes “aggressive” surveillance? Is it constitutional? What we know about it is limited

to a variety of press reports. According to the *Washington Post*, “Officials said the FBI’s tactics, which will be outlined in an electronic communication to be sent to field offices this week, will include aggressive and often overt surveillance, widespread interviews, and, in some cases, arrests. Local police will be urged to run the names of suspicious people through the federal government’s terrorism watch list, even during traffic stops and other minor encounters.”⁵³ Not all surveillance was focused on Muslims and Arab Americans, despite their privileged place in the “terror scare” rhetoric. Dissent and protest generally were suspect and the FBI continued to practice a “guilt by association” model of intelligence gathering which “justifies ever expanding investigations: each association widens the circle of suspects and justifies still further investigations of the new suspects’ associations.”⁵⁴

Yet people have found ways to fight back against FBI power by using the courts. New popular legal strategies against state surveillance emerged by the early 1970s. To date, no scholar has studied these legal efforts in any depth and I hope my discussion breaks new ground on behalf of democratic praxis. Chapter 6 delineates resistance under the FOIA, looking at legal challenges surrounding the release of FBI files to the public. Historically, the FBI heavily censors files before disclosure. The political police have an institutional interest in maintaining secrecy about their role in society, which requires the broad redacting of records. The declassification process is wrought with problems, designed to make requestors “go through hoops,” as one insider admitted.⁵⁵ It becomes a censorship problem, particularly with the false denial of records and widespread file destruction. A full accounting of FBI behavior is possible only when people sue the FBI to contest this censorship. But federal judges widely deferred to the Bureau, for example, to protect the secret use of informers in anti-Communist and black power investigations. To a degree, the United States lags behind other nations on the openness or transparency question. Indeed, the movement for transparency in government under the banner of the “right to know” developed dramatically on a global level since the end of the Cold War, advocating responsive and accountable democratic government. More than twenty-six nations adopted FOI laws after 1990. Today, over eighty countries have written constitutional provisions granting citizens the right of access to government information. Daniel J. Metcalfe, director of the Office of Information and Privacy at the U.S. Justice Department, reported to Congress in 2006, “So the FOIA, and its evolution over the decades, holds significance for the processes of democracy building—and also, in the most recent international trend, fighting corruption—throughout the world.”⁵⁶

Chapter 7 analyzes the recent body of civil rights litigation against the FBI for infringements of the First and Fourth Amendments. My approach emphasizes the agency of victims of repression, who in their search for power

created a new legal tradition. These lawsuits emerged as a new social justice tactic, putting the FBI on trial for the first time in its history. It is important to give voice to both the plaintiffs and their lawyers, allowing them to speak on their own terms. These legal pioneers risked lives and careers to challenge the government in a court of law because suing the FBI was highly controversial, so much so that the mainstream legal community largely shunned such cases. Overall, I uncover forty-seven anti-spying lawsuits from 1969 to the present and in the majority of cases (59 percent) plaintiffs proved to the court that the FBI violated their rights. The gains included large monetary damage awards and the curtailing of spying. Federal judges decided most of the cases, and the FBI had a hard time defending their actions, arguing that national security during the Cold War necessitated extra-legal and unconstitutional practices. But legal action to seek redress is not an easy route because the federal courts set a high standard to succeed and the legal community still is somewhat wary to challenge FBI power on behalf of aggrieved individuals and groups. The Bureau will delay, deny, and withhold evidence to try to win at any cost. For the FBI, losing in court sets a dangerous precedent since thousands of Americans live silently in our society as victims of repression. The prospect of these individuals suing the Bureau is the next breakthrough in civil liberties. I hope my history of these challenges aids this effort by demonstrating that litigation can be an effective social justice tactic. The ability to sue the federal police is fundamental to expanding democracy.

The concluding chapter places the study of the FBI in the broader context of a "Surveillance Society." Since the late 1980s, scholars in several fields talk about the death of privacy in our roles as workers, consumers, and political citizens due to new technology deployed by both the government (Big Brother) and private industry (Little Brother). As the title of a recent book on computer data mining suggests, there is *No Place to Hide*.⁵⁷ Political scientist Reg Whitaker writes in *The End of Privacy*, "New technologies of surveillance are rendering individuals more and more transparent, and relentlessly reducing the private spaces into which people have traditionally been able to retreat for refuge and self-definition."⁵⁸ Sociologist David Lyon writes in *The Electronic Eye*, "To an unprecedented extent, ordinary people now find themselves 'under surveillance' in the routines of everyday life. In numerous ways what once was thought of as the exception has become the rule, as highly specialized agencies use increasingly sophisticated means of routinely collecting personal data, making us all targets of monitoring, and possibly objects of suspicion."⁵⁹ Surveillance is about power and social control. In most cases, large entities are doing the watching to demonstrate their prowess. In cases of conspicuous or overt surveillance, the practice becomes a deliberate means of intimidation. The relationship between the conductor of surveillance and

the surveillant becomes one of domination and subordination—whether the groups involved are the FBI versus dissident, boss to employer, or guard to prisoner. Subordinate groups will find ways to resist; they always have and always will. But as surveillance technology grows more sophisticated and intrusive, the attack on privacy reaches new heights.

America stands at a critical juncture. Historian Alan Brinkley recently noted, “The question facing America today is not whether civil liberties are being abridged. Clearly they are. It is whether these abridgements will be a temporary setback for civil liberties, as in earlier crises, or whether we will enter a new period in our history in which the role of civil liberties in national life will become permanently diminished.”⁶⁰ Supreme Court Justice Sandra Day O’Connor commented in 2006, “It takes a lot of degeneration before a country falls into dictatorship, but we should avoid these ends by avoiding these beginnings.”⁶¹

When the Church Committee conducted a “reckoning” of FBI conduct more than thirty years ago, they found little adherence to the law or the Constitution. It is worthwhile to quote the Final Report of the Committee.

Legal issues were often overlooked by many of the intelligence officers who directed these operations. . . . Legal issues were clearly not a primary consideration—if they were a consideration at all—in many of the programs and techniques of the intelligence community. . . . On some occasions when agency officials did assume, or were told, that a program was illegal, they still permitted it to continue. . . . Even when agency officials recognized certain programs or techniques to be illegal, they sometimes advocated their implementation or permitted them to continue nonetheless.⁶²

It is time for another reckoning. We need to reevaluate the role of the FBI in American society to prevent further degeneration and to protect the civil liberties of all people living in the United States. These are perilous times when loud voices are needed to restore basic justice to the society. Those voices must be free to express themselves without worrying about retribution by the government.

Notes

1. Roger Lippman, “Looking Back on the Seattle Conspiracy Trial,” December 1990, 2, www.terrasol.home.igc.org/trial.htm (Dec. 12, 2009); *United States v. Charles Clark Marshall, III, et al.* 451 F.2d 372, Nov. 18, 1971.

2. Ward Churchill and Jim Vander Wall, *The COINTELPRO Papers: Documents From the FBI’s Secret War Against Dissent in the United States* (Boston: South End Press, 1990), 188; Bernard Weiner, “What, Another Conspiracy?” *Nation*, Nov. 2,

1970; Peter Babcox et al., “The Committee to Defend the Conspiracy,” *New York Review of Books*, June 19, 1969; Arthur Kinoy, *Rights on Trial: The Odyssey of a People’s Lawyer* (Cambridge, Mass.: Harvard University Press, 1983): 297–330.

3. Lippman, “Looking Back,” 2–3; Roger Lippman to Ivan Greenberg, email, Dec. 19, 2008, Dec. 29, 2008, Dec. 31, 2008.

4. Robert Justin Goldstein, *Political Repression in Modern America: From 1870 to 1976* (Urbana: University of Illinois Press, 2001), 472; Cathy Wilkerson, *Flying Close to the Sun: My Life and Times as a Weatherman* (New York: Seven Stories Press, 2007), 197.

5. Lippman to Greenberg, Dec. 29, 2008. The Bureau placed Lippman on the Rabble Rouser Index by December 1968 due to membership in SDS.

6. Complaint in *Lippman v. Mitchell*, United States District Court for the Western District of Washington, June 13, 1974, 7, www.terrasol.home.igc.org/wiretap2.htm (Dec. 12, 2009).

7. Paul Chevigny, *Cops and Rebels: A Study of Provocation* (New York: Pantheon Books, 1972), 258–59, 325; Roger Lippman to Ivan Greenberg, email, Dec. 18, 2008.

8. Lippman, “Looking Back,” 3–4; Churchill and Vander Wall, *The COINTEL-PRO Papers*, 222; Lippman to Greenberg, Dec. 29, 2008. The other defendants were Michael Justesen, Susan Stern, Joe Kelly, Jeff Dowd, Michael Lerner, and Mike Abeles.

9. Lippman to Greenberg, Dec. 18, 2008, and Dec. 29, 2008.

10. Lippman to Greenberg, Dec. 18, 2009, and Dec. 29, 2008.

11. Complaint, *Lippman v. City of Miami et al.*, United States District Court for the Southern District of Florida, May 4, 2006.

12. “FBI Targeted Freelance Journalist Covering FTAA Miami Talks,” *Democracy Now!*, May 5, 2006.

13. Complaint, *Lippman v. City of Miami et al.*, 15–16.

14. David Cole and Jules Lobel, *Less Safe, Less Free: Why America Is Losing the War on Terror* (New York: The New Press, 2007), 1–2. See also DeMond Shondell Miller, Jason David Rivera, and Joel C. Yelin, “Civil Liberties: The Line Dividing Environmental Protest and Ecoterrorists,” *Journal for the Study of Radicalism* 2 (2008): 109–23.

15. Quoted in J. Soffiyah Elijah, “Reality of Political Prisoners in the United States: What September 11 Taught Us about Defending Them,” 18 *Harvard Blackletter Law Journal* (2002): 130.

16. Thomas G. Bloomberg and Stanley Cohen, eds., *Punishment and Social Control* (Hawthorne, N.Y.: Walter de Gruyter, 2003). See also William G. Staples, *Everyday Surveillance: Vigilance and Visibility in Postmodern Life* (Lanham, Md.: Rowman and Littlefield, 2000).

17. Myra Marx Ferree, “Soft Repression: Ridicule, Stigma and Silencing in Gender-Based Movements” in *Repression and Mobilization*, eds. Christian Davenport, Hank Johnson, and Carol Mueller (Minneapolis: University of Minnesota Press, 2005): 138–58.

18. In an early example of FBI police science, in 1956 the Bureau issued to its agents a secret twenty-nine page monograph titled “Pretexts and Cover Techniques.” It begins: “The primary purpose of this monograph is to make available to FBI investigators the ideas and experiences of other Agents and Bureau officials. The sharing of these ideas and experiences will serve as a firm foundation for the future and will

build better pretext and cover techniques. In addition to setting forth the underlying principles of these techniques, this monograph cites numerous examples of pretexts and covers which have worked successfully. These examples are presented in concise form with the emphasis on the ideas and ingenuity they contain" (1). The Bureau noted that to gain information agents posed as bill collectors, taxicab drivers, truck drivers, deliverymen, elevator operators, waiters, sales clerks, hotel clerks, real-estate agents, building inspectors, claim adjusters, surveyors, telephone men, assessors, tax collectors, food and drug inspectors, construction workers, bricklayers, plasterers, painters, iron workers, public-opinion pollers, laborers, and vagrants (21).

19. Athan G. Theoharis, *The FBI and American Democracy: A Brief Critical History* (Lawrence: University of Kansas Press, 2004); Richard Gid Powers, *Broken: The Troubled Past and Uncertain Future of the FBI* (New York: Simon and Schuster, 2004). Other recent scholarship includes Rhodri Jeffrey-Jones, *The FBI: A History* (New Haven, Conn.: Yale University Press, 2007); Natalie Robins, *Alien Ink: The FBI's War on Freedom of Expression* (New York: W. Morrow, 1992); David H. Price, *Threatening Anthropology: McCarthyism and the FBI's Surveillance of Activist Anthropologists* (Durham, N.C.: Duke University Press, 2004); David Cunningham, *There's Something Happening Here: The New Left, the Klan and FBI Counterintelligence*. (Berkeley: University of California Press, 2004); John Drabble, "To Ensure Domestic Tranquility: The FBI COINTELPRO-WHITE HATE and Political Discourse, 1964–1971," *Journal of American Studies* 38 (Aug. 2004): 297–328; Robert A. Hill, ed., *The FBI's RACON: Racial Conditions in the United States during World War II* (Boston: Northeastern University Press, 1995); Kathryn S. Olmsted, *Challenging the Secret Government: The Post-Watergate Investigations of the CIA and the FBI* (Chapel Hill: University of North Carolina Press, 1996); James Kirkpatrick Davis, *Assault on the Left: The FBI and the Sixties Antiwar Movement* (Westport, Conn.: Greenwood Press, 1997); Mike Forrest Keen, *Stalking the Sociological Imagination: J. Edgar Hoover's Surveillance of American Sociology* (Westport: Greenwood Press, 1999); Regis Schmidt, *Red Scare: FBI and the Origins of Anticommunism in the United States, 1919–1943* (Copenhagen: Museum Tusulanum Press, 2000); Clarie A. Culleton, *Joyce and the G-Men: J. Edgar Hoover's Manipulation of Modernism* (New York: Palgrave Macmillan, 2004); and Fred Jerome, *The Einstein File: J. Edgar Hoover's Secret War Against the World's Most Famous Scientist* (New York: St. Martin's Press, 2002).

20. Athan G. Theoharis, ed., *A Culture of Secrecy: The Government Versus the People's Right to Know* (Lawrence: University of Kansas Press, 1998); Theoharis, "Secrecy and Power: Unanticipated Problems in Researching FBI Files," *Political Science Quarterly* 119 (2004): 271–90. Senator Daniel Patrick Moynihan, who chaired the bipartisan Commission on Protecting and Reducing Government Secrecy (1995–1996), largely dismissed the role of the FOIA for failing to "change the practices of the bureaucracy." Moynihan, *Secrecy: The American Experience* (New Haven, Conn.: Yale University Press, 1998), 173.

21. Athan G. Theoharis and John Stuart Cox, *The Boss: J. Edgar Hoover and the American Inquisition* (Philadelphia: Temple University Press, 1988), 17.

22. Richard Gid Powers, *Secrecy and Power: The Life of J. Edgar Hoover* (New York: The Free Press, 1987), 2, 489.

23. Although Churchill has been the subject of controversy for his Left views and more recently for charges of plagiarism, I find no deficiencies in his scholarship on the FBI and social movements. See Ward Churchill and Jim Vander Wall, *The COIN-TELPRO Papers*; Churchill and Vander Wall, *Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement* (Boston: South End Press, 1988); Churchill, "'To Disrupt, Discredit and Destroy': The FBI's Secret War Against the Black Panther Party," in *Liberation, Imagination, and the Black Panther Party*, ed. Kathleen Cleaver and George Katsiaficas (New York: Routledge, 2001), 78–119; Churchill, "From the Pinkertons to the PATRIOT Act: The Trajectory of Political Policing in the United States, 1870 to the Present," *CR: The New Centennial Review* 4 (Spring 2004): 1–72.

24. Thomas B. Dudney, "A Questionnaire for Agency Records Officers," Aug. 30, 1990, National Archives FBI File; "Putting Records to Work," *Federal Computer Week*, June 21, 2004.

25. Bradley P. Moss to Ivan Greenberg, email, April 28, 2010.

26. National Archives and Records Administration, "Final Report with Findings and Recommendations, Assessment of FBI Recordkeeping," Oct. 15, 2002, 14, National Archives FBI file.

27. In a narrow ruling in *Safecard Services v. SEC*, 929 F.2d 1197 (1991), the D.C. Circuit said that a key law enforcement exemption (7c) may not apply if the government acted unlawfully, and the plaintiff provided proof in advance. Information in law enforcement records identifying private individuals is exempt from disclosure unless release is necessary to "confirm or refute compelling evidence that the agency is engaged in illegal activity." But no case dealing with FBI political investigations has tested this standard. Recently, the U.S. Supreme Court in *National Archives and Records Administration v. Favish*, 541 U.S. 157 (2004) modestly loosened the finding in *Safecard* by suggesting that proving government wrongdoing need only meet a "reasonable person" test. Justice Anthony Kennedy wrote for court, "[W]here there is a privacy interest protected by Exemption 7(c) and the public interest being asserted is to show that responsible officials acted negligently or otherwise improperly in the performance of their duties, the requestor must establish more than a mere suspicion in order to obtain disclosure. Rather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." See the discussion by Lee Levine, "Strange Bedfellows: Reconciling Privacy and Freedom of Information" (paper presented at National FOIA Day Conference, March 16, 2005).

28. Director to Minneapolis field office, Nov. 21, 1983, Sheriff's Posse Comitatus FBI File.

29. SAC Chicago to Director, Feb. 24, 1986; SAC Boston to Director, June 25, 1985; SAC Indianapolis to Director, May 14, 1985. Pledge of Resistance FBI File.

30. Athan G. Theoharis, ed., *From the Files of J. Edgar Hoover* (Chicago: Ivan R. Dee, 1991), 102–3.

31. Ruth Rosen, *The World Split Open: How the Modern Women's Movement Changed America* (New York: Penguin, 2001), 239, 252–53, 259–60.

32. Claude A. Clegg III, "Nation under Siege: Elijah Muhammad, the FBI and Police-State Culture in Chicago," in *Police Brutality: An Anthology*, ed. Jill Nelson (New York: W.W. Norton, 2000), 118–19.

33. Akinyele Omowale Umoja, "Repression Breeds Resistance: The Black Liberation Army and the Radical Legacy of the Black Panther Party," in *Liberation, Imagination, and the Black Panther Party*, 3–19.

34. Jeremy Varon, *Bringing the War Home: The Weather Underground, the Red Army Faction, and Revolutionary Violence in the Sixties and Seventies* (Berkeley: University of California Press, 2004), 3.

35. "Sheriff's Posse Comitatus," FBI field office report, Minneapolis, Minnesota, March 21, 1994, 2, Sheriff's Posse Comitatus FBI File; Danny O. Coulson and Elaine Shannon, *No Heroes: Inside the FBI's Secret Counter-Terror Force* (New York: Pocket Books, 1999), 193.

36. Robert Elias, *The Politics of Victimization: Victims, Victimology, and Human Rights* (New York: Oxford University Press, 1986), 217. Christian Smith discusses the emotional dynamics that Central American peace activists experienced when they encountered repression. Smith, *Resisting Reagan: The U.S. Central America Peace Movement* (Chicago: University of Chicago Press, 1996), 320–23.

37. The literature on the Rule of Law is extensive. Some sources include: Ronald Dworkin, *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985); Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977); Lon L. Fuller, *The Morality of Law* (New Haven, Conn.: Yale University Press, 1969); J. Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1972); Ian Shapiro, ed., *The Rule of Law* (New York: New York University Press, 1995).

38. Catherine Valcke, "Civil Disobedience and the Rule of Law—A Lockean Insight," in *The Rule of Law*, 45–59.

39. It took ten years after passage of the Whistleblower Protection Act for the FBI to write guidelines on this topic. President Bush ignored the law and so did Clinton until 1997, when the FBI Crime Lab scandal broke. "Whistleblowers Inside the FBI Get Little Protection," Associated Press, Nov. 14, 1999.

40. Chip Berlet, "Hunt for the Red Menace," part 17, Political Research Associates, 1998, www.publiceye.org (Feb 2, 2003).

41. A similar proposal is offered by David B. Kopel and Paul H. Blackman in *No More Wacos* (New York: Prometheus Books, 1997), 386–87.

42. "Inspector Says FBI Needs Outside Watchdog," *APBnews*, July 29, 1999.

43. "Freed Puerto Rican Militants Revel in Life on the Outside," *New York Times*, Jan. 27, 2000. FBI files on groups and individuals inside Puerto Rico total about 1.8 million pages.

44. Nonviolent political action succeeded in Bolivia (1977, 1982); Sudan (1985); Haiti (1985); Philippines (1986); South Korea (1987); Chile (1989); Poland (1989); East Germany (1989); Czechoslovakia (1989); Mongolia (1990); Nepal (1990); Madagascar (1993); Bangladesh (1996); and Indonesia (1998). Stephan Zunes, Lester R. Kurtz, and Sarah Beth Asher, eds., *Nonviolent Social Movements: A Geographical Perspective* (Oxford: Wiley Blackwell, 1999).

45. *United States v. United States District Court* 407 U.S. 297 (1972).
46. A list of signers is an appendix in Jack X. Dempsey and David Cole, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (New York: The New Press, 2002).
47. Frank Askin, *Defending Rights: A Life in Law and Politics* (Atlantic Highlands, N.J.: Humanities Press, 1997), 171.
48. Frankie Y. Bailey and Alice P. Green, "Law Never Here": *A Social History of African American Responses to Issues of Crime and Justice* (Westport, Conn.: Praeger, 1999), 182.
49. Churchill and Vander Wall, *Agents of Repression*, 376–78; Dempsey and Cole, *Terrorism and the Constitution*, 55–56.
50. Morris Dees, *Gathering Storm: America's Militia Threat* (New York: HarperPerennial, 1997), 156, 162–63; Coulson and Shannon, *No Heroes*, 528, 532; "Phone Trail to Oklahoma City," *New American*, July 8, 1996; "FBI Destroyed Possible McVeigh Evidence," Associated Press, March 1, 2003.
51. Office of Inspector General, U.S. Department of Justice, "A Review of Federal Bureau of Investigation's Use of National Security Letters," March 2007, xvi–xlviii.
52. Privacy and Civil Liberties Oversight Board, "Second Annual Report to Congress," Jan. 30, 2008, 21–22.
53. "Election Heightens Terrorism Offensive," *Washington Post*, Sept. 27, 2004.
54. Dempsey and Cole, *Terrorism and the Constitution*, 37.
55. Scott A. Hodes, "FOIA Appeals, the Unspoken Problem," Oct. 15, 2005, www.LLRX.com (Nov. 16, 2006).
56. Daniel J. Metcalfe, "Implementing FOIA—Does the Bush Administration Executive Order Improve Processing?" Hearing by the Subcommittee on Government Management, Finance, and Accountability, Committee on Government Reform, U.S. House of Representatives, July 26, 2006, 8. See also David Banisar, *Freedom of Information Around the World: A Global Survey of Access to Government Information Laws* (London: Privacy International, 2006); Thomas Blanton, "The World's Right to Know," *Foreign Policy* 131 (July–Aug. 2002): 50–58; Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004); Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts after Communism* (New York: Vintage Books, 1995).
57. Robert O'Harrow, *No Place to Hide* (New York: The Free Press, 2004).
58. Reg Whitaker, *The End of Privacy: How Total Surveillance Is Becoming a Reality* (New York: The New Press, 2000), 4.
59. David Lyon, *The Electronic Eye: The Rise of Surveillance Society* (Minneapolis: University of Minnesota Press, 1994), 4.
60. Alan Brinkley, "Past as Prologue?" in *Liberty Under Attack: The War on Our Freedoms in an Age of Terror*, ed. R. C. Leone and Greg Anrig (New York: Public Affairs, 2007), 26.
61. Quoted in Howard Ball, *Bush, the Detainees, and the Constitution: The Battle over Presidential Power in the War on Terror* (Lawrence: University Press of Kansas, 2007), 1.
62. U.S. Senate Select Committee on Intelligence (Church Committee), *Intelligence Activities and the Rights of Americans*, vol. 2, 1976, 140, 141, 155.

1

State Crimes

IT IS RARE FOR A STATE TO ADMIT to its own political crimes. As Gregg Barak notes, “Because the victims of state criminality typically lack any means of judicial redress, they usually have very little, if any, political recourse against the perpetrators of their abuse.”¹ The United States, as the leader of the “free world,” likes to think that such an assessment does not apply to it—that the U.S. government, as a constitutional democracy, does not engage in state crimes, or, if it does, victims can rely on the courts for a legal redress. Americans are told by their leaders they live in a nation based on the rule of law and no one—not even top officials—are above the law. As this chapter shows, the U.S. government has a long history of state crimes perpetrated against groups or people and law enforcement officials often try to thwart the law to protect or cover up repressive and illegal behavior. Apart from African American slavery and Native American genocide, the Cold War contributed to the greatest outbreak of state crimes in United States history with the FBI as the lead agency for social control. The political and ideological witch hunt against “subversives” stifled dissent and left great scars on the psyche of the nation while undermining the human rights of thousands of people. Spying became a routine practice and the federal government engaged in deliberate disruption to undermine subjects of investigation.

Government spying qualifies as a state crime when it is unconstitutional or illegal. For more than forty years the FBI utilized warrantless break-ins, wiretaps, or mail opening coupled with “counterintelligence” methods such as death threats, false arrests, slander, and blacklisting. When the FBI encouraged division and violence through the use of infiltrators, it also crossed the

line into criminal behavior in politics. In legal proceedings, FBI informers or agents committed perjury and fabricated or withheld evidence in clear violation of the law. A second level of criminal behavior is just as insidious, although its severity is different. The FBI maliciously used investigations as a form of intimidation to discourage political activity. They conducted dozens of interviews to slander and isolate subjects of investigation. The interviews of work peers, neighbors, family, and friends had serious detrimental impacts by stigmatizing the subject in their network of relations and undermining their effectiveness. The surveillance of Americans is a crime when the justification for such spying is political, unrelated to criminal conduct, and the surveillance is overt, causing distress to the subject. In my view, only one form of government spying in politics is legitimate: if spying is done under narrow terms to uncover criminal behavior. In other words, police shall not monitor or disrupt protected speech and assembly, which forms the basis of the American heritage of political freedom.

The scope of the government's criminal spying has never been thoroughly documented. The gradual declassification of FBI files since 1974 provides a growing body of evidence of political policing. In 1975 and 1976, the U.S. Senate Church Committee exposed some of this illegal conduct during hearings on COINTELPRO, a counterintelligence program begun in 1956. Led by Democratic Senator Frank Church of Idaho, the committee formed in the aftermath of Watergate and ongoing press disclosures of illegal and apparently uncontrolled FBI, CIA, and Defense Department spying on Americans. At the time, very little congressional oversight of the intelligence community existed. The committee held twenty-one public hearings and interviewed about eight hundred people leading to a critical multivolume report, *Intelligence Activities and the Rights of Americans*, and the establishment of the permanent Senate Select Committee on Intelligence.²

The Church Committee labeled COINTELPRO a "sophisticated vigilante program aimed squarely at preventing the exercise of First Amendment rights of speech and association." Many other FBI dirty tricks took place apart from COINTELPRO. As historian Kenneth O'Reilly notes, "Only a small number of the FBI counterintelligence actions conducted between 1956 and 1971 were carried out as formal COINTELPRO operations. The vast majority were thus not recorded in the central COINTELPRO file but were under other program files or individual case captions."³ The Red Scare survived the 1950s in an expansive way; between 1960 and 1974, the Bureau conducted about five hundred thousand domestic security investigations with the vast majority focused on people and groups with liberal-Left politics. Although the McCarthy-era blacklist ended, the FBI intensified efforts to contain emerging social movements for black civil rights, women's rights, Native American rights, gay rights, black power, and the anti-war movement. The New Left as well

as the remnants of the Old Left emerged as top targets and any public critic of government spying might be subject to investigation. Most Americans are unprepared to believe that their own government engaged in bald criminal behavior during the Cold War. The idea of “American exceptionalism” does not apply in this regard: The democratic state is guilty of large-scale violations of the rights of citizens and immigrants.

“Counterintelligence” Methods

The FBI’s aggressive actions to disrupt and weaken groups (“counterintelligence”) went beyond information gathering designed to fight movements for social change. We can summarize these methods, many of which had no basis in the law. First, warrantless intelligence gathering using phone taps and bugs to collect information violated the Fourth Amendment prohibition against “unreasonable searches” by government. The FBI officially admitted to placing 2,305 warrantless phone taps between 1956 and 1971, as well as 697 warrantless bugs in offices or homes.⁴ In some cases, the FBI also conducted eavesdropping in an open, conspicuous manner to induce paranoia. They wanted the subject to become aware of surveillance—an assertion of state power to chill free speech and drive subjects away from activism.

Known inside the FBI as “black bag jobs,” the Bureau conducted break-ins of offices or homes to steal or copy papers, computer files, membership lists, financial records, or other information. The FBI also conducted break-ins to plant electronic listening devices. Statistics on the total number of black bag jobs do not exist. In 1975, the FBI told Congress the nationwide figure was only 238 limited to the years 1942 to 1966. The Bureau later changed its story by admitting in 1981 that about five hundred break-ins took place in Chicago alone and continued through the mid-1970s. In general, the FBI concealed an accounting of break-ins in its official files by attributing these actions to unnamed sources. According to a 1981 memo, “[T]he use of the terms ‘anonymous sources’ or ‘highly confidential sources’ were terms used by the intelligence community since World War II and they could mean a number of things including mail openings, mail cover, trash covers, surreptitious entries, bag jobs, wiretaps and micro surveillances.” FBI agent M. Wesley Swearingen, who performed black bag jobs in Chicago and Los Angeles, suggests close to twenty-four thousand break-ins occurred over a thirty-five-year period, a figure the Bureau has not confirmed. One top target was the small Socialist Workers Party. The FBI conducted 208 black bag jobs against the Party during the 1940s and 1950s. The Party’s national office in New York City was broken into eighty-one times between 1958 and 1965.⁵ After 1978, the FBI obtained warrants for break-ins, so these jobs are now legal. Again, there are

no reliable statistics on break-ins in the post-COINTELPRO years, but the secret Foreign Intelligence Surveillance Court approves hundreds of warrants for wiretaps or break-ins each year.

Another counterintelligence method involved the use of undercover informers or agents, who infiltrated political organizations both to passively gather information and to actively create divisions. The FBI also recruited informers from within groups. In some cases, informers encouraged illegal activity to entrap subjects. These government “snitches” or “rats” circulated within social movements with the intention to undermine political activity. Informants became the first choice of the Bureau for surveillance considered “far more efficient and productive” than electronic surveillance. In the Communist Party, they comprised a substantial corps—one in every six members in the mid-1960s. FBI Agent Danny O. Coulson worked in New York City and recalled that his supervisor “informed me that the director wanted to know where every Red in New York was at every moment so that when we went to war with the Soviet Union, we could round up these old folks and intern them as subversives. Upon reviewing the case files [supervisor] Dooley deposited on my desk, I discovered that fully a third of these people had long been employed as FBI informants.” The Bureau also undertook a major effort to infiltrate the New Left with about one thousand informers embedded in groups by 1970. In the city of Chicago, we know the FBI deployed 5,145 informers in more than one hundred groups between 1966 and 1976.⁶

Counterintelligence included fabricating documents. The FBI created phony correspondence between members of target groups in order to create splits within or between organizations. The FBI sent bogus letters to individual activists or their friends, relatives or employers. In a well-publicized case, in 1964 the Bureau sent an anonymous letter to Martin Luther King Jr. urging him to commit suicide.⁷ About 110 anonymous or fictitious mailings were used against New Left groups between 1968 and 1971, including poison-pen letters designed to break up marriages.⁸

The FBI fabricated publications (pamphlets, newspapers, leaflets, posters and cartoons) on behalf of target organizations and individuals in order to distort their positions and objectives with the goal to publicly discredit them and, again, to foster intra- and intergroup tensions.⁹ They also released phony information (“disinformation”) to the media to discredit subjects. The FBI tried to frame public sentiment about a group or individual so the public accepted the FBI’s targeting as legitimate. During the 1960s campaign against black power and civil rights groups, at least twenty-six cases arose where the Bureau contacted the media to plant false information.

Disinformation could confuse protest groups. FBI Director Clarence M. Kelley, who served from 1973 to 1978, described such techniques in his memoir. One example follows:

In 1969, a group of Midwestern college students, known to be SDS members, planned to go to Washington to disrupt the inauguration of Richard Nixon. The FBI learned of their plans through student informants and made a series of anonymous, boycott-threatening telephone calls to the bus company that the SDS planned to use for the trip. In addition, to further confuse things, FBI agents called student organizers regarding bus information. The FBI callers, posing as representatives from the bus company, gave erroneous information to the organizers regarding routes, costs, departure, destination times, etc. The Bureau also distributed leaflets on campus listing contradictory and incorrect information concerning the group's travel plans. Not surprisingly, the trip never materialized.

There are many other cases, but again we can quote Kelley, who boasts about such techniques. In his view, the nation faced a crisis created by radicals justifying almost any FBI effort to protect the government.

In one usage of the Cointelpro "disinformation" technique, the Chicago FBI field office duplicated blank forms, prepared by the National Mobilization Committee to End the War in Vietnam (NMC), soliciting housing for demonstrators coming to Chicago for the Democratic National Convention. The Chicago FBI office filled out over 200 of these forms with fictitious names and addresses and sent them to the NMC, which in turn gave them to demonstrators who made "long and useless journeys to locate these addresses." . . . If the NMC ever suspected the FBI of being involved here, no mention of it ever got back to me.¹⁰

In a few known cases, the FBI created phony organizations to battle authentic dissident groups. Kelley also described the misleading practice known as "snitch-jacketing," attributing phony identities to subjects to discredit them: "One of the most popular techniques used by the Bureau was the classic 'snitch-jacket'; that is, neutralizing a target group by labeling its key individuals as informants, even though they were not."¹¹ At least twelve field offices employed this practice against black activists during the 1960s.¹²

An informal type of employee blacklisting developed from the 1960s through the present when the Bureau called the boss of a subject to pressure the employer. During the 1960s, the FBI contacted the employers or business associates of at least twenty-eight New Left activists and sixty civil rights and black power activists. The Church Committee commented on a related practice: "anonymously attacking the political beliefs of targets in order to induce their employers to fire them."¹³ After Hoover died in 1972, the tactic persisted. We know that peace activists during the 1980s experienced FBI interference at their workplaces.

For a small number of people the FBI targeted them in day-to-day activities in their communities. The Bureau used threatening tactics toward landlords to get subjects evicted. They contacted local stores to watch subjects or

recruited neighbors to engage in harassment. They rented apartments near subjects to conduct surveillance.

FBI harassment extended to false criminal charges. City police arrested individuals for bogus reasons to tie them up in courtroom proceedings, disrupting their political activity and depleting their resources. In some cases, the FBI fabricated evidence for criminal prosecution or withheld exculpatory evidence that might have proved the innocence of defendants. We also know that the Bureau intimidated witnesses, applied coercion to obtain false testimony, infiltrated defense attorneys, and sanctioned perjury by informers or agents in court proceedings.¹⁴ During civil anti-spying lawsuits, which I study in chapter 7, the FBI employed many of the same tactics.

The FBI Encourages Violence

In several different ways, the FBI encouraged conflict and violence. There are enough known cases to establish several historical patterns. First, during COINTELPRO the FBI in select cases enlisted criminal elements to assault political targets. Efforts along these lines include attacks against the Communist Party (CP) and the Black Panthers. The FBI also encouraged rival political groups to attack one another. In addition, informers inside violence-prone groups across the political spectrum participated in violence or failed to prevent it. During the investigation of African Americans, city police or the FBI provoked armed confrontations in which they killed targets in “self-defense.” There is another little-noticed dimension: the role of death threats in politics. According to the study of “police science,” the FBI or its surrogates attempt to scare dissidents away from political activity by raising “safety” issues. Threats of violence function as a form of state intimidation and may be interpreted as a warning to cease political activity.

The Bureau encouraged the Italian mafia (La Cosa Nostra) to assassinate CP members. In 1966, the FBI initiated Operation Hoodwink in New York City to set the CP and the mafia against each other. The goal, in the FBI’s words, was to “cause disruption of both groups by having each expend their energies, time and money attacking each other.” To accomplish this objective the FBI field office forged three letters on CP stationery and sent them to the leaders of the mafia families. The letters blamed the mafia for a recent bombing of CP headquarters and promised retribution. In order to inflame relations between the groups, the FBI also sent a phony letter to the editor of *The Worker* attacking the mafia.¹⁵

State violence became an integral part of the campaign to destroy the 1960s black power movement. Director Kelley recounted the deliberate nature of

these efforts, confirming government efforts to suppress bottom-up political assembly to prevent subordinate groups from rebelling: "Almost one-third of the Black Nationalist Hate Group COINTELPRO activities were designed to weaken individual groups by setting organizations against each other. . . . This technique created an atmosphere in which black groups vented their hostility against each other instead of against society at large."¹⁶ A 1968 memo to all field offices expressed violent intentions: "The Negro youth and moderate must be made to understand that if they succumb to revolutionary teaching, they will be dead revolutionaries."¹⁷ The Church Committee noted "examples where [FBI] decisions have been made to risk the death of suspect individuals by intentionally exacerbating tensions between groups known to be violence prone and known to have a desire to injure each other."¹⁸

In the most prominent known case, the FBI's fomenting of intergroup conflict in San Diego in 1968 led to substantial injury and death. Over a two-year period, the Bureau pitted two groups, the Black Panthers and US (also known as the Organization US, so named to signify the idea that it was "us against them"), against one another. Before 1968, the groups worked in tandem, as leader Ron Karenga of US recalled: "We used to do community patrol together." The FBI began its disruption with a two-step strategy: They contacted US members to turn them against the Panthers and mailed phony material to the Panthers to heighten animosities between the groups. The Bureau monitored the growing tensions and deliberately set out to exacerbate them by using informers inside each group in a violent role. In a September 25, 1968, memo, the Bureau noted the Panthers had a contract out to kill Karenga. Not only did the FBI not notify Karenga of the threat, they contemplated escalating the tensions: "Los Angeles [FBI] is presently analyzing the situation to determine if further disruption can be caused between the two antagonists." At this time, the FBI monitored phone calls of members and requested income tax and selective service records to "determine if a counter-intelligence technique can be used in this regard."¹⁹

The FBI soon learned of more plans for violence between the two groups. Their intelligence indicated that US planned to kill Panther leader Eldridge Cleaver and the Panthers planned to kill one of their members suspected as an US informer. Again, the FBI did not intervene to stop the violence, but on the contrary devised new ways to maximize the damage. An FBI memo noted that the Panther-US split degenerated into "gang warfare" and the Bureau could use this context to apply "hard hitting counterintelligence measures aimed at crippling the BPP." At this point, the violent role of informers played a critical part. On January 19, 1969, a clash between the two groups resulted in the deaths of Panthers "Buncky" Carter, minister of defense for the Los Angeles chapter, and John Huggins, the deputy minister of information. US members

George Stiner and Larry Stiner, who also served as FBI informers, were responsible for the killings. FBI agent Swearingen, who worked on the intelligence desk in Los Angeles, indicated his supervisors encouraged the violent role of the informers. He heard fellow agents discuss the killings before they occurred. "I later reviewed the Los Angeles files and verified that the Stiner brothers were FBI informants."²⁰

The Bureau mailed a new series of derogatory and highly inflammatory anonymous material to the Panthers allegedly from the US organization. One mailing featured a cartoon with a Panther member hanging from a tree with two smiling US members looking on. The FBI used the lynching image to antagonize, and informers inside the Panthers reported back to headquarters that the Panthers were outraged. Violent conflict again took place—this time, one FBI informer killed another. The two antagonists did not know of the other's secret role. Unfazed by the killings, the FBI kept up the pressure. On March 17, an US member critically wounded a Panther member during a rally near Los Angeles. The Panthers retaliated, firing several rounds into the home of an US member. The FBI then sent out another round of bogus mailings. On April 4, another clash took place without fatalities. On May 23, the FBI cheered when Panther member John Savage was shot to death by US member Terry Horne. For the FBI, the real target was the Panthers, and the FBI reported that US members were buying large amounts of ammunition.

The Bureau helped choreograph the violent unrest. In another incident, several US members—including an FBI informer—killed Panther member Sylvester Bell. When Panthers firebombed the US office in San Diego, the FBI wrote in a memo, "In view of the recent killing of BPP member Sylvester Bell, a new cartoon is being considered in the hopes that it will assist in the continuance of the rift between BPP and US." The government took responsibility for intergroup conflict noting "a substantial amount of the unrest is directly attributed to this [FBI] program." In a November 12 memo, the FBI noted Karenga feared Panthers would kill him so the FBI concocted another anonymous mailing. One cartoon featured a Panther leader as antagonistic toward black women and children. A second gave the impression that Karenga had the Panthers at his mercy.

In May 1970, the FBI decided to cease its role in the Panther-US confrontation. In their view, the goal of weakening the Panthers had been achieved. In later years, Karenga recalled his group was used by the FBI. "We knew it wasn't going to be a tea party," he recalled, "but we didn't anticipate how violent the U.S. government would get."²¹

In Chicago, the monitoring of the Panthers became a top government priority. The Bureau combined surveillance with disruption and heightened its activities when the Panthers tried to form alliances with both black street gangs and some largely white New Left groups, such as Students for a Demo-

cratic Society.²² In a case documented by the Church Committee, the FBI tried to instigate violence by provoking the Blackstone Rangers, a street gang, to assault the local chapter of the Panthers. The Church Committee detailed the effort: "An Anonymous letter was sent to the leader of the Blackstone Rangers (a group, according to the Field Offices' proposal, 'to whom violent-type activity, shooting, and the like are second nature') advising him that 'the brothers that run the Panthers blame you for blocking their thing and there's supposed to be a hit out for you.' The letter was intended to 'intensify the degree of animosity between the two groups' and 'cause retaliatory action which could disrupt the BPP or lead to reprisals against its leadership.'" ²³ Attorney Flint Taylor, who represented Chicago Panthers, offered more background.

Early in '69, the FBI heard that the Panthers were trying to straighten the street gangs. Gangs were very strong in Chicago, and there was a lot of black-on-black violence. The Panthers tried to reach the leaders, to get them to have a more revolutionary view, to turn their wrath away from each other and direct it toward the oppression of Blacks. When Fred [Hampton] and Bobby Rush met with the leader of the Blackstone Rangers, John Fort, the Chicago FBI heard about it from their informants. To stop that kind of coalition building, the FBI sent Fort an anonymous letter . . . the FBI's intent was to cause actual physical violence between the Panthers and the Blackstone Rangers. There is no question that they wanted to wipe out the leadership of the Panthers. And if they could do it with the Blackstone Rangers, they would.²⁴

The Chicago police, with the help of the FBI, shot to death Panthers Fred Hampton and Mark Clark on the night of December 4, 1969. The FBI focused on the twenty-one-year-old Hampton not only because of his charisma and popularity among young African Americans, but also because he talked about encouraging a "rainbow coalition" of protest groups long before Rev. Jesse Jackson popularized the phrase. According to declassified FBI files, the Bureau closely followed Hampton in the weeks before he was killed, reporting in secret memos the content of his public speeches at several universities. The Bureau recorded a speech on October 29, 1969, at Illinois State University at Normal, noting that Hampton stated, "'We follow the Marxist-Leninist line of thought and advocate revolution.' . . . He urged the group to arm themselves and protect their homes."²⁵ Hampton, a Marxist who called the police "pigs," had to be stopped.

At the time of the police raid, Hampton was waiting to serve two to five years for stealing \$72 worth of ice cream. The month before the killing, the FBI placed him on its official "Rabble Rousers Index."²⁶ On November 14, just three weeks before his death, the FBI sat in the audience as Hampton lectured at Southern Illinois University at Carbondale. Their version of his lecture includes: "Hampton denounced the capitalist system as one where a

minority rose to the top to exploit the majority, and concluded his speech with the assertion that the BPP was not directing its struggle against all whites but only against 'fascist racist pigs.' He stated that those whites who fit the latter description will be classified by their actions and not their words."²⁷

The FBI planted an informer, William O'Neal, as head of security for the Chicago Panthers. O'Neal was instructed by his handlers to engage in "harrasing and impelling the criminal activities of the Black Panther Party locally." He acted as a provocateur, urging the Panthers to participate in armed robberies and bombings. His false report that two illegal guns might be in Hampton's apartment became the basis for the police raid. O'Neal previously gave the Chicago police a floor map of Hampton's apartment, including the location where the young radical slept. After the killings, the Chicago office of the FBI, in a plan agreed upon with the Department of Justice, concealed the identity of O'Neal from a grand jury and publicly denied any involvement in the slaying. O'Neal continued to work inside the Panthers for two additional years. The cover-up worked at first but the lies told by police and the FBI eventually unraveled. Although the Bureau withheld most of their documents, a witness inadvertently mentioned the FBI's role. FBI memos attested to O'Neal's involvement before the raid. O'Neal supplied the information that was "the only source of the raid." The FBI authorized a special payment of \$300 to O'Neal for "uniquely valuable services" due to Hampton's murder.

Government violence to fight the Panthers in San Diego and Chicago was replicated elsewhere. The FBI's assault on the BPP included provoking shootouts during raids on Panther headquarters across the nation. Overall, twenty-eight Panthers lost their lives in confrontations with the police.²⁸ The Church Committee reported on snitch-jacketing against the Panthers: "On several occasions, the Bureau used this technique against members of the Black Panther Party; it was used at least twice after FBI documents expressed concern over the possible consequences because two members of the BPP had been murdered as suspected informants."²⁹ According to Director Kelley,

In one snitch-jacket operation in California, four Black Panthers and their leader were arrested and jailed. Shortly afterward, the four members were released but the leader was not. He was being held in protective custody, it was explained. The local FBI field office then circulated the rumor that the Black Panther leader was cooperating with the police. This, to be sure, was untrue but it nevertheless destroyed the reputation of that Panther leader. On another occasion, the Bureau learned that a Black Panther official, who had been brought into custody on numerous charges, was also suspected of being an FBI informant (which he was not). Nevertheless, the Bureau anonymously sent letters to other Panther members saying that the man was indeed an informant. His career as a Panther ended then and there.³⁰

Leaders Martin Luther King Jr. and Malcolm X were both the victims of violent FBI counterintelligence operations. In 1964, Hoover publicly called King the “most notorious liar” and “one of the lowest characters in the country.” Before King received the Nobel Peace Prize, agents authorized a special action in which they urged him to commit suicide in an anonymous letter. The letter, which consists of approximately 450 words, began:

In view of your low grade, I will not dignify your name with either a Mr. or a Reverend. . . . King, look into your heart . . . you are a colossal fraud and an evil, vicious one at that. You could not believe in God and act as you do. . . . King, like all frauds, your end is approaching. . . . You, even at an early age have turned out to be not a leader but a dissolute, abnormal moral imbecile. . . . Your “honorary” degrees, your Nobel Prize (what a farce) and other awards will not save you King. I repeat you are done. No person can overcome the facts, not even a fraud like yourself. Lend your ear to the enclosure. [Transcripts of intercepted conversations of King spliced to convey his involvement in illicit sexual activities.] King, there is only one thing left for you to do. You know what it is. You have just 34 days to do this. You are done. There is but one way out for you. You better take it before your filthy, abnormal, fraudulent self is bared to the nation.³¹

King already emerged as an international figure. Several months earlier he met with the pope in Rome and before that meeting the FBI sent derogatory information to the Vatican in the hope that the pontiff might cancel the visit.³²

The FBI’s indirect role in Malcolm X’s killing took three forms. FBI informants inside the Nation of Islam (NOI) encouraged the anti-Malcolm sentiment that eventually led to his death at the hands of NOI assassins. In addition, FBI bugs and phone taps of the NOI heard the plans to murder Malcolm X, but the Bureau did nothing to stop the killing. Black protection was always a low priority for the FBI.³³ A police informer also served as Malcolm’s bodyguard at the time of his death. How can the FBI be trusted with safety and security when they are trying to undermine an individual and group?

The section of COINTELPRO devoted to the New Left also encouraged conflict, including violence. Historian Athan G. Theoharis wrote, “Anonymous letters were sent out to the parents of New Left activists, reporting on their sons’ or daughters’ premarital sexual activities and use of illicit drugs.” In a few cases, the FBI tried to spread venereal diseases: “In an extreme act of retribution, FBI agents hired prostitutes known to have venereal disease to infect New Left leaders on the premise that their contracting the disease would undermine the support of campus followers.”³⁴ In a major effort against the counterculture press, which numbered about four hundred to five hundred newspapers during the late 1960s, Hoover ordered agents across the nation to conduct a “detailed survey concerning New Left-type publications being

printed and circulated in your territories.” He directed agents to send him intelligence on each paper’s staff, printer and advertisers with the goal to “fold and cease publication” of these subversive media. FBI efforts also turned to violence. Roger Streitmatter writes,

The most frightening of all the battles in the [FBI’s] Secret War were those involving violence that was so severe that the perpetrating law enforcement officials could justifiably be labeled “domestic terrorists.” The office of the *Washington Free Press* in the nation’s capital was ransacked just before the 1969 presidential inauguration; four years later, the *New York Times* printed FBI documents proving that the raid had been the work of agents from the FBI and U.S. Army. Other FBI files now available link agents to firebombings of the offices of the *Helix* in Seattle, *Space City* in Houston, *Orpheus* in Phoenix, *Great Speckled Bird* in Atlanta, and *Free Press* in Los Angeles. The most sustained campaign of violence may have been against Milwaukee *Kaleidoscope* editor John Kois; his car was firebombed and shot at, and the windows in his newspaper office where he was working were shattered by gunfire.³⁵

Before 1976, no government guidelines prohibited informers from encouraging or participating in violent political acts. The FBI had a free hand to direct their human assets in any manner and we know of several cases in which informers helped organize crimes. In Camden, New Jersey, anti-war protestors broke into a Selective Service office to steal records. They were led by an informer within the group, who admitted, “I taught them everything they knew . . . how to cut glass and open windows without making any noise. . . . How to open file cabinets without a key. . . . How to climb ladders easily and walk on the edge of the roof without falling. . . . I began to feel like the Pied Pier.”³⁶ One of the worst examples of an informer provocateur fomenting violence involved Thomas Tongyai, known as “Tommy the Traveler.” As Ward Churchill and Jim Vander Wall note, Tongyai “spent over two years traveling among colleges in Western New York state urging students to kill police, make bombs and blow up buildings. He supplied students with radical speakers, literature and films, tried to organize an SDS chapter at Hobart College, organized SDS conferences at Rochester and urged students to participate in the ‘Days of Rage’ in Chicago in October 1969.” At Hobart College students took his advice and bombed an ROTC building.³⁷

The secrets of many other violent FBI actions may be stored away in classified files or files destroyed by officials. But I can cite several other examples related to state violence. An informer at the University of Washington supplied drugs and weapons to members of SDS and the Weathermen. In Detroit, an informer inside the Weathermen gave bomb-making lessons to activists and in 1970 helped plot to bomb police and military installations.³⁸ The FBI targeted Professor Peter Bohmer, which led to his dismissal from San Diego

State University in the early 1970s. A gunman also fired shots into his home, wounding a friend, and the FBI had ties to the shooter.³⁹

During the 1968 protests in Chicago at the time of the Democratic National Convention, an undercover police operative, who served as a bodyguard to Yippie leaders Abbie Hoffman and Jerry Rubin, threw rocks at the police as well as a can of paint. A highly placed informer inside the American Indian Movement (AIM) repeatedly advocated “guerrilla warfare” and armed resistance for the group and introduced pamphlets on violence and urban warfare.⁴⁰ According to author Grace Paley, a founder of the Greenwich Peace Center in the late 1960s, “Well, we felt there were a couple of people who might be informants. You really had a gut feeling about it, and I’m sure we missed plenty.” She suggested a pattern: “It was always the FBI who suggested bringing a bomb—because as radical as some of these people were, it just didn’t occur to them half of the time to go blow up this place or to do this or that. It was usually an informer who made the suggestion, and then it appeared in court ten years later.”⁴¹

In 1964, the Johnson White House urged J. Edgar Hoover to establish a white-hate section of COINTELPRO to target the Klan and other white supremacist groups. The FBI undertook a major effort to recruit Klan members as informers and to send in informers to pose as Klan members. Notably, these informers participated in an untold number of violent acts against Southern civil rights workers while working for the FBI. The Church Committee reported, for example, on one Klan informer who had “beaten people severely, had boarded buses and kicked people, had [gone] into restaurants and beaten them [blacks] with blackjacks, chains and pistols.” The committee noted that white violence against black Americans was tolerated. “It was understood that in the Klan, ‘the informer couldn’t be an angel and be a good informant.’”⁴² A scholar of the Klan wrote, “The role of FBI infiltrators and other informants in the everyday life of the movement needs to be examined to see if and how they influence and possibly accelerate movement violence.”⁴³

Violent informant behavior surfaced inside the Black Nationalist Party for Self-Defense (also known as “Afro Set”) in Cleveland. An FBI informer urged the killing of police. In a 1970 incident, the informer shot two officers. While Afro Set leader Harlrel B. Jones was convicted in the case, according to a judge, “The informant, a codefendant and admitted triggerman, testified that Jones had ordered the members of Afro Set to shoot police officers.” So here an FBI informer engaged in violence and all charges against the informer were dropped because he testified against a targeted political leader. Jones served five years before a habeas corpus appeal won him freedom because the informer’s status was hidden by the prosecution at trial.⁴⁴

In 1976, the role of the informer in political violence changed under new Attorney General Guidelines. For the first time, informers were discouraged

from engaging in violence. However, informers still could try to discredit groups by getting them to violate the law. The only curb is that informers cannot be the chief instigators: "Merely furnishing the opportunity to violate the law does not constitute entrapment," the FBI tells its special agents. "A defendant's ready and unhesitating acceptance of the Government's offer to commit a crime is substantial evidence that he/she was predisposed to do so."⁴⁵ If any activists agree with violent statements initiated by informers, that person can be subject to investigation. If activists actually follow the FBI's advice to break the law, the FBI stands by ready to make an arrest.

In 1988, the FBI undertook a major effort to entrap radical environmentalists. They initiated a crime involving the protest group Earth First! through a sting operation in Arizona. FBI infiltrators helped the group disable a power transmission tower. The informant picked the target, helped activists get the tools necessary for the action, and drove the truck that carried out the scheme.⁴⁶ The FBI hoped to discredit and criminalize Earth First! and looked for a justification to conduct operations against the environmental movement nationwide. As an Earth First! member wrote cynically in their newspaper, "When was the last time anyone heard of the FBI infiltrating an armed group and provoking them to nonviolence? ('Psst, hey kid! Forget about bombs, let's go do a sit-in.')"⁴⁷

Another publicly known example concerns African Americans in the 1990s. In 1995, an informer urged the daughter of Malcolm X to kill NOI leader Louis Farrakan. The FBI taped forty telephone calls between Quibilah Shabazz and the informer, of which thirty-eight calls were initiated by the informer.⁴⁸ In a very different case, informers inside a white militia group in Virginia urged violence. Fifteen members of a hunting club were indicted on illegal weapons charges and the informer's tape recordings of meetings indicate he urged the members to engage in violence.⁴⁹

In the early twenty-first century, a troubling pattern of entrapment emerged whereby FBI and city police informers infiltrated groups during the "War on Terror" and acted as extremists, encouraging fanatical elements to talk about violence against America. The informers again secretly tape-recorded these conversations, which were used as legal evidence. The FBI usually made arrests long before any actual plans for terrorism took place.⁵⁰ But without FBI encouragement many of these vague plans for violence would never form. The "Liberty City Seven" case showed all of these points at work. Seven African American men were arrested on June 23, 2006, in Miami's low-income Liberty City neighborhood, accused of plotting to blow up Chicago's Sears Tower and a federal building in Miami. One of the defendants, Narseal Baptiste, recruited and trained the others after meeting with two FBI informers posing as associates of Al Qaeda. The informers promised the men \$50,000 to carry out their plans. The informers taped conversations in which the men talked about violence in order to secure the money, and

took part in an oath ceremony pledging allegiance to Al Qaeda, which the FBI operatives constructed. At the time of the arrests, the group was disbanding without carrying out any plans for violence and they possessed no weapons. Without the FBI's urging, there would have been no case at all. The view that seven poor men wanted to con money out of Al Qaeda without any intention of ever breaking the law led to two deadlocked juries before the government obtained a conviction. While Attorney General Alberto Gonzales said the men were prepared to "wage a full ground war on the United States," law professor Bruce J. Winick noted, "It was like a little movie put together by a government informant." Meanwhile, one of the informers was paid about \$40,000 by the FBI for his efforts to entrap the men.⁵¹

Advice on Fighting Repression

Since the mid-1970s revelations of FBI spying under COINTELPRO, many political activists recognized the FBI's methods to suppress politics. Protest and civil liberty groups issued books and pamphlets on how to adapt to, and resist, government harassment. The Center for Constitutional Rights (CCR) authored a pamphlet, "If An Agent Knocks: Federal Investigators and Your Rights." The CCR is a Left lawyers group founded in 1966 by William Kunstler and Arthur Kinoy to litigate on behalf of poor people, minorities, and activists who are victims of state repression. Their pamphlet opened with cautionary advice: "People who openly oppose United States government policies should be prepared to receive visits from FBI agents or other federal investigators." They advise not to talk to FBI agents or allow them into your home unless they have a warrant. "You can simply say, 'I don't want to talk to you' or 'You'll have to speak to my lawyer.'"

The CCR advises activists to confront informers who may target them: "When possible, confront the suspected person in public, with at least one other person present. If the suspect declines to answer, he or she at least knows that you are aware of the surveillance." Do not let FBI harassment curtail political activism. "Do not let fears generated by 'conspicuous' surveillance create unspoken tensions that undermine your work and organization. Creating fear is often the purpose of obvious surveillance."

What about FBI threats of violence? "If your home is broken into, or threats have been made against you, your organization, or someone you work with, share this information with everyone affected. Take immediate steps to increase your personal and office security. You should discuss with your organization's officials and with a lawyer whether and how to report such incidents to the police. If you do decide to make a report, do not do so without the presence of counsel."⁵²

The American Friends Service Committee (AFSC) published its own guide for activists. In “Bugs, Taps and Infiltrators: What to Do About Political Spying,” there is the assumption that the FBI monitored groups and encouraged dissension. The pamphlet begins:

Organizations involved in controversial issues—particularly those who encourage or assist members to commit civil disobedience—should be alert to the possibility of surveillance and disruption by police or federal agencies. During the last three decades, many individuals and organizations were spied upon, wiretapped, their personal lives disrupted in an effort to draw them away from their political work, and their organizations infiltrated. Good organizers should be acquainted with this sordid part of American history, and with the signs that may indicate that their group is the target of an investigation. However, do not let paranoia immobilize you. The results of paranoia and overreaction to evidence of surveillance can be just as disruptive to an organization as an actual infiltrator or disruption campaign.

The pamphlet also urged activists to confront suspected informers to undermine their effectiveness. You turn the tables: We are watching you.

The AFSC noted that undercover operatives display common patterns of participation. They volunteer for tasks that provide access to important meetings and papers, such as financial records, membership lists, minutes of meetings, and confidential files. They also may “cause problems for a group such as committing it to activities or expenses without following proper channels, or urge the group to plan activities that divide group unity.” They may also try to embarrass the group in public. They may “seek the public spotlight, in the name of your group, and then make comments or present an image different from the rest of the group.” There are practical tips to keep records of their presence within an organization: “Implement a sign-in policy for your office and/or meetings. This is helpful for your organizing, developing a mailing list, and can provide evidence that an infiltrator or informer was at your meeting.” If the informant takes on the role of disrupter, “Confront the troublemaker, and lay out why the person is disrupting the organization. Set guidelines for further involvement and carefully monitor the person’s activities. If problems continue, consider asking the person to leave the organization.”⁵³

Sheila O’Donnell, a private investigator who worked with progressive groups, wrote another “how to” manual about dealing with official repression. Titled “Common Sense Security: Tip Sheet for Staff Organizers,” the pamphlet may sound paranoid to those who are not familiar with surveillance. But veteran activists now know the tactics they may face. For example, how should one deal with a wiretapped phone? “Don’t use code on the phone. If you are being tapped and the transcript is used against you in court, the

coded conversations can be alleged to be anything. Don't say anything on the phone you don't want to hear in open court." Moreover, "Don't gossip on the phone. Smut is valuable to anyone listening; it makes everyone vulnerable." It is very unsettling to lack privacy on the phone.

What should you do if you are being followed? Seek out others in the same plight; solidarity is helpful to face the harassment posed by the state. "If you are followed or feel vulnerable, call a friend; don't 'tough it out' alone. They are trying to frighten you. It is frightening to have someone threatening your freedom."

Always keep detailed notes of suspicious activity, which later may be useful in legal action: "Debrief yourself after each incident. Write details down; time, date, occasion, incident, characteristics of the person(s), impressions, anything odd about the situation. Keep a 'weirdo' file and keep notes from unsettling situations and see if a pattern emerges." O'Donnell urges activists to request their FBI files under the FOIA.

Lastly, do not submit to the harassment and do not alter your political behavior. Do not let the FBI silence you. "Don't let them intimidate you. So what if they know where you live or work and what you do? This is still a democracy and we have Constitutional rights. They intend to frighten you; don't let them. They can only 'neutralize' you if you let them." O'Donnell concludes, "Dissatisfaction with the status quo and attempting to mobilize for change is protected; surveillance and harassment are violations. Speak out."⁵⁴

Considering the watchful eye of the FBI, activists should be careful not to violate the law. Attorney Brian Glick noted, "While the FBI and police are entirely capable of fabricating criminal charges, any violations make it easier for them to set you up. The point is not to get so uptight and paranoid that you can't function, but to make a realistic assessment based on your visibility and other pertinent circumstances."⁵⁵

The CCR, with the cooperation from the National Lawyers Guild, established the Movement Support Network in 1984 to monitor cases of FBI harassment. They published lists of break-ins of offices and homes of political activists, especially Americans who criticized U.S. policy in Central America. Many of the Bureau's target groups were churches and other organizations involved in the Sanctuary movement helping refugees from Latin America.⁵⁶

With knowledge of political policing, a number of groups devised organizational strategies to fight infiltration. It is no coincidence that "affinity groups" first took form *after* the public exposure of FBI tactics. These groups are used during civil disobedience, a strategy that not only promotes solidarity among protestors but provides a means to prevent government provocateurs from pursuing violent behavior to undermine the group's legitimacy. The Clamshell Alliance, which organized protests at the Seabrook Nuclear Power Plant in New Hampshire in 1976 and 1977, became one of the first to develop the affinity

group structure, which since has spread not only in the United States but also to Great Britain and Germany. What is an affinity group and why is it effective? The idea is outlined in several protest action manuals, including Sanderson Beck's *The Nonviolent Action Guide* (2003). Affinity groups consist of three to fifteen people who come together on an ad-hoc basis to collectively prepare for nonviolent resistance. They train together on the form of the peaceful protest and how they will act when arrested. The groups operate by democratic consensus and trust and friendship is elaborated in special training sessions. The protest actions are scripted with support people present at the sites of civil disobedience. Under these disciplined and coordinated terms, police infiltrators prove unable to influence the direction of the action in ways of which the group disapproves. While an infiltrator may make his way into a group and gain the trust of fellow members (as happened at Clamshell and elsewhere), their ability to take on a violent leadership role greatly is diminished. As an anti-nuclear activist writes, "In an affinity group, it's more difficult to be manipulated by self-styled leaders or rushed into inappropriate action by impatient activists. It's also much more difficult to be infiltrated or provoked by agents provocateurs, who often seek to undermine an action by pushing for forms of violence."⁵⁷

Law enforcement should be thankful. Affinity groups reduce the likelihood of violence as a group breaks the law by occupying a protest site or blocking street traffic. The protestors have a greater sense of security and police easily can negotiate with them.

In other ways, direct action groups counsel their members on fighting infiltration. Within the radical environmental and ecology movement, David Foreman's *Ecodefense: A Field Guide to Monkeywrenching* (1985) remains a popular work. The FBI considers this book heretical and they tried to arrest Foreman in 1989 because Earth First! members adopted his techniques. The "monkeywrenching" tactic is relatively simple: Protesters secretly disabled machinery used by private logging companies as a means to save the forests. They also put metal spikes in trees to clog machinery when lumber was cut. Since *Ecodefense* advocates civil disobedience, it also counsels groups to be on the lookout for the ultra-violent and radical protestor: "One way these [undercover] agents try to spot potential monkeywrenchers they can set up for arrest is to act especially radical and 'talk tough' when around other members of the group. If someone responds, the agent will then provide ideas, information, or equipment to the monkeywrencher(s) to encourage specific illegal acts which can later result in arrests. Such agents may brag of having participated in numerous illegal acts, in order to attract recruits." The surveillance may follow an activist into prison. The book counsels, "If you are in jail, the prisoner sharing your cell may be an undercover operative, usually a 'jail house snitch' who routinely seeks information for the authorities from talkative prisoners." Lawyers for

activists are vulnerable to surveillance: “The prosecution may attempt to place an informant in your legal defense committee.”⁵⁸

Within the animal rights movement, the Animal Liberation Front (ALF) conducted illegal property vandalism. According to the FBI, the ALF and a related group, the Earth Liberation Front, were responsible for more than six hundred criminal acts between 1996 and 2002, resulting in more than \$43 million in damages.⁵⁹ The ALF website counsels about infiltrators.

They come out of nowhere and all of a sudden they are everywhere. Whether it's a meeting, a protest, or an action, this person will be right in the thick of it. . . . Well, a planted infiltrator will ask a lot of questions about the A.L.F. and illegal activities. S/he will suggest targets and volunteer to do reconnaissance as well as take part in the action. . . . Everyone who asks a lot of questions about the A.L.F. isn't necessarily an infiltrator, but they are the ones to watch. . . . If the person persists in asking questions, STAY AWAY FROM THAT PERSON. Any activist who can't understand the need for security is not someone we should allow to get too close.⁶⁰

Right-wing groups also issued advice on ways to resist police spying. For example, the first of the white militia groups formed in 1994 and it did not take long before leaders discussed ways to fight infiltration. The handbook of the Florida State Militia advocated a cell structure: “You still have your inner circle, and this the FBI, ATF, or any other deferral scumbag cannot penetrate, if you keep your guard.” The editor of *Modern Militiaman* wrote in the debut issue in 1996: “If you are an effective leader in the Patriotic movement, especially militias, you can count on being accused of being an informant for the BATF, FBI, CIA, DEA, or any one of a number of alphabet-soup of national or local police goon squads. If you have not been accused, then you are probably not effective.” This writer also warned that “there are infiltrators and agents provocateurs among us” and “these agents provocateurs will probably be the loudest in advocating terrorism.” According to Randy Trochmann, a founder of the Militia of Montana, “It's common knowledge that one out of every five individuals who claims to be a patriot is actually a government informer. Everybody in the movement should be thinking about who that fifth guy is.”⁶¹

The militias use “open” and “closed” groups to counter police infiltration. Only the small closed groups wage illegal political activity, or discuss such schemes, and new members are not placed in closed groups until they've earned the trust of the open group members. Many militias adopt the strategy of a “leaderless resistance,” which white supremacist Louis Beam advocated in a pamphlet in 1992. To avoid police infiltration at a central headquarters, militia groups should forge “phantom cells” which operate independently of, and unknown to, one another. Doing away with a central hierarchy minimizes

the effectiveness of government spying. The extreme Right has learned some of the lessons of COINTELPRO.⁶²

“Testilying” and Falsification

The study of state crimes needs to more fully address police misconduct in legal proceedings. While recent scholarship suggests a broad pattern of U.S. city police “testilying” or perjury, few consider if the same type of activity is undertaken by federal law enforcement. Are cases of misconduct due to “a few bad apples,” as police officials often maintain, or is it an institutional problem?

During the mid-1990s, city police “testilying” became a major topic of debate both in public discourse and in scholarship. It was invoked, for example, during the Clinton impeachment hearings, when the main charges against the president centered on perjury and the subornation of perjury. When Alan Dershowitz came to Clinton’s defense before the U.S. House Judiciary Committee, he noted the widespread practice of police perjury at the local level: “Police perjury in criminal cases—particularly in the context of searches and other exclusionary rule issues—is so pervasive that the former police chief of San Jose and Kansas City has estimated that ‘hundreds of thousands of law-enforcement officers commit felony perjury every year testifying about drug arrests alone.’” Dershowitz, who taught for more than thirty-five years at Harvard Law School, told the Committee:

Nor is evidence of police perjury merely anecdotal. Numerous commission reports have found rampant abuses in police departments throughout the country. All objective reports point to a pervasive problem of police lying, and tolerance of the lying by prosecutors and judges, all in the name of convicting the factually guilty whose rights may have been violated and whose convictions might be endangered by the exclusionary rule.⁶³

In 1994, the Mollen Commission in New York City exposed official disregard of perjury as pivotal to its institutionalization. “Several former and current prosecutors acknowledged— ‘off the record’—that perjury and falsification are serious problems in law enforcement that, though not condoned, are ignored. . . . The practice of police falsification in connection with such arrests is so common in certain precincts that it has spawned its own word: ‘testilying.’” Sanctioned by commanding officers, the large scope of the problem was acknowledged publicly by Police Commissioner William Bratton. One sergeant admitted to lying in seventy-five court trials or hearings.⁶⁴ Paul Chevigny referred to this problem in two books on police power. In 1997, he wrote, “Police lying is an endemic problem now in U.S. police departments, just as it was twenty-five years ago when I wrote that ‘police lying is the most

pervasive of all abuses.”⁶⁵ Jerome H. Skolnick suggested more than two decades ago that police often practiced deception in the investigatory phase of a criminal probe and that later in the testimonial phase do not abandon the earlier tendency toward deceit: “[C]ourtroom lying is justified within the police culture by the same necessity rationale that courts have permitted police to employ at the investigative stage: The end justifies the means.”⁶⁶ But the ends may not always be worthy and lying at the testimony phase is done under oath, unlike investigatory work.⁶⁷ Morgan Cloud called police perjury the “dirty little secret” of the U.S. criminal justice system because judges, prosecutors, defense lawyers, and offenders all know of its existence. One survey of criminal justice practitioners found that on average police perjury occurs about 20 percent of the time. Only 8 percent of those surveyed believed that police never or almost never lie under oath.⁶⁸ Police crimes are under-reported and officers rarely are investigated, prosecuted, or convicted, which legitimizes the unlawful practices.⁶⁹

By the 1990s, evidence of negative police practices seriously eroded confidence in the legal system across racial and ethnic lines. In a 1994 poll in Los Angeles conducted during the O. J. Simpson trial, which also featured charges of police perjury, more than two-thirds of African Americans responded that the police commonly “testily” and about half of Latinos and a quarter of whites also expressed this view.⁷⁰ After the Ramparts police scandal, 51 percent of L.A. poll respondents stated that police misconduct was symptomatic of a larger problem within the department, not isolated to a few rogue officers.⁷¹ In 2000, a nationwide poll of jurors found that 36 percent believe police are not truthful on the witness stand; younger jurors felt more strongly that police lie than older ones, as did African Americans and Latinos.⁷²

Perjury provided the underpinning of what is known as the “Blue Wall of Silence,” when officers refuse to testify truthfully against fellow officers accused of breaking the law. In a government study of more than nine hundred city police, a majority (52 percent) agreed that officers engage in deception or silence to protect other officers’ improper conduct.⁷³ In the NYPD, the Mollen Commission found, “The pervasiveness of the code of silence is itself alarming.” In the LAPD, the Christopher Commission found, “Perhaps the greatest single barrier to effective investigation and adjudication of complaints is the officers’ unwritten ‘code of silence.’”⁷⁴ Strong traditions in most police departments encouraged police officers to back up the perjured testimony of fellow officers.⁷⁵ Falsification occurred not only in court testimony but also in official reports, where exculpatory evidence is suppressed.⁷⁶ Police lied in legal papers needed to secure search warrants. According to John Kleinig, testimonial deception occurred “quite commonly in sworn affidavits. . . . In order to show probable cause, facts are created, reordered or inflated; sources are exaggerated; or nonexistent sources are cited.”⁷⁷

Does federal law enforcement engage in a similar pattern of testilying and falsification? FBI activity from the 1960s to the present offers many instances of such unlawful conduct. I find a pattern of lying by informers and agents, the falsifying of documents, and denial of responsibility for “dirty tricks.” For many years, the FBI also concealed their record systems and resisted disclosure under the FOIA as part of the maintenance of a Blue Wall of Silence.

The Bureau routinely used lying and deception in their investigatory work. For example, undercover informers constructed false identities and made false statements as part of their efforts to elicit information from subjects, as well as to disrupt their activities. The FBI’s heavy reliance on informers, who were deployed in 83 percent of COINTELPRO investigations, posed a threat to standards of truthfulness. Because there is such a strong incentive for informers to please their handlers—and they often get paid or work to reduce a criminal charge—it is not a far stretch to question the fundamental integrity of all informant-based political information. There are strong pressures on both FBI agents and their informants to find something on a target, so fabrication occurs. FBI agents may get promotions based on their recruiting of productive informers. Dissident FBI agent John C. Ryan has commented, “Informants frequently held back information or altered the information to fit their agenda, which was often revenge, or to provide what the agent was hoping to learn, especially if payment was involved.” Information gathered through illegal means sometimes was attributed to informers. “It was also common to use police intelligence information, information from illegal wiretaps and microphones, even news stories, by attributing the information to informants, both as a means of inflating an informant’s worth, and/or masking an illegal eavesdropping operation.”⁷⁸ FBI whistleblower M. Wesley Swearingen supported this view in his book, *FBI Secrets*: “In the beginning, when I saw new agents being encouraged to cheat on their examinations, I was shocked. But after twenty years of seeing a whole bureau cheat on Inspectors’ examinations, concoct fictitious informants, manufacture phony informant reports, and create false statistics, even the most egregious levels of corruption—when top FBI officials lied to the courts, the Department of Justice, and to the U.S. Congress—no longer shocked me. After witnessing twenty years of FBI wrongdoing, I had accepted it as a means to survive in the bureau.”⁷⁹

Wilbert Allen worked as an informer inside the Black Panthers in the early 1970s in Winston-Salem, North Carolina. In 1973, he revealed his identity in an interview with a Panther newspaper, much to the displeasure of his police handlers. Allen was asked, “Does the police department use informers to lie in order to frame people?” He responded, “Yes, this happens often. I could have done it many times. Once an informant feels he’s going to get a dollar or two for dropping a dime and informing on a fellow human being, he won’t

hesitate to lie. They cooperate fully with the police.” Allen said informers can be very sloppy in gathering intelligence, reporting hearsay as fact: “In my undercover dealings with the Winston-Salem Police Department [for seven years], I found that a lot of information they received was misinterpreted through other informers. This led to a lot of harassment of individuals who the police had under surveillance and were spying on. Anything that was loose talk was taken to be fact. Information I gave was often misused through their own department.”⁸⁰

The FBI leadership routinely instructed its agents and informers to lie to the public or the media, if necessary, to maintain the secrecy of an investigation. Moreover, when the FBI leaked classified information to friendly journalists, they usually insisted that the source of the information remain anonymous. In designing disruptive actions, the FBI embraced “silence” by hiding their behavior. In 1970, an FBI memo from the Los Angeles office, as part of an effort to discredit actress Jane Fonda, concluded with a standard note, “If approved, appropriate precautions will be taken to preclude the identity of the Bureau as the source of this operation.” Similarly, a 1970 Newark, New Jersey, FBI memo designed to divide SDS and the Black Panthers, by sending a racist letter to the Panthers under the name of SDS, contained the following comment: “Full precautions will be taken to protect the Bureau as the source of the letter, which will be written by a Special Agent and mailed in Newark, NJ.” In many instances, anonymous letters were composed on commercially purchased stationery to conceal the government’s role. In Philadelphia, where the FBI tried to undermine the New Left, one memo from 1968 noted, “It is suggested that a few select top-echelon leaders of the New Left be subjected to harassment by a series of anonymous messages with a mystical connection. . . . It is believed that the periodic receipt of anonymous messages, as described above, could cause concern and mental anguish on the part of a ‘hand-picked’ recipient or recipients. Suspicion, distrust, and disruption could follow.” In the same manner as the other memos, the FBI agent noted that concealing the Bureau’s role could be assured: “The Bureau’s interest can be protected with the usual precautions taken in such matters.” In Detroit, counterintelligence efforts also included anonymous letters and an agent wrote, “Since this letter is an anonymous letter, there is no possibility of embarrassment to the Bureau.”⁸¹

In an effort to manipulate legal proceedings, informers engaged in perjury during several high-profile political trials. The FBI also withheld exculpatory evidence that might have cleared defendants. In the case of Panther leader Geronimo ji Jaga Pratt, civil liberty and Left groups long argued for his innocence, depicting him as a victim of Hoover’s obsessive concern to crush the Panthers. Pratt served twenty-seven years in prison based on a guilty murder verdict obtained with the perjured testimony of a police and FBI informer,

who falsely told the court Pratt confessed to the crime. Furthermore, the informer, Julius Butler, lied about his informer status. As the judge later noted, “The evidence which was withheld about Julius Butler and his activities could have put the case in a different light, and failure to timely disclose it undermines confidence in the verdict.”⁸² According to Swearingen, who worked in the Los Angeles FBI office at the time of the trial, “I have seen FBI documents that show Butler contacted [the FBI] at least thirty-five times over a two-year period, which includes the time just before and just after the Pratt trial.” Moreover, Swearingen’s firsthand account about the withholding of exculpatory evidence was damning: “A total of three wiretaps [were] known to the FBI with information that placed Pratt in the San Francisco area during and after the murder of Caroline Olsen, and yet the FBI withheld this information from the court and the jury.”⁸³ In the Pratt case, the FBI continued to cover up their crimes long after COINTELPRO officially ended. The alleged “reform” after Hoover should have resulted in the release of political prisoners.

Evidence of FBI misconduct surfaced during the criminal proceedings against American Indian Movement (AIM) leaders Leonard Peltier, Russell Means and Dennis Banks. Peltier was convicted of killing two FBI agents in 1975 on the Pine Ridge Reservation and his lawyers tried to get a new trial by demonstrating the FBI engaged in systematic coercion of witnesses, evidence fabrication, and suppression of exculpatory evidence. After the trial, the FBI admitted it engaged in perjury and the judge in 1991 wrote President George H. W. Bush asking for a commutation of Peltier’s sentence.⁸⁴ Banks and Means were charged after the Wounded Knee standoff in 1973 and although they eventually were cleared of any wrongdoing, the FBI tried to manipulate the court proceedings by withholding documents (at least 131 pieces of exculpatory evidence), altering documents, and making false testimony before the court. The judge called the FBI’s actions a “complete disrespect” for the court and “the prosecution in this trial had something other than attaining justice foremost in mind. . . . The fact that the incidents of misconduct formed a pattern throughout the course of the trial leads me to the belief that this case was not prosecuted in good faith or in the spirit of justice.”⁸⁵

In several cases, we know the FBI compromised the confidentiality of attorney-client communications. FBI spying on progressive defense lawyers appears to have been fairly common in this period. An informer inside AIM sent the FBI information about legal defense strategies in the Banks and Means proceedings. The informer contacted the FBI about fifty times during the course of the eight-month trial and the FBI also conducted surveillance on the Wounded Knee Legal Defense Committee. In a different case, attorney Johnnie Cochran represented Black Panther Willie Stafford in Los Angeles in 1971. “Sometimes it appeared they could read our minds,” Cochran said about the prosecutors. “Maybe, I thought, they’re that good; maybe they’re

just lucky. As it turned out, they were neither. They were the skulking beneficiaries of lawless treachery. . . . One of my co-counsel in the Panther trial was an FBI informant.”⁸⁶ Cochran and attorney Stuart Hanlon worked on behalf of Pratt for many years and Hanlon believed his phone was tapped because of his legal work. About the Pratt case, a recent study notes, “Years later the FBI confirmed that it had conducted surveillance on Pratt’s relatives, attorneys, and witnesses throughout the trial.”⁸⁷

In the 1973 trial of the “Gainesville Eight,” involving anti-war activists from the Vietnam Veterans Against the War (VVAW) who were charged with conspiracy to disrupt the 1972 Democratic and Republican conventions, the FBI also eavesdropped on defense lawyer communications with their clients. The jury acquitted the peace activists.⁸⁸ An FBI informer inside the Veterans group sent a variety of legal defense material to the Bureau. According to the Church Committee, the informer “brought back various position papers taken by various legal defense groups . . . legal thoughts on various trials, the Gainesville (Florida) 8, the Camden 9. . . . Various documents from all these groups.” The FBI obtained “a confidential legal manual prepared by VVAW attorneys as a guide for legal defense of VVAW members in the event of prosecution for dissident activity.”⁸⁹

Police infiltrators inside defense support committees also jeopardize the integrity of legal proceedings. In high-profile political arrests, support committees assemble to discuss legal strategy, publicize campaigns, and conduct fundraising. An FBI memo dated October 16, 1970, discusses one effort in Minnesota.

The Committee to Defend the Minnesota 8 is comprised of approximately 25 persons, including the eight individuals who were arrested in connection with the break-in of three Selective Service boards in the state of Minnesota on the night of July 11, 1970. Meetings are held weekly on Wednesday nights at various locations wherein plans, demonstrations and political philosophy are discussed. Most of the people who attend these meetings are members of Students for a Democratic Society (SDS) and persons sympathetic with the cause of those individuals who were arrested.⁹⁰

In a second case, the FBI surveilled the Coalition for the Defense of the Panthers between 1969 and 1972, a group based in New Haven, Connecticut. The FBI put the Coalition under surveillance from its inception, although it found nothing illegal.⁹¹ Attorney Charles Gary, who defended Panther Bobby Seale, suspected that his legal office and hotel room had been illegally bugged during the duration of the trial. After Gary obtained his FBI file, he discovered his suspicions were correct. Moreover, at the trial the FBI falsely denied they placed wiretaps on Seale’s legal defense team.⁹²

Intimidating tactics were deployed against judges and prosecutors as well. The FBI may meet privately with judges to influence their trial rulings. We

know this occurred, for example, during the Chicago Conspiracy trial in 1969. As lawyer William Kunstler noted, “One of the devices [of the FBI] was to go in and talk to the judge, scare the judge in criminal trials, and get the judge on the FBI’s side, and they certainly did it with [Judge] Hoffman.”⁹³ In that case, FBI documents also indicate that the police illegally spied on and recorded meetings between the defendants and their lawyers. A federal judge wrote in 1981, “The Chicago Police and possibly the FBI had surreptitiously attended and/or surveilled several meetings of the defendants and their counsel. It appears that information obtained in this manner (including trial strategies and potential arguments on appeal) was forwarded to Assistant U.S. Attorney Richard Schultz, one of the prosecutors.”⁹⁴

When the FBI taps the phone of political activists, do they deliberately decide *not* to listen when these activists talk to their lawyers? The FBI conducted massive spying against activist lawyer groups, such as the National Lawyers Guild and the American Civil Liberties Union, and began with the premise that “subversive” attorneys are not entitled to any confidential privileges with their clients. We know that over several decades the FBI conducted close to one thousand break-ins against Guild members. For example, attorneys Ken Clark and Barry Litt counseled witnesses in the “Tucson Five” grand jury case involving the Weathermen. The Bureau illegally broke into their offices. Leslie H. Abramson, who gave legal advice to SDS members, was another victim of a “black bag job.”⁹⁵

From the 1940s through the early 1970s, prosecutors relied on evidence gained through illegal, warrantless wiretaps. When challenged by defense attorneys, prosecutors routinely lied about the use of such FBI evidence. When defense attorneys filed anti-wiretap motions to exclude evidence gathered illegally by the government, these motions almost always were quashed by judges. As radical lawyer Arthur Kinoy recalled,

[W]iretapping without warrants was going on constantly but was never acknowledged. This was one of the facts of public life that no one would openly admit. Every now and then, if wiretapping involved a nationally known figure, it would leak out in a newspaper column. Sometimes it showed up through bungling by the wiretappers. . . . People knew that this tapping was going on, but defense lawyers could rarely, if ever, prove its existence in a courtroom. Invariably the government lawyers blandly denied the presence of any such wiretapping when challenged by the defense at the beginning of a political trial. The denial ended the matter. No federal judge would challenge the veracity and integrity of government lawyers. The question of whether the case had been tainted by illegal wiretapping remained, at best, a minor issue for an appeal if the defendants were convicted, and routinely the appellate courts accepted the assurance of government lawyers that no such wiretapping had occurred.⁹⁶

The Bureau embraced secrecy and obstructionism to conceal political policing during several civil anti-spying lawsuits brought against the Bureau. In 1973, the Socialist Workers Party sued the government and the Justice Department for deliberately concealing information on illegal break-ins.⁹⁷ In another civil case, a coalition of Chicago groups sued the FBI and the city police in 1974 and police infiltrated the defense team for more than two years. The FBI interpreted the lawsuit as a subversive enemy action that required extra-legal means to crush.⁹⁸ During the civil lawsuit brought by Earth First! resulting in a \$4.4 million jury award, the FBI lied about their prior surveillance of the group. After the violent stand-off in Waco, Texas, in 1993 prompted civil litigation, the FBI lied to Attorney General Janet Reno about the FBI's role in the final assault on the Davidians' compound. Delay, deny, destroy, lie—this became the FBI strategy during litigation where public exposure threatened the secrecy of their actions.

FBI perjury postdates COINTELPRO in other ways as well. The 1995 Crime Lab scandal shows systematic false reporting by top Bureau scientists. Whistleblower Frederic Whitehurst alleged the crime laboratory routinely tampered with evidence to help prosecutors. FBI forensic experts were pressured to distort their court testimony in several high-profile political cases, including the first World Trade Center bombing case (1993), the Oklahoma City bombing case (1995), and the Unabomber case. Whitehurst's allegations prompted a Department of Justice report on the crime laboratory's wrongdoing, which documented eight types of misconduct.⁹⁹ If we cannot trust the FBI to be neutral in its scientific evaluation of a crime scene, then how can we trust it in subjective political-intelligence cases? If professional scientists adopt the FBI's culture of lying, then the prospect of intelligence agents and informers telling the truth does indeed seem dim. As part of the Blue Wall of Silence, the FBI also harshly treats government whistleblowers. In the Whitehurst case, he was transferred from his job and demoted immediately after he made the allegations. The FBI leadership demanded he undergo forced psychiatric treatment to brand him mentally unstable to undermine his charges. Rather than embracing his criticism, the FBI planned to ruin his reputation. Whitehurst eventually sued the FBI and won a \$1.46 million settlement.¹⁰⁰ Moreover, the FBI concealed the full extent of its misconduct in the Crime Lab until the National Association of Criminal Defense Lawyers (NACDL) filed an FOIA lawsuit. The Bureau fought disclosure of documents, rebuffed by a federal judge who concluded that the Justice Department engaged in "misconduct and bad faith" in the lawsuit and that the government made "serious, repeated misrepresentations in its briefs, as well as declarations submitted in support of these briefs that are deeply disturbing."¹⁰¹ In dealing with improprieties, the Bureau engaged in a "no truth" or "truth last" policy, instead of coming forward in a "truth first" manner.

Deceit during litigation paralleled the FBI's established pattern of lying to Congress in its reports and testimony, as well as withholding material from congressional oversight. In an early example, the FBI falsely accounted for the scope of its illegal break-ins before the Church Committee. As we have noted, the FBI claimed it conducted only 239 illegal break-ins. They denied holding full records on the subject: "There is no central index, file or document listing surreptitious entries conducted against domestic targets. To reconstruct these activities, it is necessary to rely upon recollections of special agents who have knowledge of such activities, and review of those files identified by recollections as being targets of surreptitious entries."¹⁰² Apparently they did not consult the right agents, like Swearingen, who later stated in an affidavit that his Chicago office alone committed hundreds of surreptitious entries. The FBI also falsely told Congress no break-ins occurred after 1966, a claim later undermined by Justice Department documents showing break-ins against New Left groups during the early 1970s.¹⁰³

In another example of false congressional testimony, Director William Webster in 1985 claimed that the Bureau was not investigating Americans active in the Committee in Solidarity with the People of El Salvador (CISPES). When Congressman Don Edwards's subcommittee asked questions about the CISPES investigation a year later, the FBI again pleaded ignorance, even though it had already opened about 180 spin-off investigations. In 1987, an FBI official falsely denied that the FBI shared its CISPES files with the state security forces in El Salvador. The total CISPES file totals fifty-seven cubic feet or approximately 142,500 pages, including various field office files.¹⁰⁴

In a 1988 briefing before the Senate Intelligence Committee, the FBI lied about the broad range of its Library Awareness Program. The Bureau claimed they entered public libraries only in New York City to get the assistance of librarians to report on the reading habits of suspect foreign nationals. In fact, the program included libraries in at least ten other states with efforts to recruit library personnel as paid informers.¹⁰⁵ The shootout at Ruby Ridge, Idaho, in 1992 also showed the FBI at fault for destroying records after police mistakenly killed the wife and child of Randy Weaver, a white supremacist. FBI officials engaged in obstruction of justice after the fact to cover up their crime and the documents were part of the record to be used in civil litigation.¹⁰⁶ When Congress investigated the Crime Lab scandal, the Bureau stonewalled: Hearings twice were postponed because the FBI refused to supply requested documentation. Eventually the records provided to the Senate Committee were so heavily redacted as to be virtually useless.¹⁰⁷ The FBI's withholding of a large number of its Timothy McVeigh documents during his 1997 trial—about 3,135 documents—prompted wide criticism for jeopardizing the conviction in the case and delaying the execution.¹⁰⁸

The FBI engaged in misconduct during the investigatory stage of the Richard Jewell and Wen Ho Lee cases. When they first interviewed Jewell, the FBI used a deceptive ploy informing him they wanted his participation in an FBI training video. They asked Jewell questions about the 1996 Atlanta Olympic bombing in this false context until Director Louis Freeh told the agents they should read Jewell his Miranda rights since he was the chief suspect. Congressional hearings eventually posed questions about the FBI's conduct, finding that the FBI affidavit used to obtain a search warrant of Jewell's home fell short of the legal requirements under the Fourth Amendment. As University of Chicago law professor Albert Alschuler told Congress, the affidavit consisted "almost entirely of hearsay, hearsay on hearsay, rumor, opinion, innuendo, and amateur psychology." The FBI stretched the truth and fabricated a pretext. As Alschuler testified, "The allegations about Jewell, even if taken at face value, did not tie him to the crime. But the FBI found a magistrate willing to issue a search warrant. Empirical studies suggest that magistrates rubber-stamp requests for search warrants, and it would have taken considerable courage to block the FBI's search of its prime suspect in a case like this. . . . Now the Fourth Amendment of the U.S. Constitution should have prevented what happened to Richard Jewell."¹⁰⁹ For eighty-eight days Jewell was under twenty-four-hour FBI surveillance, although they found nothing to tie him to the bombing. The ACLU viewed Jewell "as a poster child for how the FBI continues to do little more than pay lip service to civil liberties when it undertakes an investigation."¹¹⁰

When the FBI interrogated Lee, the chief suspect in the Chinese nuclear secrets spying scandal, they again used deceptive practices. They told Lee he had failed a lie detector test, when in fact he had passed the test.¹¹¹ Is this mendacity allowed under the law? The courts hold that police may lie during interrogations as long as the deception does not constitute coercion. In addition, an FBI agent lied under oath in order to get the judge to deny Lee bail, claiming that Lee showed a pattern of deceptive actions.¹¹² Much of the press coverage failed to report that the FBI successfully enlisted Lee's wife as an informer years earlier.¹¹³

The premise of the Blue Wall of Silence for the FBI largely is unexplored, built in part on the FBI's secret management of its records. For decades, the FBI refused to allow outside government inspectors to view its hundreds of millions of pages of files, a policy established by Hoover.¹¹⁴ To conceal abuse of power, Hoover also maintained a separate "Do Not File" records system focused on the FBI's illegal activity.¹¹⁵ To further conceal the existence of illegal surveillance practices, the Bureau wrote in reports that information gathered from illegal wiretaps derived from "anonymous" or "confidential" persons.¹¹⁶ In recent years, the U.S. Government Accounting Office (GAO) also complained about lack of access to FBI files.¹¹⁷

Conclusion

There is a dissonance when you read law enforcement journals or the memoirs of FBI agents and compare them to critical histories of the FBI's assault on civil liberties. One side trumpets that they helped to destroy the CP, the New Left, the Panthers, and so forth, and saved the country from destruction. Meanwhile, the other side says they were harassed by the FBI and their democratic, constitutional rights were trampled upon. Who are the real criminals? Who are the real patriots?

Human Rights Watch noted in its *World Report 2000* about the United States, "As in previous years, serious human rights violations continued to be committed by federal, state, and local officials. The courts, administrative agencies, and legislatures were often unable or unwilling to hold abusers accountable, to provide protection to victims, or to secure the changes needed to bring laws and practice in line with international standards."¹¹⁸ For years the United States flaunted United Nations resolutions and conventions, such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, an underlying document of the modern human rights movement. In 1999, the Clinton administration submitted the first compliance report ever filed by the United States in regard to this U.N. Convention. The report was four years overdue, and Human Rights Watch was not impressed.

The [U.S.] report acknowledged the existence of treaty violations in the U.S., but insisted they were "aberrational" and unauthorized. Unfortunately, the report failed to confront adequately the limitations of legal protection for victims of abuse, ignored the widespread impunity enjoyed by abusive officials, exaggerated officials' commitment to implement human rights obligations, and failed to delineate steps it would take to address violations it acknowledged.¹¹⁹

One measure of a state's criminality is if it punishes government officials caught transgressing the law. The big crimes of COINTELPRO have gone unpunished. Two FBI officials were found guilty of violating the law for their authorization of illegal break-ins against the Weather Underground but these two officials never served a day in jail, pardoned by President Ronald Reagan when he entered office in 1981.¹²⁰ No significant punishments were meted out for FBI officials in the Ruby Ridge or Waco standoffs, the CISPES investigation, the FBI Crime Lab scandal, or the Richard Jewell interrogation. Apologists often say, of course, there will be a few examples of abuse and crimes committed by police or FBI. The problem with this point of view is that if law enforcement does not punish these individuals, it effectively condones misconduct within its ranks. Failure to prosecute is an institutional

response. While congressional committees hold hearings on FBI misconduct, the Congress rarely places curbs on future FBI activity. It is a ritual: Since the mid-1970s FBI leaders are summoned to testify on Capitol Hill. They are questioned about FBI abuses. Members of Congress condemn some of their actions and may issue a critical report. But then Congress declines to change the way they oversee the FBI or pass any legislation that might alter the way the FBI operates.

Notes

1. Gregg Barak, ed., *Crimes by the Capitalist State: An Introduction to State Criminality* (Albany: State University of New York Press, 1992), 4. Since the end of the Cold War, the study of state crimes has increased in several areas. See, for example, Penny Green and Tony Ward, *State Crime: Governments, Violence and Corruption* (London: Pluto Press, 2004); Jeffrey Ian Ross, ed., *Controlling State Crime* (New Brunswick: Rutgers University Press, 2000); Ross, ed., *Varieties of State Crime and Its Control* (Monsey, New York: Criminal Justice Press, 2000); Barak, "Crime, Criminality and Human Rights: Toward an Understanding of State Criminology," in *Political Crime in Contemporary America: A Critical Approach*, ed., Kenneth D. Tunnell (New York: Garland Publishing, 1993), 207–30; David Kauzlarich, Rick A. Matthews and William J. Miller, "Toward a Victimology of State Crime," *Critical Criminology* 10 (Oct. 2001), 173–94; David Kauzlarich and Ronald C. Kramer, *Crimes of the American Nuclear State: At Home and Abroad* (Lebanon: University Press of New England, 1998); Mitchell Maki, Harry Kitano and S. Megan Berthold, *Achieving the Impossible Dream: How Japanese Americans Obtained Redress* (Urbana: University of Illinois Press, 1999); Bud Schultz and Ruth Schultz, *The Price of Dissent: Testimonies to Political Repression in America* (Berkeley: University of California Press, 2001); Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (Boston: Little Brown 1998).

2. Loch K. Johnson, *A Season of Inquiry: The Senate Intelligence Investigation* (Lexington: University Press of Kentucky, 1985); Leroy Ashby and Rod Gramer, *Fighting the Odds: The Life of Senator Frank Church* (Pullman: Washington State University Press, 1994); Kathryn S. Olmsted, *Challenging the Secret Government: The Post-Watergate Investigations of the CIA and the FBI* (Chapel Hill: University of North Carolina Press, 1996).

3. Daniel Patrick Moynihan, *Secrecy: The American Experience* (New Haven, Conn.: Yale University Press, 1998), 37; Kenneth O'Reilly, *Hoover and the Un-Americans: The FBI, HUAC, and the Red Menace* (Philadelphia: Temple University Press, 1983), 210.

4. Ward Churchill and Jim Vander Wall, *The COINTELPRO Papers: Documents from the FBI's Secret War Against Dissent in the United States* (Boston: South End Press, 1990), 303–4.

5. J. K. Hall to Mr. Finzel, "Eustice Mullins, Requestor, FOIPA Matter," Dec. 14, 1981, FOIPA High Visibility Memoranda 1974–1985 FBI file; M. Wesley Swearingen, *FBI Secrets: An Agent's Expose* (Boston: South End Press, 1995), 29–37, 165; David

Burnham, *Above the Law: Secret Deals, Political Fixes, and Other Misadventures of the U.S. Justice Department* (New York: Scribners, 1996), 133; James Kirkpatrick Davis, *Spying on Americans: The FBI's Domestic Counterintelligence Program* (New York: Praeger, 1992), 59.

6. David Garrow, "FBI Political Harassment and FBI Historiography: Analyzing Informants and Measuring Their Effects," *The Public Historian* 4 (Fall 1988): 5, 9; Davis, *Spying on Americans*, 57, 88, 102; Davis, *Assault on the Left: The FBI and the Sixties Antiwar Movement* (Westport, Conn.: Greenwood Press, 1997), 141; Jerry J. Berman, "FBI Charter Legislation: The Case for Prohibiting Domestic Intelligence Investigations," *University of Detroit Journal of Urban Law* 55 (Summer 1978): 1070; Danny O. Coulson and Elaine Shannon, *No Heroes: Inside the FBI's Secret Counter-Terror Force* (New York: Pocket Books, 1999), 23.

7. The sending of the King suicide letter and tape is one of the most infamous FBI actions in their history. Athan G. Theoharis, ed., *From the Files of J. Edgar Hoover* (Chicago: Ivan R. Dee, 1991), 102–3.

8. Davis, *Assault on the Left*, 208.

9. Brian Glick, *War At Home: Covert Action Against U.S. Activists and What We Can Do About It* (Boston: South End Press, 1989), 46.

10. Clarence M. Kelley and James Kirkpatrick Davis, *Kelley: The Story of an FBI Director* (Kansas City: Andrews, McNeel, and Parker, 1987), 174–75.

11. Kelley and Davis, *Kelley*, 171.

12. Davis, *Spying on Americans*, 114.

13. Davis, *Spying on Americans*, 123; Davis, *Assault on the Left*, 208; U.S. Senate Select Committee on Intelligence (Church Committee), *Intelligence Activities and the Rights of Americans: Final Report of the Select Committee to Study Governmental Operations*, vol. 2, 1976, 10.

14. Glick, *War At Home*, 53–57.

15. John J. Abt with Michael Myerson, *Advocate and Activist: Memoirs of an American Communist Lawyer* (Urbana: University of Illinois Press, 1993), 282. Churchill and Vander Wall in *The COINTELPRO Papers* reproduce FBI memos on Operation Hoodwink, 42–45.

16. Kelley and Davis, *Kelley*, 171.

17. Davis, *Spying on Americans*, 103.

18. Testimony of Frederick A. O. Schwarz Jr., "Hearings before the Select Committee to Study Governmental Operations with Respect to Intelligence Activities," vol. 6, 1975, 6.

19. Scot Brown, *Fighting for US: Maulana Karenga, the US Organization, and Black Cultural Nationalism* (New York: New York University Press, 2003), 107–10.

20. Swearingen, *FBI Secrets*, 83.

21. Davis, *Spying on Americans*, 106–11; Brown, *Fighting for US*, 107–31; Swearingen, *FBI Secrets*, 89.

22. John Drabble, "Fighting Black Power-New Left Coalitions: Covert FBI Campaigns and American Cultural Discourse," *European Journal of American Culture* 27 (July 2008): 65–91.

23. Church Committee, *Intelligence Activities and the Rights of Americans*, 180.

24. Schultz and Schultz, *The Price of Dissent*, 241.
25. FBI office, Springfield, Illinois, "Speeches of Frederick Allen Hampton," Oct. 29, 1969, Dec. 22, 1969, War Resisters League (WRL) FBI file; Frank J. Donner, *The Age of Surveillance: The Aims and Methods of America's Political Intelligence System* (New York: Random House, 1980), 226–28.
26. Kenneth O'Reilly, "Racial Matters": *The FBI's Secret Files on Black America, 1960–1972* (New York: The Free Press, 1989), 297–98, 311–12.
27. "Speeches of Frederick Allen Hampton," Dec. 22, 1969.
28. O'Reilly, "Racial Matters"; Ward Churchill, "'To Disrupt, Discredit and Destroy': The FBI's Secret War Against the Black Panther Party," in *Liberation, Imagination, and the Black Panther Party*, eds. Kathleen Cleaver and George Katsiaficas (New York: Routledge, 2001), 78; Davis, *Spying on Americans*, 103; Ivan Greenberg, "Federal Bureau of Investigation," in *The Jim Crow Encyclopedia*, eds. Nikki Brown and Barry Stentiford (Westport, Conn.: Greenwood Press, 2008): 294–98.
29. Church Committee, *Intelligence Activities and the Rights of Americans*, 180.
30. Kelley and Davis, *Kelley*, 171.
31. Theoharis, *From the Files of J. Edgar Hoover*, 102–3.
32. Three top FBI leaders discuss the King letter in their memoirs. William C. Sullivan with Bill Brown, *The Bureau: My Thirty Years in Hoover's FBI* (New York: W.W. Norton, 1979), 142; W. Mark Felt, *The FBI Pyramid From the Inside* (New York: Putnam, 1979), 126–27; Oliver "Buck" Revell, *A G-Man's Journal* (New York: Pocket Books, 1998), 453. See also David Garrow, *The FBI and Martin Luther King, Jr.: From "Solo" to Memphis* (New York: W.W. Norton, 1981); Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York: HarperCollins, 1988); and Theoharis, ed., *From the Files of J. Edgar Hoover*, 102–3.
33. Dennis D. Wainstock, *Malcolm X, American Revolutionary* (Jefferson, N.C.: McFarland, 2009), 177–80.
34. Athan G. Theoharis, *J. Edgar Hoover, Sex, and Crime: An Historical Antidote* (Chicago: Ivan R. Dee, 1995), 99–100.
35. Roger Streitmatter, *Voices of Revolution: The Dissident Press in America* (New York: Columbia University Press, 2001), 200, 215–17.
36. Michael Linfield, *Freedom Under Fire: Civil Liberties in Time of War* (Boston: South End Press, 1990), 236.
37. Churchill and Vander Wall, *The COINTELPRO Papers*, 222.
38. Davis, *Assault on the Left*, 208–209; Churchill and Vander Wall, *The COINTELPRO Papers*, 222–24.
39. Robert J. Goldstein, *Political Repression in Modern America: From 1870 to 1976* (Urbana: University of Illinois Press, 2001), 523.
40. Ward Churchill and Jim Vander Wall, *Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement* (Boston: South End Press, 1989), 223–26.
41. Natalie Robins, *Alien Ink: The FBI's War on Freedom of Expression* (New York: William Morrow, 1992), 359.
42. Church Committee, *Intelligence Activities and the Rights of Americans*, 13.

43. Betty A. Dobratz and Stephanie L. Shanks-Meile, “White Power, White Pride”: *The White Separatist Movement in the United States* (New York: Twayne Publishers, 1997): 210, 234–35.

44. *Jones v. FBI* 41 F. 3d 238 (6th Cir. 1994).

45. FBI, *Legal Handbook for Special Agents*, June 11, 1998, section 8.3, 7–8.

46. Noelle Hanrahan, “America’s Secret Police: FBI COINTELPRO in the 1990s,” Redwood Summer Justice Project, April 15, 1998; Martha F. Lee, *Earth First!: Environmental Apocalypse* (Syracuse, N.Y.: Syracuse University Press, 1995).

47. Mikal Jakubal, “Nonviolence Forever,” *Earth First! Journal*, March–April 1998.

48. “Defense for Malcolm X’s Daughter Seeks to Question Informer,” *New York Times*, March 8, 1995.

49. “Virginia Hunt Club Was Aiming to Battle Government, US Says,” *Washington Post*, April 27, 1995.

50. Dina Temple-Raston, *The Jihad Next Door: The Lackawanna Six and Rough Justice in the Age of Terror* (New York: Public Affairs, 2007), 243; “U.S. Campaign Produces Few Convictions on Terrorism Charges,” *Washington Post*, June 12, 2005; “Few Clear Wins in U.S. Anti-Terror Cases,” *Washington Post*, April 21, 2008.

51. In the third trial in 2009 five of the men were convicted. “Liberty City Seven Terrorism Mistrial Highlights Problem of Timing,” *Los Angeles Times*, April 18, 2008; “U.S. to Make Third Attempt to Prosecute Miami Group,” *Washington Post*, April 24, 2008; “Liberty Seven Trial Travesty,” *Miami New Times*, Nov. 11, 2007; “Five Miami Men Convicted of Sears Tower Attack Plot,” *Washington Post*, May 12, 2009.

52. Center for Constitutional Rights, “‘If An Agent Knocks’: Federal Investigators and Your Rights,” n.d.

53. American Friends Service Committee, “Bugs, Taps and Infiltrators: What to Do About Political Spying,” n.d.

54. Sheila O’Donnell, “Common Sense Security: Tip Sheet for Staff Organizers,” n.d.

55. Brian Glick, “COINTELPRO Revisited: Spying and Disruptio” (n.d.), 3. In 2009, the Electronic Frontier Foundation issued a 59-page “Surveillance Self-Defense” manual to resist FBI spying on computer data and communications, www.ssd.eff.org/book/export/html/14 (Dec. 9, 2009).

56. The CCR documented break-ins at the International Center for Development Policy (Washington, D.C.); Centro Presente (Cambridge, Mass.); National Nambia Concerns (Denver, Colo.); Old Cambridge Baptist Church (Cambridge, Mass.); North American Congress on Latin America (New York, NY); Transafrica (Washington, D.C.); Trinity Methodist Church (Berkeley, Calif.); Nicaraguan Embassy (Washington, D.C.); Michigan Home for Peace and Justice (Saginaw, Mich.); St. Williams Catholic Church (Louisville, Ky.); University Baptist Church (Seattle, Wash.); Amnesty International (Los Angeles, Calif.); CISPEs (Washington, D.C.); East Bay Sanctuary Covenant (Berkeley, Calif.); Church of the Covenant (Boston, Mass.); *Sojourner* magazine (Washington, D.C.); First Congregation Church (Cambridge, Mass.); and Guatemala News Information Center (Oakland, Calif.).

57. Stephen Hancock, “Affinity Groups: From Seabrook to Gorleben,” *Peace News*, April 1997. The affinity group idea is not completely new. The Communist Party “cell”

groups during the 1950s consisted of small groups of committed activists that worked in close coordination with one another. However, the CP cells and affinity groups differ in important respects. The affinity group is organized for specific civil disobedience actions. It is not tied to a political party and is a bottom-up, democratic formation, unlike the Communist cells, which took orders from top Party leaders and had little discretion to depart from the Party line. It is easy to leave an affinity group and still remain active in the movement. During the black civil rights movement of the 1950s and 1960s, protestors who organized sit-ins at segregated facilities in the South also used affinity group ideas by rehearsing their protests and training on nonviolent tactics in small groups. See David Halberstam, *The Children* (New York: Random House, 1998).

58. David Foreman, *Ecodefense: A Field Guide to Monkeywrenching* (Tucson, Ariz.: Earth First! Books, 1985), 298. In 2004, the FBI pointed to the influence of Foreman's book among "eco-terrorists." FBI Intelligence Assessment, "Tactics Used by Eco-Terrorists to Detect and Thwart Law Enforcement Operations," April 15, 2004, 1–4. See also Don Liddick, *Eco-Terrorism: Radical Environmental and Animal Liberation Movements* (Westport, Conn.: Greenwood Publishing, 2006).

59. "Eco-Terrorists, too, May Soon Be on the Run," *Christian Science Monitor*, Feb. 15, 2002.

60. Animal rights activity is considered a top "terrorist" threat. In 2006, Congress passed the Animal Enterprise Protection Act to crack down on protests even though no deaths have been associated with such activism. Department of Homeland Security, "Domestic Terrorist Newsletter" 1 (2006): 1–2; Center for Constitutional Rights, "The Right to Dissent," 2009, 11–12.

61. Kenneth S. Stern, *A Force Upon the Plain: The American Militia Movement and the Politics of Hate* (New York: Simon and Schuster, 1996), 135; Martin Lindstedt, "Forming Infiltrator-Resistant Militia Organizations," *Modern Militiaman*, June 1996, 2–5; Robert L. Snow, *The Militia Threat: Terrorists Among Us* (New York: Plenum Trade, 1999), 126–35; Kevin Flynn, *The Silent Brotherhood: Inside America's Racist Underground* (New York: The Free Press, 1989), 393.

62. Beam, a former leader of the Klan in Texas who also worked with Aryan Nations, was indicted for sedition in 1987 and made it onto the FBI's Ten Most Wanted List. But a federal grand jury acquitted him on all charges.

63. Alan Dershowitz, statement before the House Judiciary Committee, Dec. 1, 1998. Dershowitz also writes about pervasive police perjury in *Reasonable Doubts: The O.J. Simpson Case and American Criminal Justice* (New York: Simon and Schuster, 1996); Dershowitz, "A Police Badge Is Not a License to Commit Perjury," *The San Diego Union-Tribune*, April 4, 1991.

64. Mollen Commission, "Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Practices of the Police Department," July 7, 1994, 36, 42; "Police Lied, and New York Pays the Price," *New York Times*, Jan 5, 1997.

65. Paul Chevigny, *Edge of the Knife: Police Violence in the Americas* (New York: The New Press, 1997), 139. See also his *Police Power: Police Abuses in New York City* (New York: Pantheon Books, 1969).

66. Jerome H. Skolnick, "Deception by Police," *Criminal Justice Ethics* 1 (Summer/Fall 1982): 2; Skolnick, "Corruption and the Blue Code of Silence," in *Policing*

Corruption: International Perspectives, eds. Rick Sarre, Dilip K. Das, Hans-Jörg Albrecht (Lanham, Md.: Lexington Books, 2005), 301–16.

67. John Kleinig, *The Ethics of Policing* (New York: Cambridge University Press, 1996), 149–50.

68. Morgan Cloud, “The Dirty Little Secret,” *Emory Law Journal* 43 (Fall 1994): 1311. See also Myron Orfield Jr., “Deterrence, Perjury and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts,” *University of Colorado Law Review* 63 (1992): 75, 107.

69. “Police Perjury Not Rare, Observers Say,” *Washington Post*, Feb. 17, 1999; Christopher Slobogin, “Testilying: Police Perjury and What to Do About It,” *University of Colorado Law Review* 67 (1996): 1037; Alexa P. Freeman, “Unscheduled Departures: The Circumvention of Just Sentencing for Police Brutality,” *Hastings Law Journal* 47 (1996): 703; Jennifer Koepke, “The Failure to Breach the Blue Wall of Silence: The Circling of the Wagons to Protect Police Perjury,” *Washburn Law Journal* 39 (Spring 2000): 229.

70. “Charges of Police Lying Haunt Cases,” *Los Angeles Times*, Dec. 6, 1996.

71. “Rampart Revelations Upset City Residents, Undercut Confidence,” *Los Angeles Times*, April 9, 2000.

72. David E. Rovelta, “Scandals Damage Cop Credibility,” *National Law Journal*, Dec. 4, 2000.

73. David Weisburd and Rosann Greenspan, “Police Attitudes Toward Abuse of Authority: Findings from a National Study,” National Institute of Justice, U.S. Department of Justice, May 2000, 1, 4.

74. Mollen Commission, 53; Christopher Commission, “Report of the Independent Commission of the Los Angeles Police Department,” April 1, 1991, 168. See also Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States* (New York, 1998); “NYPD Brutality Testimony Spotlights Code of Silence,” *Los Angeles Times*, May 22, 1999; “Police Officials Ask Panel Not to Cite Officers for Lying,” *New York Times*, Nov. 18, 1999. In 1999, the Civilian Complaint Review Board in New York City cited sixty-five officers for making false statements to its investigators to protect fellow officers.

75. Gabriel Chin and Scott Wells, “The ‘Blue Wall of Silence’ as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury,” *University of Pittsburgh Law Review* 233 (1998): 59.

76. Stanley Z. Fisher, “‘Just the Facts, Ma’am’: Lying and the Omission of Exculpatory Evidence in Police Reports,” *New England Law Review* 28 (1993): 1.

77. Kleinig, *The Ethics of Policing*, 146.

78. “Statement of John C. Ryan,” May 7, 2001, 3, 5, in *Bari v. FBI*, No. C-91-1057 CW N. D. Cal. (2002).

79. Swearingen, *FBI Secrets*, 1.

80. The FBI wrote about Allen’s public exposure of his informer status: “This matter is being followed with informants and sources and local police officials and the Bureau will be kept advised of developments.” SAC Charlotte to FBI Director, Sept. 7, 1973, Black Panther Party, Winston-Salem, FBI File.

81. Churchill and Vander Wall, *The COINTELPRO Papers*, 121, 205–6, 213, 215.

82. "Black Panther Geronimo Pratt Granted New Trial after 25 Years," Associated Press, May, 19, 1997.
83. Swearingen, *FBI Secrets*, 87, 167–68.
84. Churchill and Vander Wall, *Agents of Repression*, 287–328; Peter Matthiessen, *In the Spirit of Crazy Horse* (New York: Penguin Books, 1983).
85. David J. Langum, *William M. Kunstler: The Most Hated Lawyer in America* (New York: New York University Press, 1999), 246–52; Churchill and Vander Wall, *The COINTELPRO Papers*, 255, 390. See also John William Sayer, *Ghost Dancing the Law: The Wounded Knee Trials* (Cambridge, Mass.: Harvard University Press, 1997).
86. Jack Olson, *Last Man Standing: The Tragedy and Triumph of Geronimo Pratt* (New York: Doubleday, 2000), 90.
87. Olson, *Last Man Standing*, 147.
88. Sayer, *Ghost Dancing the Law*, 168; *Wounded Knee Legal Defense/Offense Committee v. FBI* 507 F.2d 1281 (1974); Churchill and Vander Wall, *The COINTELPRO Papers*, 190.
89. *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans*, Book 3, U.S. Senate Select Committee to Study Governmental Operations, 1976, 265–66.
90. FBI office report, Minneapolis, Minnesota, Jan. 12, 1973.
91. *Williams v. FBI*, 730 F.2d 885 (1984).
92. Swearingen, *FBI Secrets*, 157–58.
93. "The Life and Times of William Moses Kunstler: Interview by Dennis Bernstein and Julie Light," *Z Magazine*, Oct. 1995.
94. Langum, *William M. Kunstler*, 111.
95. Langum, *William M. Kunstler*, 77–78. See also Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild: From Roosevelt through Reagan* (Philadelphia: Temple University Press, 1988); Percival R. Bailey, "The Case of the National Lawyers Guild, 1939–1958," in *Beyond the Hiss Case: The FBI, Congress, and the Cold War*, ed. Athan G. Theoharis (Philadelphia: Temple University Press, 1982); Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990); Judy Kutulas, *The American Civil Liberties Union and the Making of Modern Liberalism, 1930–1960* (Chapel Hill: University of North Carolina Press, 2006).
96. Arthur Kinoy, *Rights on Trial: The Odyssey of a People's Lawyer* (Cambridge, Mass.: Harvard University Press, 1983), 6.
97. Donner, *The Age of Surveillance*, 138; *Stern v. FBI* 737 F.2d. 87 (1984); Margaret Jayko, ed., *FBI on Trial: The Victory of the Socialist Workers Party Suit Against Government Spying* (New York: Pathfinder Press, 1988), 2, 8, 14, 50–51, 54–55, 238; Anthony Marro, "FBI Break-in Policy," in Theoharis, *Beyond the Hiss Case*, 97.
98. Richard M. Gutman, "Combating Defendants' Obstructionism in the Discovery Process," *University of Detroit Journal of Urban Law* 55 (Summer 1977): 985–88.
99. U.S. Department of Justice, "The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases," April 1997. See also John F. Kelly and Phillip Wearne, *Tainting Evidence: Inside the Scandals at the FBI Crime Lab* (New York: Simon and Shuster, 1998).

100. "Ex-FBI Whistleblower Still Pursues Justice," Knight-Ridder Newspapers, June 15, 1998.
101. "Justice Dept. Cover-Up for FBI Exposed," NACDL News Release, Oct. 6, 1999.
102. Athan G. Theoharis, "In-House Cover-up: Researching FBI Files," in *Beyond the Hiss Case*, 35.
103. Athan G. Theoharis, ed. *The FBI: A Comprehensive Reference Guide* (Phoenix: Oryx Press, 1999): 130–31; Rhodri Jeffrey-Jones, *The FBI: A History* (New Haven, Conn.: Yale University Press, 2007), 197–99.
104. FBI memo, "Transfer of Records to the National Archives and Records Administration (NARA)," Feb. 22, 1991, National Archives FBI File; James X. Dempsey and David Cole, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (Los Angeles: First Amendment Foundation, 1999), 30.
105. Robins, *Alien Ink*, 379.
106. "FBI Suspends Four in Ruby Ridge Probe," Associated Press, Aug. 12, 1995.
107. Kelly and Wearne, *Tainting Evidence*, 1–2, 6.
108. "Punish FBI Screw-up," *Denver Post*, May 12, 2001; "FBI Has 'Terrible Record' on High-Profile Case Data," *Los Angeles Times*, May 12, 2001.
109. U.S. House of Representatives Subcommittee on Crime, "Hearings on the Activities of the Federal Bureau of Investigations," July 30, 1997.
110. American Civil Liberties Union, "ACLU Joins with Richard Jewell in Calling for Investigation of FBI's Handling of Atlanta Olympic Park Bombing," July 30, 1997.
111. "FBI Misled Fired Nuclear Scientist," Associated Press, Jan. 8, 2000.
112. "FBI Agent Gave Faulty Testimony in Weapons Case," *New York Times*, Aug. 18, 2000; "Prosecutor: Don't Release Scientist," Associated Press, Aug. 18, 2000.
113. "FBI Aided by Los Alamos Scientist's Wife," *Washington Post*, April 26, 1999.
114. *American Friends Service Committee et al. v. Webster*, 485 F. Supp. 222, 229–30 (1980).
115. Macro in *Beyond the Hiss Case*, 97.
116. Schrecker, *Many Are the Crimes*, 226.
117. "Report Cites F.B.I.'s Following of Terrorist Suspects," *New York Times*, Oct. 9, 1990; U.S. General Accounting Office, "GAO's Work at the FBI: Access to Data, Documents, and Personnel," June 2001, 6.
118. "United States" in *Human Rights Watch World Report 2000*, Dec. 1999, 1.
119. "United States," 9.
120. Schultz and Schultz, *It Did Happen Here*, xviii.

2

The Evolution of 1970s Spying

FBI SPYING UNDERWENT SUBSTANTIAL TRANSFORMATION during the course of the 1970s. The decade began with COINTELPRO in full swing under the direction of long-time boss J. Edgar Hoover. In 1970, Hoover wanted to increase COINTELPRO actions to fight the new social movements. However, the next year the program abruptly came to an end after public exposure. Fearing embarrassment, the director suspended the program, although extensive spying on Americans continued in many other areas. The end of COINTELPRO was followed in short order by the death of Hoover himself. The director died of natural causes on May 2, 1972, ending nearly forty-eight years as head of the secret police. What direction would the FBI take under new leadership? Would the level of surveillance against domestic political groups decline? Would Congress for the first time begin to probe FBI policing practices?

COINTELPRO Aims and Ends

The FBI's COINTELPRO, originally founded in 1956 to combat domestic Communists, expanded over time to surveil increasingly larger numbers of political groups and individuals. This included the Socialist Workers Party, civil rights and black power groups, the New Left, and right-wing white supremacists. Its "counter" measures were designed to curtail the growth of social movements. The FBI claimed that more than three thousand operations were proposed, of which about 2,370 were carried out, to impede political activity. Regarding the New Left section of the program, Hoover rejected a

total of eighty-six proposals generated by local field offices.¹ It is unknown why some proposals for dirty tricks were vetoed, while others received official sanction. But the FBI leadership, in rejecting the more outrageous counter measures, argued they exhibited restraint.

Upon taking office in January 1969, President Richard M. Nixon urged the FBI to expand domestic spying on student radicalism and the New Left. The Justice Department directed Hoover to track the “inflammatory” speeches of campus activists and to gather intelligence on the “income sources of revolutionary groups.” The FBI investigated all known members of Students for a Democratic Society (SDS) and reported on the “identities of speakers” at anti-war demonstrations.² Nixon’s outrage against the student Left increased in the fall of 1969 and spring of 1970, when at least 250 bombings were directed at symbols of the state war machine—ROTC buildings, draft boards, and some federal offices and multinational corporate headquarters. On May 4, 1970, the National Guard killed four students at Kent State University in Ohio, prompting protests on more than half the nation’s campuses. About 1.5 million students engaged in protests, probably the largest social action in the history of higher education, shutting down about a fifth of colleges across the nation. In response, thirty-two states passed laws withdrawing financial aid from students who violated campus rules. More than ten public universities banned SDS.³ The Justice Department began to arrest activists on “conspiracy” to riot charges and Nixon compiled a political “enemies list.”

Less than two months after the Kent State massacre, Nixon proposed the so-called Huston Plan to conduct spying on dissent directly from the White House. The plan included authority to conduct electronic surveillance, mail opening, the use of informers, and break-ins. Nixon called the heads of all the intelligence agencies—FBI, CIA, and NSA, as well as the spying component of the Department of Defense—to the White House to announce his plans. “We are now confronted with a new and grave crisis in our country,” he told the intelligence chiefs. “Certainly hundreds, perhaps thousands of Americans—mostly under 30—are determined to destroy our society.” The Huston Plan was not enacted because Hoover and the FBI objected to its implementation. Hoover insisted the Bureau retain the primary role to conduct political policing investigations, viewing the competing Huston Plan as an attack on its independence. Nonetheless, the antipathy of the Nixon administration toward young radicals was not lost on Hoover.⁴

In August 1970, the FBI formulated plans to intensify COINTELPRO operations. Hoover issued instructions to all special agents to increase coverage of “extremist” organizations out of fear that they might “engage in kidnapping and holding as hostages of high ranking Government officials, diplomats, and foreign officials, as well as members of their families.” How did Hoover reach

this conclusion? He referred to a recent kidnapping of a judge and members of the jury in San Rafael, California. FBI official G. C. Moore summarized Hoover's view: "It is reasonable to assume that extremist elements, as the Panthers, the Students for a Democratic Society, including the Weatherman faction, and similar violence-prone organizations may utilize this tactic with greater frequency in the future. Accordingly, we are alerting all offices and instructing that the SAC assure that the investigations of such extremist organizations is intensified and that informant coverage is developed to the point whereby we receive advance notice of such plans."⁵ The urgency to enhance surveillance was unusual because Hoover told the SACs he was "holding you personally responsible. . . . Your efforts in this regard will be the subject of close scrutiny during future inspections."⁶ Hoover had consulted with Nixon. "In line with our conversation the other evening," he wrote the president on August 17, 1970, "I have had instructions issued to every one of our field offices."⁷

As part of the effort to expand COINTELPRO, on September 10 and 11, 1970, the FBI held a special conference in Washington to explore new ways to combat the New Left. The FBI offered a series of seminars and at least forty agents or other top officials attended. A twelve-page conference summary is stored in Director L. Patrick Gray III's declassified FBI file and is remarkable for its candid statements about official repression. The titles of the seminars are redacted, but their descriptions are alarming to anyone concerned about civil liberties. The first session of the conference focused on the

nature of the New Left, its subversive intent and its threat to the internal security of the nation. Basis for our investigation of the New Left movement, presidential directives, statutes, and executive orders. Selected attendees should give descriptions of New Left activities in their respective areas.

The description for the second session used a key word: "neutralization." The repressive apparatus of the state is on display: "objectives of our investigations such as neutralization of the New Left movement, curtailment of its activities. Investigative responsibilities concerning individuals and organizations." A third session dealt with the "funds and publications" of the radicals. A fourth looked at "investigative techniques—informants." The FBI defined "counter-intelligence" as "unusual investigative techniques"—failing to mention that many were illegal. On the second day of the conference, the morning session discussed

violence-oriented groups which include Weatherman faction, White Panther Party, Yippies. Attendees should be able to discuss aspects of such groups which include communal dress style and use of underground press as communication center.⁸

The investigation of the underground press became a major effort. Yet the FBI seemed to give too much weight to them: These newspapers hardly formed a “communication center.” Most were loosely organized, local efforts struggling to survive.⁹ The FBI recommended “[t]hat New Left underground newspapers, especially those oriented toward the Weatherman philosophy, be afforded intensive investigation due to their apparent role as a communication center.” The FBI named five papers as publishing “Weatherman threats”: *Rat*; *Kaleidoscope*; *Berkeley Tribe*; *Argus*; and *Quick Silver Times*.

The last session of the two-day conference provided an “open discussion” on ways to fight (“curtail”) the New Left: “open discussion on items covered above. Attendees should make concrete suggestions on new approaches to the New Left Movement, streamlining procedures, administrative details, improved techniques on such items as informants and counterintelligence recommendations should be received concerning steps and curtailing New Left militants.” It is rare for the FBI to articulate its ideological and political goals in so straightforward a manner. At the conference, the FBI developed fifteen specific recommendations. Nowhere else is it stated so directly “[t]hat ‘movement’ attorneys be considered as targets for intensive investigation due to their close relationship with New Left militants.” The focus on New Left investigations is evident in other ways as well: “that the field be instructed to obtain more specific details on New Left individuals, especially where there is an indication of violence, and that these investigations must be exhaustive.” There is the general recommendation, “Counterintelligence suggestions are being encouraged from the field no matter how far out.”¹⁰ Sabotage methods normally were formulated in Washington, so the call to local offices reflected the high priority devoted to fighting the new social movements. Does “far out” include unconstitutional or illegal actions?

What is in the mind of the FBI? Field offices generated some topics to be discussed and, again, this material includes rare, bald discussion of political aims to crush social movements. The Cincinnati office offered suggestions on two topics: attacks on police and the relationship between the New Left and black militants. Using exaggerated language, they believed the New Left “offensive” sought the “annihilation” of the existing society.

It is apparent that the New Left will settle for nothing less than the complete destruction of the Establishment and the annihilation of its adherents as witnessed by the intimidation of law enforcement generally throughout the country. Uniformed and plainclothes police officers have been killed and injured by New Leftists and other militants. Federal and police buildings have been bombed and police vehicles and property have been destroyed. What measures can preserve the safety of FBI personnel, space and property?

Cincinnati agents worried about coalitions of activists across race lines, especially the forging of bonds between SDS and the Panthers. They searched for new ways to keep these groups apart.

Obviously, there must exist a line of communication between above mentioned groups which enables them to coordinate their mutual objectives in destroying the government and the existing order in the United States. Racial differences as such are meaningless to the black militant and the New Leftist inasmuch as their common denominator is the annihilation of the existing order. Again, what counterintelligence measures can be utilized in alienating the New Leftist from the black militant and vice versa.

Elsewhere, the recommendations noted "investigations in the New Left are a daily occurrence" and new "investigative techniques for communes" should be developed. There was a call to establish "photo albums including all activists" and "utilization of specialized surveillance vehicles, such as Volkswagens, motorcycles, vehicles with psychedelic paint jobs." The Boston field office suggested, "Seminar on types of concealed recording equipment available and successful methods devised for use of such devices to record speeches of New Left Activists. Feasibility of informants or sources using devices."¹¹

Surveillance of SDS already had become a top priority. By May 1969, the FBI received approval from the Attorney General to place a wiretap on the telephone at SDS's national headquarters in Chicago. The FBI listened in as the Weatherman faction took over the organization. On November 13, 1969, Hoover wrote, "The telephone surveillance has continued to be a source of valuable, timely and pertinent information concerning the activities, strategy, plans and operations of the Students for a Democratic Society. The Weatherman faction . . . which is the action-oriented faction . . . controls the national headquarters and we therefore have been able to develop extremely valuable information concerning this group."¹² On February 12, 1970, Hoover concluded that the telephone surveillance revealed "[t]he Weatherman faction is totally committed to violent revolution at this time and has made strategic plans to build an underground paramilitary organization designed to carry out guerrilla warfare in the cities of the United States." The phone taps also yielded detailed information on the formation of Weatherman collectives.

Weatherman members have moved into collectives in the major cities of the country and in an effort to keep their whereabouts unknown to local and Federal authorities are continuously moving from one collective to another. Sensitive information from the telephone surveillance has enabled the Federal Bureau of Investigation to locate many of those individuals as well as ascertaining the location of their frequently changing collectives.¹³

Unexpectedly, COINTELPRO came to an abrupt end in the spring of 1971. Hoover's decision to end the program followed dramatic actions by protestors, who on March 8, 1971, broke into an FBI office in Media, Pennsylvania, and stole more than a thousand classified documents. The protestors, calling themselves the Citizen's Committee to Investigate the FBI, leaked the documents to the press. Both the *Washington Post* and the *New York Times* published articles exposing FBI spying based on the Media documents. Public outrage led to calls for Hoover to resign. The identity of the protestors remained a mystery and no one was prosecuted for the break-in. FBI leaders, including W. Mark Felt, believed they had ties to the radical Catholic priests Philip and Daniel Berrigan.¹⁴ Felt notes in his memoir, "Publication of the FBI documents resulted in a great outcry against FBI practices depicted as reprehensible and Un-American. . . . The selective and widespread publication of the stolen documents damaged the FBI's image, possibly forever, in the minds of many Americans." For example, "The FBI was accused of racism when the Media documents showed it attempting to recruit informants in black neighborhoods." Among the documents liberated were "transcripts of telephone taps on the Black Panthers, instructions on how to cope with rioters, and a number of investigative reports."¹⁵

Although COINTELPRO ended, surveillance against the New Left remained in place. In September 1971, the Justice Department and the FBI discussed ways to prosecute seventy-one New Left leaders for political activity. Robert C. Mardian, an assistant attorney general, informed Hoover that the department was "conducting an in-depth analysis of the New Left Movement to determine if any of its leaders can be prosecuted under the provisions of the Smith Act or other federal statutes. In this connection, it would be appreciated if the Bureau could furnish an up-to-date listing of the leaders of the New Left Movement, together with a summary of their background and activities." In a second memo to Hoover four months later, Mardian asked, "It would be helpful if the Bureau could furnish current photographs, if available, of the 71 individuals whose biographies have previously been made available."¹⁶

The Hoover era finally ended not by the director's resignation but by his death. The director was seventy-seven years old, having served the FBI since 1919. Historians view Hoover from widely disparate and polarized perspectives. Athan G. Theoharis, representing a liberal viewpoint, believes that "Hoover had more to do with undermining American constitutional guarantees than any other political leader before or since."¹⁷ On the other hand, Richard Gid Powers defends Hoover from a conservative viewpoint. Hoover's "most unassailable achievement was creating one of the great institutions in American Government. . . . Millions were sure that Hoover's secret power was all that stood between them and sinister forces that aimed to destroy their

way of life.”¹⁸ Soon after his death, Congress paid tribute to Hoover, putting his name on the FBI Headquarters building in Washington, D.C. Yet almost everyone in government agreed that Hoover served too long and amassed too much power. In 1976, the Congress passed legislation limiting the tenure of the director’s job to ten years.

What changes would come to the FBI under Hoover’s successors? When L. Patrick Gray III assumed the director’s job, he recalled, “It was whispered that the liberals on the Senate Judiciary Committee were determined to work over the Nixon administration just as soon as a permanent director of the FBI was nominated. News reports claimed that regardless of whom the president chose to succeed Hoover, liberal senators were determined to force the FBI to face the most thorough public investigation in its history.”¹⁹ But congressional investigations of such a magnitude did not materialize before Nixon resigned. At that point, modest efforts included questioning the scope of secret FBI files on members of Congress.²⁰ Until the Senate Church Committee convened in early 1975, Congress cared largely about FBI spying on its members, not on the general population.

Post-Hoover Spying

FBI spying persisted despite the end of COINTELPRO and the death of Hoover. Nixon continued to urge the Bureau to pursue radicals and initially the new FBI directors (Gray, William Ruckelshaus, and Clarence M. Kelley) proved unwilling to “reform” the Bureau. Investigatory activity remained high—in July 1973, the FBI conducted 21,414 security investigations.²¹ By late 1975, the FBI told Congress it tracked 1,100 Marxist and other potentially subversive groups.²²

In preparing for the 1972 Republican National Convention, the FBI surveilled radicals to prevent the possibility of riots. They wanted to prevent a repeat of 1968, when police clashed with anti-war protestors in the streets of Chicago outside the Democratic Party Convention. Edward S. Miller, assistant director in charge of the Domestic Intelligence Division, told Gray on May 10, 1972, “We will have excellent live informant coverage in the radical groups at the convention. Of our 2,100 informants in the security field, eight percent are targeted for the Republican convention.” Gray responded, “Why so many?” Miller said, “Because many of these outwardly political groups are sheltering terrorists and revolutionaries. The Vietnam Vets Against the War are very anti-government and terroristic.” Gray supported an increase in the use of informants.²³

However, Gray tried to tighten loose thinking by agents carried over from the Hoover era. In a March 6, 1973, memo, he instructed all special agents

to make clearer distinctions about the nature of dissent in their communications to headquarters: “With increasing frequency, FBIHQ is receiving communications bearing improper or misleading characters. The Internal Security, Revolutionary Activity, Civil Unrest, and Extremist Matter characters are being used on communications reporting the activity of individuals and groups that should not be classified as revolutionary, subversive or extremist.” The FBI also monitored so-called “legitimate dissent” if it was tied to “civil unrest”: “Bearing in mind that the FBI has no interest in individuals and organizations involved in legitimate dissent, where it is deemed necessary to report on activities of such groups, communications should bear the character ‘Miscellaneous—Information Concerning.’” Special agents should continue to monitor plans for most types of street protest. Gray said, “The above instructions are not intended to relieve you of the obligation of being aware of activity scheduled to take place in your territory where the possibility of civil disorder may occur as a result of disruptive elements.”²⁴ In other words, spying on social movements persisted as long as protestors risked arrest in large numbers.

In 1971, Congress ended the FBI’s maintenance of a Security Index. The index consisted of people to be arrested and held indefinitely during a national emergency. However, the FBI established a new detention list known as the Administrative Index (ADEX). The difference between the Security Index and ADEX was one of degree. Those people listed in ADEX posed an “immediate” threat to national security, as opposed to only a “potential” threat. Initially, ADEX had four categories. It is rare to find a discussion of this top secret program but the FBI explained it at length in a legal document.

The purpose of the Administrative Index was to have a current listing of individuals deemed currently dangerous to national security. These individuals were to be afforded priority investigative coverage in the event of a national emergency. Initially this Index had four categories:

Category I included all leaders of revolutionary groups, persons demonstrating violence against persons rather than property, and other extremist leaders with special terrorist training.

Category II included secondary leadership of revolutionary groups and extremist groups, active participants who furthered the aims of such groups, as well as unaffiliated revolutionaries who had acted violently against property rather than people.

Category III included rank and file participants in recent extremist or revolutionary activities.

Category IV included those in a position to influence others to engage in acts inimical to national defense, who had a proclivity for exercising such influence, but who otherwise did not qualify under the first three categories.²⁵

Soon after assuming the director's job, Gray eliminated the separate ADEX categories and reduced the number of people on the list from about thirteen thousand to three thousand. Those who remained "represent a hard core of individuals who are dedicated to the overthrow or destruction of the U.S. Government"—especially black power advocates, American Communists, and SDS members.²⁶ The number of people on ADEX continued to dwindle to about 1,200 people by 1976.²⁷

Gray also changed the Ghetto Informant Program. Informers had been placed in stores and local institutions in neighborhoods to listen to the political speech of residents and to keep a general watch on everyday life. It formed one of the largest informant programs, growing rapidly from 3,248 people in 1968 to about 7,500 people at its peak in 1972. The FBI believed "it was necessary in situations of potential violence to gain information from laborers, clerks, housewives, businessmen, anybody."²⁸ The urban race riots of 1964 to 1968 had prompted the creation of the program, as did the high priority devoted to tracking African American support for the Black Panther Party. An FBI official said, "Cities were being burned, Detroit, Washington, areas like this. We were given a mandate to know what the situation was, where was violence going to break out, what next? They weren't informants like an individual penetrating an organization. They were listening posts in the community that would help tell us that we have a group here that's getting ready to start another firefight or something."²⁹

In September 1972, Gray consulted all field offices about the program's effectiveness. Most of the offices suggested it should be changed because civil disruptions had declined. For example, in Portland, Oregon, the field office recommended trimming the program to "established pre-developed friendly contacts in the Negro community to serve as listening posts, to report information concerning changes or problems in their neighborhood worthy of attention."³⁰ In Newark, New Jersey, the field office referred to its informers "in such businesses as gas stations, candy stores, barber shops, etc., and . . . these individuals are contacted on a regular basis and routinely report that 'all is quiet in the neighborhood.'" The informers were not situated to provide important intelligence: "'Listening post' informants are not in a position to furnish information about preplanned disturbances and they certainly cannot furnish prior information relative to a spontaneous disturbance."³¹ After review, Gray eliminated the "listening post" component of the program while retaining some of its informers in other capacities.³²

Gray intensified efforts to track the Weather Underground Organization (WUO) and arrest political fugitives. During 1970 to 1972, the WUO engaged in five symbolic bombings and issued thirteen communiqués, according to FBI files.³³ In his public speeches, Gray emphasized the threat posed by

“urban guerrilla terrorism.” In classified memos to agents, he also pursued the matter. “These are not normal times. We are in an age of terrorism,” he wrote on November 22, 1972. “The tactic of the urban guerrilla, often used in Latin American, Algeria, the Middle East and elsewhere in the world, was introduced into the U.S. about five years ago and we have seen ample evidence of it in the form of ambushed police officers and terrorist bombings which have included the U.S. Capitol and the Pentagon. We now accept the existence of urban guerrilla terrorism and the fact that the urban guerrilla’s philosophy of terrorism has made it necessary for law enforcement to adopt new standards and adapt to the constant threat of terrorist attack.”³⁴ FBI efforts were enhanced by the Nixon White House, which on September 25, 1972, established a special Cabinet Committee to Combat Terrorism. Although the Committee met only once (and President Carter abolished it in 1977), for a brief period in the early 1970s it gave a boost to the FBI, which was designated as the lead agency to respond to terrorist attacks in the United States.³⁵

The FBI collected more than ninety thousand pages of intelligence in its Weatherman investigations. In May 1972, an FBI official wrote a summary of Bureau efforts: “Our investigation of the revolutionary Weatherman group centers on approximately 280 people throughout the country. Included in that number are the 26 Weatherman fugitives. Also included is a group of about 40 individuals, all non-fugitives, whose whereabouts are unknown and who are believed active in the Weatherman underground.” The WUO had been underground for more than two years and “a few fugitives have been apprehended, however, the key Weatherman leaders remain at large.” The subject of drugs was raised in connection with dissident demobilization: “Weatherman advocates use marijuana and LSD, but oppose hard drugs, such as heroin and amphetamines. It is possible that some Weatherman activists have become drug addicted to the extent that they have dropped out of the revolution. Such a report has been received concerning Weatherman leader [text redacted] however, this has not been verified.” The FBI also tracked progressive lawyers who advised Weatherman or other radicals. For example, the Bureau references the “possible break-up” of the People’s Law Office in Chicago. “This office has been a key communications channel for Weatherman” and the FBI cheered that the office is “on the verge of disintegration.” The names of three lawyers are redacted in this memo. The FBI reported details of their personal lives.³⁶

The information gathered on the Weatherman from third-party sources included bank officials, telephone company representatives, and school officials. The FBI also collected information from parents, neighbors, and acquaintances of subjects. Foreign government intelligence services provided information to the FBI when Weathermen traveled overseas to engage in political activity.³⁷

In 1972 and 1973, the FBI conducted break-ins against subjects associated with Weatherman fugitives, an illegal method investigated by the Justice Department later in the decade. How did the FBI decide on targets? “Parents and close relatives of Weatherman fugitives who cooperated fully or partially with the FBI” were not chosen. Break-ins “generally [were] made against such relatives who did not cooperate in the fugitive investigation.”³⁸ A November 17, 1972, memo between officials Felt and Miller described in brief, terse language the authorization of one such break-in. The name of the subject of the break-in was concealed.

DO NOT FILE

Mr. Felt:

Revolutionary Activities – Weatherman

On 11/17/72 SAC Decker, New York, requested authority to contact an anonymous source at [text redacted] Avenue, Brooklyn, who may have some knowledge concerning [text redacted]. He assured me that such could be accomplished with full security and I gave him authority to proceed.

ACTION

For information.

E. S. Miller³⁹

The “Do Not File” label indicated this communication was not filed in the FBI’s central records system. Such concealment of illegal activity limited knowledge of break-ins within the Bureau.

Congressional Questioning

Gray’s tenure as director lasted less than a year. Nixon forced him to resign after it became known the director destroyed some Watergate-related documents. When Nixon chose Clarence M. Kelley as the permanent director, Senate liberals posed new questions about FBI spying in confirmation hearings. Liberal icon Ted Kennedy, Democratic senator from Massachusetts, led the effort. He asked, “Is there any reason why the public should not know what the standards for the FBI in, say, deciding which groups are going to be infiltrated or which groups are going to be put under surveillance? Do you see any reason why the public shouldn’t just know the standards which are being used by the FBI to make a decision as to whether such group will be actually infiltrated?” Kelley was evasive: “As I mentioned before, Senator, I don’t know what the standards are for that type of investigation, but

I would again be willing to talk about this, as well as other matters, with the oversight committee.” Kennedy pursued the matter of infiltration: “Do you think the public ought to have the right to know whether infiltrators into any of these groups are under instructions and whether they ought to encourage and participate in any activity?” Kelley again refused to offer a meaningful response: “I think that is an operational matter which is subject to many interpretations and on occasion law enforcement becomes too isolated in its position and fearful of exposure, fearful that they are going to be hampered in their investigations.”⁴⁰

Kennedy asked if government operatives participate in illegal activity. “[D]o you think that there are any circumstances where FBI agents ought to be instructed to participate in criminal activity when they are infiltrating a protest organization?” Kelley denied he supported such activity: “If that be your question, there are no circumstances wherein they should be authorized to go into criminal activity.”⁴¹ But as director, Kelley never issued any internal directives on this matter.

As the Senate began to debate the establishment of a permanent Senate oversight committee for the FBI, the Kennedy civil liberty view argued Congress should know more about Bureau practices to prevent abuse of surveillance authority. In the past, congressional oversight almost was nonexistent, which afforded too much unaccountable power to the Bureau. “I suppose part of the problem we are confronted with in any kind of oversight situation is not having the basis of information of past activities of the FBI,” Kennedy said. “If we are unaware of at least some of these instructions or what these standards are or what is in the Bureau or what is in the manual for the past, it makes it exceedingly difficult to have some kind of constructive dialog.”⁴² Senator Robert C. Byrd, a Democrat from West Virginia, also urged new forms of accountability. He had held great faith in Hoover but not his successors.

We acknowledge that under Mr. Hoover, we trusted things to him. I sat on subcommittees when he appeared before them and we o’oh’d and we a’ah’d and we were big-eyed and swelled our chests with pride in his performance. I was one of his best supporters in this country. But we don’t have Mr. Hoover any more. Congress was content to place its trust in him and there weren’t many questions asked as far as I am concerned. His budget request, as far as I was concerned, and I think as far as most Members of the Senate and House were concerned, was pretty much sacrosanct. We gave him anything he wanted. We trusted him.

But we are living in a different time now. I would not have felt the same about Mr. Gray. . . . This committee or some committee ought to conduct a very thorough study in detail for the first time in the history of the FBI, of this organization.⁴³

Referring to Nixon, Byrd worried about the impact of “political pressures” on the FBI by a “politically motivated Attorney General or by a President.” Kelley supported new congressional oversight to “stabilize the position [of the director] and I am confident it would diminish the possibility of such pressures.”⁴⁴

Notably, the question of FBI “independence” from a partisan attorney general or president was framed narrowly only in terms of the two-party system. While governing elites worried about undue influence on the FBI by particular Republican or Democratic leaders, they shared a consensus about the overall goals of FBI surveillance practices: The FBI should surveil radicals and defend the status quo at any cost. In their view, it was not a “political” decision to surveil and infiltrate the Black Panthers or the New Left—it was the natural order of things for the American government. Indeed, while Kelley served as police chief in Kansas City, he supervised a large surveillance program against the black power movement. He told the Senate Committee, “The Black Panthers became somewhat powerful in the city. . . . We were keeping some tabs on their activities, but not to a great extent. Then [in 1968] they became quite militant and on several occasions threatened to kill officers. One, the leader, even challenged me to a duel . . . they had guns, and when you get a threat that they are going to kill officers and officers have been killed, with that kind of threat we put a 24-hour surveillance on them. . . . We were not going to let them out of our sight. They knew they were being followed.”⁴⁵ Most senators shared this antipathy toward black militants. Byrd only cared about the manipulation of the FBI within the two-party system. “This is what I am seeking here,” he told Kelley, “that degree of independence which would assure that the FBI, under the wrong Director, under the wrong Attorney General, under the wrong President, will not be used as a private police force or White House secret police force, a political instrument of the party in power at any given time.”⁴⁶

When several senators asked about informer abuse, Kelley reassured them agents in most cases ably controlled their human assets. Kennedy asked how much money the FBI spent on informers: “Do you see from a law enforcement viewpoint difficulties or problems in indicating that ‘x’ amount of money is being used to pay informants since perhaps, people would want to pay more if they thought it was going to be insufficient, or would want to pay less?” Kelley did not want to disclose any details about the informer system: “There are certain schools of thought that the more you publicize the informant payments, the more uneasy becomes the criminal. And I don’t think there is any merit in such a matter. The only thing that you need to do is to be truthful about what the money is being put to, and at the same time, not disclose all the details of the work—such as you mentioned. And certainly the amount, there might be a breakdown even within such accounting as we have

mentioned, which would reveal, inadvertently, something about the work. When you reveal the name of the informant, you of course have broken a confidence which is irreparable.”⁴⁷

Kennedy, like virtually all of his colleagues, never challenged the integrity of the informer system. He only wanted details on its financing: “[N]o one is asking for the names of informants or the informants in particular categories. I’m just interested in the lump figure that is being used.” Kelley refused to promise disclosure of this information: “The use of informants is of long standing and must, however, be carefully controlled. And I think law enforcement has grown up some so that they can control the use of informants. It is one of the tools of the profession, but I seriously doubt the people realize to any extent the usefulness of the informant.”⁴⁸

Byrd, like Kennedy, asked about the criteria for informer deployment. “Who makes the decision as to what informant will be hired to infiltrate a group or to act within a group?” Kelley answered that individual agents recruit and manage informers: “Insofar as the development and designation of informants, actually, that is almost an individual agent’s responsibility. After he has contacted and developed an informant, it is discussed with his supervisor. If it appears this informant has the proper motivation, if he is not trying to milk us of money, if he is not, for example, possibly trying to infiltrate us—if, in other words, it appears that he can be a productive informant, yes, we will go into it.”⁴⁹

Byrd also voiced concern about illegal informer activity. This topic would emerge as a major issue during the Church Committee hearings. “What controls does the Bureau have to assure that persons who infiltrate groups do not themselves instigate criminal activity?” Kelley mentioned the peril of entrapment: “the controls of warning them first about entrapment; the controls of telling them what is procedure and what is not by frequent conferences with them to assure that they do not deviate from this course.” Byrd pressed further: “What action is taken if they do deviate from the course?” Kelley said, “Well usually—I don’t know of any violations such as this in my experience, but I would think that they would be dismissed immediately. They should be crossed off, no longer use them. You can’t trust one that does that.” Byrd pushed the issue of informer credibility. “How does the Bureau guard against the dangers that informants will fabricate or exaggerate in order to maintain good relations with their special agent contact and thereby assure continuing informant payments?”⁵⁰

The Senate easily confirmed Kelley as director. In preparation for his first major press interview on an ABC television news program hosted by Harry Reasoner, FBI staff wrote a fifty-seven page briefing paper for the director. This text demonstrates again institutional mendacity in its denial of coun-

terintelligence, dirty tricks activities. The American state could not admit publicly to its role as a control apparatus because efforts to suppress social movements conflict with American constitutional values. So they engage in deceit. For example, the FBI briefing paper argued the Bureau investigated political activists to “protect” the government from “danger”: “We feel that when individuals become engaged in activity which involves basic elements of Federal statutes designed to protect the structure and existence of the Government, it is not only the duty, but also the obligation of the FBI to determine the extent and degree of the danger to the Government.” Is nonviolent, peaceful protest dangerous? The director was instructed to repeat the official line: “The FBI does not maintain files or dossiers on individuals, prominent or not, for political purposes.”⁵¹

Does the FBI use informers as provocateurs? Again, public denial is necessary by a government nominally committed to free speech and assembly: “I know of no instance where FBI agents have utilized informants as provocateurs and we most certainly will not tolerate any such situation.” The historical record is littered with dozens of cases. The FBI compounds the lie by claiming that “an agent provocateur operation would be plainly illegal and, in fact, defeat the purpose of the informant. . . . Our Agents are carefully trained in this regard and informants used are thoroughly indoctrinated against initiating or causing any illegal activity. Informants are thoroughly investigated to insure they are stable and amenable to discipline and instructions. Informants are closely supervised so that any indications of lack of control of the informant or instability on the part of the informant can be detected and informant terminated.”⁵² Contrary to official ideology, informants often assumed illegal scripted roles to deal drugs to subjects, provoke police officers while posing as demonstrators, advocate violence to subjects, and help plan political crimes. There are enough known examples of their committing perjury in court to indicate that their credibility is a major problem.

Surveillance of the Left

About three months before Nixon resigned on August 9, 1974, Vice President Gerald R. Ford gave a series of public speeches around the nation to raise his profile with expectations he soon might be elevated to the presidency. Ford did not engage in public speaking during his first five months as vice president, but the times had changed as the crisis deepened in the White House. His first speech took place on May 9—the same day the U.S. House Judiciary Committee opened formal and public impeachment hearings against Nixon. Ford, a relative unknown, was on the verge of assuming the most powerful

office in the land, yet the American people knew little about him. As a congressman, he was undistinguished, authoring no major pieces of legislation. Although he rose in the U.S. House leadership to the position of Republican minority leader, he did not have much of a national following. His choice as vice president had surprised many. Now, though, he needed to appear in public and speak to the American people.

Just as protestors hounded Nixon, Ford faced the same type of resistance during these speeches. Small groups of demonstrators appeared wherever he spoke in May through July, raising placards against the Vietnam War and U.S. imperialism and yelling slogans favoring the impeachment of Nixon. FBI surveillance covered all of these protests. Ford's recently declassified FBI file documents these encounters with background information on dissident groups organizing against the vice president.

When Ford visited Eastern Illinois University in Charleston, an FBI source on campus reported that the student senate planned to stage a nonviolent impeach Richard Nixon demonstration during the vice president's speech. In a memo before the visit, the local FBI office informed the director about the anticipated "display of anti-Nixon posters and signs" and after the speech "pointed direct questions concerning impeachment of President will be asked." The day after the speech, the FBI office reported that "approximately twenty sign carrying demonstrators marched outside." Ford's speech about the "Watergate situation" took place "without disruption."⁵³

In Buffalo, Ford was met by about 150 protestors who chanted anti-Nixon slogans, such as "Dump Nixon, Junk Ford," with placards reading, "Jail the Rich, Free the Poor." Why does the FBI report the content of slogans in their memos? "Dump and Junk" does not mean kill or murder. As the local FBI office noted, "No arrests, injuries or acts of violence" were associated with Ford's visit. But the FBI wanted to get to the bottom of the conspiracy. The field office wrote a memo ten days later providing detailed background on seven radical groups that organized the protest.⁵⁴ I list the groups below. All of them were under investigation.

Vietnam Veterans Against the War (VVAW)
 Youth Against War and Fascism (YAWF)
 Communist Party, USA (CPUSA)
 Young Workers Liberation League
 Spartacist League (SPL)
 Attica Brigade (AB)
 Revolutionary Union (RU)

In the social history of the mid-1970s, the small Marxist-Leninist sectarian Left remained active. Does it matter that many of the people leading the anti-

Ford protests were revolutionaries? From the point of view of the government, it mattered greatly and they alerted the Secret Service about these demonstrations. While two of the groups listed above—VVAW and AB—had less definite ties to sectarian politics than the others, their leaders still embraced revolution in one form or the other, according to the FBI, and so they were monitored despite the end of COINTELPRO.

On May 24, 1974, students turned out against Ford at Michigan State University in East Lansing. The FBI tried to categorize their political backgrounds but proved unable to determine their precise character. The FBI wrote, "Source advised that the student demonstration cannot be characterized as any specific group but rather characterized themselves by saying that they want to be identified only as a student coalition and not represented by any one organization."⁵⁵ When Ford spoke in Manchester, New Hampshire, on May 31, 1974, he was met by about forty-five protestors affiliated with the Seacoast Area Workers Committee (SAWC). The FBI was certain that SAWC was a "front group" for the RU with Marxist-Leninist-Maoist politics.⁵⁶ At his next speech on June 5 in Columbus, Ohio, the FBI identified some of the same groups behind a protest of about one hundred people. They also referenced the Youth International Party or Yippies. The FBI noted a source inside the Yippies indicated members might duplicate Secret Service buttons and assume the identity of government agents.⁵⁷

In addition to the anti-Ford protests, nonsectarian Left groups also were subject to investigation. Two brief case studies of groups which neither organized protests nor advocated violence show the long arm of the state to contain radical sentiment. I detail surveillance of writers associated with the journal *Radical America* (RA); and policy researchers associated with the Washington, D.C., think tank, the Institute for Policy Studies (IPS). Both RA and IPS pursued intellectual projects related to radicalism and the New Left and did not embrace rigid ideological perspectives. RA functioned primarily as a history journal offering activists a useable past to inform their current politics. IPS lobbied Congress on legislation and advised a wide range of progressive groups and trade unions on current policy matters. Although they worked within peaceful and legal limits, the FBI said they posed a danger to the government and formed a conspiracy to radicalize the nation.

The FBI file on *Radical America* is 997 pages covering the years 1969 to 1973.⁵⁸ The journal was founded in 1967 as the unofficial publication of SDS in Madison, Wisconsin, with the young Paul Buhle as editor. Buhle, a University of Wisconsin graduate student, later became a major American historian. The first memo in the file is dated April 4, 1969, from the Milwaukee field office to the director. For an unknown reason, the FBI at that date began to take an interest in the journal. The SAC in Madison wrote, "Will receive and review future issues of 'Radical America' for pertinent theoretical information on

the New Left.” The previous year the FBI opened a special section of COIN-TELPRO devoted specifically to monitoring and neutralizing the New Left movement. So it took less than a year before RA came under their purview. The memo noted the address of the journal, named the editor and his home address, and searched for more information on “Radical America Komiks,” which they had acquired: “Will ascertain the identity of the individual or individuals residing at 695 Grove Street [in San Francisco], individuals who may be responsible for printing and mailing” of the “Komiks” magazine. The Washington, D.C., field office was told to “review Federal records for copyright of ‘Radical America Komiks’ allegedly obtained in 1969 by ‘Radical America.’”⁵⁹

The San Francisco FBI office reviewed the address on Grove Street and reported to Washington, “[T]here is no such number on Grove Street and that the building lot which would ordinarily be assigned this street number is empty.” The office searched their records on the counterculture press and also found nothing. “A review of recent issues of underground and new left publications published in San Francisco which contain comics were reviewed but none of these were captioned or identified as ‘Radical America Komiks.’”⁶⁰ The field office in Alexandria, Virginia, also proved unable to find any government copyright information on “Komiks.”⁶¹ This is not surprising: The counterculture and New Left press rarely copyrighted their publications, reluctant to accept the copyright process as legitimate.

Why the interest in *Komiks*? Buhle remembers, “*Radical America Komiks* was inspired by my childhood love for comics, and the appearance of Gilbert Shelton’s *Feds ’n Heads*, a comic from Austin, Texas. I dragooned Gilbert into editing *RA Komiks* and it appeared as the third number of the Underground Comix phenomena.” The FBI interest may have been due to “the marijuana/ LSD talked about in Gilbert’s comics. Or that SDS was in the process of being taken over by Weathermen (something that we, at RA, bitterly opposed). Or simply that *RA Komiks* was more widely circulated than any issue hitherto.”⁶²

On June 26, 1969, the Milwaukee FBI office wrote an eleven-page memo to the director summarizing their information on RA and noted they would “forward on a continual basis copies of ‘Radical America’ to the Bureau when they are issued in Madison, Wisconsin.” Again it is noted that RA was published by “SDS people” with Buhle as editor and a brief description of Buhle follows: “[text deleted] said on June 23, 1967, that Buhle was elected president of the SDS chapter at the University of Connecticut, Storrs, in January, 1966. Buhle withdrew from that position during the early part of 1967.” Buhle had enrolled in the doctoral program in history at the University of Wisconsin and RA “has an address of in care of Paul Buhle, 1237 Spaight Street, Madison, Wisconsin.” The FBI called the journal using a false cover: “By means of suitable telephonic pretext, a Special Agent of the FBI talked with [several

sentences redacted]. He said that 'Radical America' is a magazine published by UW [University of Wisconsin] SDS people." Besides Buhle, the FBI identified several other "officers" of the journal: Dan Georgakas, Henry Haslach, and Dave Wagner. Brief descriptions of each follow in the memo. About the journal's finances, the FBI noted RA "received a generous grant from the Rabinowitz Foundation and therefore is not presently suffering any financial problems." Three long paragraphs about RA finances are redacted in the file. The Bureau inspected the journal's bank records. Looking to connect the Black Panther Party to the journal, the FBI noted the BPP wrote a \$10 check to Buhle. "This check in the amount of \$10 was dated April 5, 1969, signed by Paul Buhle, on the 'Radical America' account at the First National Bank of Madison." A one-page description of the BPP is included in the file.⁶³

About a year later, the Milwaukee FBI office sent updated information on RA to Headquarters. They identified two new staff editors: James D. Tomisch and Martha R. Sonnenberg, both graduate students like Buhle at UW. Brief descriptions of each person include their home address and telephone number.⁶⁴ The FBI became an avid reader of RA. In January 1971, the Milwaukee office wrote a twenty-six-page memo summarizing its articles and activity. One article in particular caught the FBI's attention, a review by Michael Meerepol of *The Roots of the Modern American Empire* by William Appleman Williams. In a five-paragraph description of Meerepol, the FBI notes that the son of Julius and Ethel Rosenberg joined the Communist Party (CP) in 1962 and attended the SDS national convention in 1968. The November 1970 issue devoted to radical historiography also drew special notice: "The following individuals were identified by name as having worked on this issue: Mari-Jo and Paul Buhle; Ann Gordon; Roger Keernan; Jerry Markowitz; James O'Brien; Brian Peterson; and Paul Richards." A paragraph describing the background of each of these individuals is included and once again the FBI looked to connect the BPP to RA: "[text redacted] advised on Dec. 15, 1970, that the Black Panther Party (BPP) Chapter in New Haven, Connecticut, was recently contacted by 'Radical America,' 1237 Spaight Street, Madison. It is not certain concerning the purpose of the contact; however, financial assistance may have been given to the New Haven BPP." At this time the Milwaukee FBI office planned temporarily to close the investigation. The memo states:

To date, "Radical America" staff members have made no effort to use this publication as a means of stating their own ideologies and therefore it is felt by Milwaukee that no further investigation should be conducted in this case. Milwaukee is placing "Radical America" in a closed status subject to reopening at a later date if "Radical America" changes from a New Left theoretical journal to a newspaper format reporting current events of interest to the Bureau. Milwaukee

will continue to obtain copies of "Radical America" and after perusal they will be forwarded to the Bureau by Routine Slip.⁶⁵

The FBI reopened the investigation about eight months later. Why it commenced again is not entirely clear. Apparently, the FBI no longer viewed RA as an SDS publication but as a broader vehicle of the New Left. Of course, SDS had disbanded. There is no evidence that the FBI associated the journal with the Weathermen. Buhle remembers, in fact, that in addition to opposing the takeover of SDS by the Weathermen, the journal "never called for violence or even for demonstrating."⁶⁶ A September 14, 1971, FBI memo states:

The Bureau is requested to note character change in this case from Students for Democratic Society (SDS) to New Left, as it is felt by Milwaukee that a character of this nature better typifies the type of publication which "Radical America" stands for . . . "Radical America" now appears to be a New Left theoretical journal and, as such, is currently being investigated by the Milwaukee Division.

The reopening of the investigation might be related to content change in the journal toward a Marxist working-class focus. The FBI quoted the January–February 1971 issue, when the editors wrote, "The main focus for study will be the American Working Class, particularly its female and black component, its historical development, and its future prospects." The FBI noted the journal's printer "was identified as an Industrial Workers of the World (IWW) Union Shop. The IWW has been designated pursuant to Executive Order 10450."

The FBI also noted RA might soon move to Boston: "Will, through appropriate pretext inquiry and through security informants and sources, verify moving of 'Radical America' to address of 1878 Massachusetts Ave., 02140. . . . It is believed that the Buhles are currently in Cambridge making the necessary arrangements for the space at this address."⁶⁷ Several subsequent memos tried to verify the move. An FBI agent visited the 1878 Massachusetts address and found the name on the door as the Cambridge Institute Center for Community Economic Development. The Institute was the subject of a closed security investigation.⁶⁸ Another agent phoned the journal's office at the Buhle residence in Madison using a false cover to find where the journal was published.⁶⁹ Back in Boston, "sources familiar with New Left Activity in the Boston area were contacted regarding the re-location . . . none of the sources contacted were able to furnish any pertinent information." By January 1972, a source reported that RA occupied the second floor at the 1878 address, but little else: "Source advised that he could supply no information regarding the publication of any type of literature by this organization, nor could he identify any of the personnel connected with 'Radical America.'"⁷⁰

In all likelihood, the FBI at this time did not have an infiltrator working for the journal or they would have reported more internal details. Buhle recalls, "In Madison, during those years, we did so much speculating about the FBI, with pretty much no basis except the valid assumption that unofficial agents, students paid according to what they gathered, were abundant; and that the material they gathered often came from their fertile imaginations. Which is to say: we radicals didn't lead lives nearly as exciting as the FBI concluded." After the Buhles moved to Boston with the journal, the FBI searched their Madison apartment: "A month or so after I left my apartment in Madison, the local FBI asked the new resident if they could look in the attic. They carted away random uncollated pages of back issues, and I am guessing that they also carted away 'The Best Hits of Buddy Holly' LP along with the snow tires of a longtime friend who later became a Weatherman. What landfill found this stuff? We'll never know."⁷¹

In the declassified file, nearly half of each page is redacted based on security exemptions, so it is hard to evaluate the entirety of the monitoring. The last memo is dated February 26, 1973, and indicates that an agent again called the journal's office under false pretext "in an effort to determine distribution methods, circulation, source of funds, and other varied information." They spoke to an unidentified woman, who advised that "the subscribers to 'Radical America' have changed. Whereas before the subscribers used to be mostly students, now more people subscribe that do community work, etc. All employees are volunteers, and all the work is shared equally. . . . When asked if she felt 'Radical America' would continue publication, unidentified female stated she saw no sign of 'Radical America' terminating publication."⁷²

No memo suggests why the investigation closed in 1973. It is possible that the FBI did not declassify the whole file. Some of the individuals who edited the journal were under separate investigation. The February 26, 1973, memo concludes, "Boston remains alert to activities of individuals listed as members of the editorial board of 'Radical America.' Where activity warrants, cases have been opened and individuals' activities have been closely followed."⁷³

Marcus Raskin and Richard Barnet, former Kennedy administration officials, founded the IPS in 1963 to conduct independent research and consulting for progressive and liberal groups. As the New Left grew during the 1960s, the Institute increasingly aligned with its activities. Raskin became a vocal opponent of U.S. intervention in Vietnam. In 1965, he coauthored the *Vietnam Reader*, a key text of the anti-war movement. In 1968, he was indicted along with four other people for conspiracy to aid draft resistance. (The so-called Boston Five later were acquitted.) He developed a critique of the "national security state" along with Barnet, whose experience at the U.S. Arms Control and Disarmament Agency left him disillusioned with government. Barnet's

books include *Roots of War* (1972) and the pioneering *Global Reach: The Power of Multinational Corporations* (1974). Raskin and Barnet also were tied to the Pentagon Papers case. Daniel Ellsberg gave them a portion of the papers for their book, *Washington Plans an Aggressive War* (1971), before the *New York Times* serialized the report.

During the six-year IPS investigation (1968–1974), the FBI used more than sixty undercover informers, burglarized the IPS office, wiretapped their phones, and searched their trash. The investigation ended only after the institute initiated a civil rights lawsuit against the Justice Department and the FBI. Their 1,532-page file begins in November 1968 when the Bureau associated IPS with SDS and the New Left. The founding FBI document states, “[T]here may be some relationship between Ramparts and IPS. San Francisco, in its continuing investigation of Ramparts, and WFO, in its preliminary investigation of IPS, should be alert for any information showing a working relationship between these two organizations. In this connection, it is noted that Marcus G. Raskin, who has been a regular contributor to Ramparts, is one of the officials of the IPS.”⁷⁴ (*Ramparts*, a leading New Left newspaper, published in Berkeley, California.) The FBI began to refer to IPS as the “Think Factory of the New Left” and the “intellectual arsenal of the New Left.” Through the end of 1968, the FBI surveillance proved limited. Several agents using a false cover called the IPS office to collect information. An FBI representative using a false identity visited the office to collect literature. The FBI checked the organization’s incorporation status. In early 1969, FBI reports begin to mention not only the New Left but also the CP: “Individuals who have been identified as CP members or sympathizers of CP activities have participated in IPS functions. IPS representatives have also affiliated with known Communists.” The Washington, D.C., field office prepared a 109-page report on IPS covering all aspects of its activity and speculated wildly if IPS was “a cover for espionage activities.”⁷⁵

In January 1971, the FBI expanded the investigation “beyond its present stage which is limited to contact with established sources.” The new authority would require “interviews of students and faculty members of IPS” presumably including attempts to recruit some of them as informers.⁷⁶ In May 1971—after COINTELPRO recently ended—the field office requested funds for a “lookout” of the IPS office to track all people coming in and out of its premises. The FBI offered an exaggerated description of the IPS:

WFO believes that the Institute for Policy Studies (IPS) is the heart, brains and driving force behind the New Left movement in this country. IPS has formulated five year plans to radicalize the thinking of the American public, concentrating on our young people. Seventeen telephone lines service IPS and it is understood that IPS is in contact with every college in the country. There has also been some

indication that IPS may have contributed financially to the recent May Day demonstrations in Washington, D.C., which were in sore financial trouble. It also appears that IPS may have an illegal arm as well as a legal one. WFO needs a discreet lookout to determine if the above assessment is correct and to conduct an in depth survey of IPS.⁷⁷

The Institute soon realized it was being watched, as the FBI acknowledged in a memo. In October, the Bureau wrote, "IPS believes its office is under surveillance. On one occasion, WFO observed an employee of IPS checking the mail boxes of the building in which WFO operates its lookout. In view of the accumulated indications of paranoia on behalf of IPS officials, WFO is discontinuing its stationary lookout of IPS temporarily."⁷⁸

In December, Hoover directed the field office to cooperate with the U.S. House Committee on Internal Security, which planned hearings on IPS.⁷⁹ Soon after Hoover died, Gray continued the assault on IPS by asking Felt on May 11, 1972: "What do we know about finances of IPS? What ideas do we have re curtailment? Any laws being violated in the financial realm?" For several years, the FBI obtained information from the Internal Revenue Service on IPS, but found no irregularities.⁸⁰ There also is a classification change for IPS in early 1972. Instead of being grouped under the label "Internal Security—New Left," the new designation became "Internal Security—Revolutionary Activities." On one occasion when agents sorted through the IPS trash at a garbage dump, they found eight typewriter ribbons and the FBI Laboratory was "requested to reduce the contents of the ribbons to readable text."⁸¹

Apart from surveillance of the group, the FBI monitored many of its leaders in separate investigations. By late 1972, the FBI started case files on the "majority" of the approximately forty-five IPS employees.⁸²

In early 1973, the FBI prepared a seventy-nine-page report on IPS activities. In introducing this material, the field office noted difficulties in its surveillance coverage: "The organization is fragmented into a wide variety of studies and interests, the vast majority to be within legal limits. The words 'appears to be' were used here because WFO does not know the full extent of IPS activities." They referred to their informers: "The difficulty of placing informants in the organization is pointed out in the first section of the report. If and when an informant is successfully planted in IPS, that individual can only report on the limited activities in which he or she is involved. While [text redacted] information was considerable, it cannot be considered to be complete, in view of its nature and the clandestine nature of IPS." Of course, no intelligence operation can be total or complete. Yet this is the FBI goal and the lack of findings of illicit behavior prompted them to dig deeper in search of a secret program. As they report, "We are dealing with an organization the size of a large Embassy, operated by radical individuals with the expressed goal of

radicalizing America and its institutions. The possibility of illicit actions are ever present and seemingly as difficult to detect as with a Communist bloc country.” The FBI again notes “personnel at IPS are obsessed with the idea of FBI surveillance.” The FBI lookout often noticed Raskin and Barnet, for example, conducting conversations on the street “in low tones and in a guarded manner” to avoid what they thought might be wiretapping of their offices.⁸³

On May 24, 1973, unknown individuals burglarized the IPS office under strange circumstances. Two anonymous phone calls to the home of Raskin said that “detectives” had conducted a break-in. The IPS hired attorney Mitchell Rogovin, who wrote the FBI director to conduct an investigation “not simply into the alleged burglary but rather into what appears to be a pattern of illegal surveillance including illegal entry by law enforcement agencies.” Rogovin said IPS long suspected surveillance: “Over the past four years, the Institute has been advised on a number of occasions that it had been surveilled by federal and local law enforcement agencies, including but not limited to, electronic surveillance and breaking and entering.”⁸⁴ The WFO and the Intelligence Division viewed Rogovin’s allegations as “provocative actions in an attempt to gain access to FBI files.”⁸⁵ A few months later Rogovin informed the U.S. Senate Select Watergate Committee of the FBI’s alleged illegal activity. The *Washington Post* wrote a story, “Institute Says FBI Spied on It,” in which they cited two former FBI agents who admitted the Bureau targeted IPS.⁸⁶

The FBI and the Justice Department would soon come into conflict over the investigation. The FBI told the Civil Rights Division (CRD) of the Justice Department that its own internal review of alleged civil rights violations against IPS found no improper conduct by FBI agents. This included denials of electronic surveillance and burglaries.⁸⁷ The Justice Department took the unusual step of asking to review the whole IPS case file. The FBI resisted this request. The SAC in the Washington field office wrote the director, “The CRD has no greater right to review the Bureau’s raw files than any other agency or division to which we disseminate information since, among other things, we have the obligation to protect the identity of sensitive sources and techniques which would be revealed.” The WFO expected the Justice Department to accept its word as final: “While the CRD may make any inquiry of the Bureau, it should be expected to accept the Bureau’s parole concerning the lack of any illegality or impropriety by bureau employees in connection with the IPS investigation . . . I feel it intolerable that the CRD should consider attempting to test the Bureau’s credibility by a review of raw field office file.”⁸⁸ Apparently, the FBI won this confrontation. Instead of obtaining full access to the IPS file, the CRD agreed only to receive from the Bureau a list of all FBI memoranda

and reports on IPS.⁸⁹ As a result, CRD was unable to verify if the FBI had engaged in a cover-up.

On February 20, 1974, IPS and three of its officers filed a civil lawsuit against the government for spying.⁹⁰ The legal action had a dramatic effect on the investigation. A week later, the WFO decided to close it because “a paucity of information exists that would support the likelihood of IPS or its leaders to be functioning in violation of Federal law.” Headquarters concurred with this decision: “Additional investigation would likely lead to additional civil rights allegations, *infra*, being made against the FBI and its personnel.”⁹¹

Although the case closed, the FBI continued to write select memos about the institute. In May 1974, the FBI again tried to find incriminating evidence by consulting its informers: “Eighteen confidential sources who have furnished reliable information in the past, and who are familiar with various phases of revolutionary and extremist activities in the greater Washington, DC area were contacted regarding any known illegal activities committed by the Institute for Policy Studies or its principal leaders.” This canvas turned up nothing against the institute.⁹² In August 1975, the director wrote the attorney general about an IPS questionnaire regarding U.S. intelligence activities. The director speculated that “some of the information in the document might be classified or based on classified information.”⁹³

Senate Church Committee

In the media, 1975 became known as the Year of Intelligence with sensational headlines depicting government assassination plots, political sabotage, and illegal surveillance overseas and at home. For the first time Congress began asking far-ranging questions about unchecked government surveillance practices. It probed in-depth abuse of power by the different components of the intelligence community—CIA, FBI, NSA, and DOD—spanning several decades and raised questions about the danger posed to democratic institutions. The wide-ranging crimes of the CIA topped the agenda. Illegal activity by the FBI formed a secondary but important focus. Overall, it proved easier for Congress to reckon with spying and covert activity overseas than at home. When the government spied on and harassed American citizens, as opposed to foreign subjects, it led to an embarrassing situation implicating officials in crimes contrary to U.S. law and constitutional values. FBI conduct created a legitimacy problem for the federal government, which congressional investigations could restore only after exposing and critiquing the crimes, and calling for reform.

Congress did not probe FBI conduct from a “radical” point of view seeking to expose government crimes to undermine the legitimacy of the system. Rather, many members believed the FBI represented unaccountable “big government.” During the long Cold War conservatives and many liberals supported the Bureau to fight Communism. However, once Hoover died the consensus about FBI conduct began to collapse. The Watergate scandal further eroded trust in the executive branch both inside and outside the government. Was elite misconduct limited to Nixon? The secrecy that kept a lid on decades of criminality at the FBI would soon be lifted. To some extent, congressional investigations expressed the outrage of the people. The corruption of national politics seemed to conflict with a mass commitment to democratic political culture. Americans increasingly came to recognize that Hoover resembled a “strongman” and popular opinion long expressed skepticism toward demands for the enlargement of unaccountable power.⁹⁴

On January 27, 1975, the Senate voted overwhelmingly (82 to 4) to establish the Senate Select Committee on Intelligence Activities. Democrat Frank Church of Idaho served as chair. Senate Majority leader Mike Mansfield asked Kelley to preserve FBI records in preparation for hearings: “We are writing to request that you not destroy, remove from your possession or control, or otherwise dispose or permit the disposal of any records or documents which might have a bearing on the subjects of investigation.” The director immediately complied with this request. Two days later Kelley sent a memo to all SACs and LEGATs: “Upon receipt of this communication, recipients are instructed to hold in abeyance any records destruction program previously approved by statute or regulations.”⁹⁵

While preserving its records, the FBI leadership initially hoped to release only a minimum amount of information from its files. The FBI believed they could satisfy congressional investigators by providing summaries of files, rather than the raw files themselves. Loch K. Johnson, who worked as a Senate staff assistant to Church and a committee investigator, recalled:

After the first meeting with the FBI to discuss the primary topics of interest to the committee, the bureau regaled the staff with a slide presentation—a classic dog-and-pony show. The last slide showed a couple of severed black heads lying in pools of blood on the street. That was designed to emphasize the danger loose in the land. The moral: leave the FBI alone to combat the savage forces that produced this and other horrors.

F. A. O. Schwarz, the Church Committee’s chief attorney, recalls, “The Bureau in the early months was clearly trying to persuade us—or scare us—into doing a slap-dash job.” Only the intervention of the attorney general in July 1975 helped liberate FBI files for the Committee: “We had great difficulties

before then, but after that point, once there was an agreement with the Attorney General, they were indeed very cooperative, and we did see the full files, absent only the names of informants.” The FBI eventually turned over “thousands of bureau papers.”⁹⁶

The hearings on the FBI began on November 18, 1975—almost ten months after the Church Committee formed—and lasted only seven days. Chairman Church began by noting the past secrecy of FBI policing practices: “There has never been a full public accounting of FBI domestic intelligence operations. Therefore, this committee has undertaken such an investigation.” And he placed the responsibility for criminal FBI conduct not only in the Bureau but also in the presidency and the Congress: “If fault is to be found, it does not rest in the bureau alone. It is to be found also in the long line of Attorneys General, Presidents, and Congresses who have given power and responsibility to the FBI, but have failed to give it adequate guidance, direction, and control.”⁹⁷ Church viewed FBI conduct as creating a legitimacy problem for the federal government and he hoped the committee would help to restore confidence.

Democratic Senator Walter Mondale of Minnesota emerged as the committee’s toughest FBI critic. After hearing the broad range of dirty tricks conducted against Martin Luther King Jr., he compared the FBI to the KGB: “Well, I must conclude that apart from direct physical violence and apart from illegal incarceration, there is nothing in this case that distinguishes that particular action from what the KGB does with dissenters in that country.”⁹⁸ Mondale only partly was correct: in this and other select instances the FBI encouraged violence or false imprisonment. Yet Mondale offered a scathing critique of political policing. Reflecting on the first day of the FBI hearings, he said, “This committee heard some of the most disturbing testimony that can be imagined in a free society.” The FBI “took justice into its own hands by seeking to punish those with unpopular ideas.”⁹⁹

Did FBI conduct undermine the ideal of a free society? No senator suggested this “radical” conclusion. Instead, some advocated the weak “rogue elephant theory”: The intelligence community acted on their own without presidential or congressional approval. A rogue entity was responsible for committing crimes, not the American government as a whole. This theory is shortsighted: Government leaders may not have known specific details of all covert operations, but they were aware of overall goals and surveillance methods. As former attorney general Nicholas deB. Katzenbach told the Committee, “Mr. Hoover annually described those [intelligence] activities to the House Appropriations Committee. The bulk of that testimony was off the record. Nevertheless, it is clear that each year at budget time, Congress had ample opportunity to explore those activities in some depth with Mr. Hoover.” The Appropriations Committee signified its support for FBI conduct by almost always agreeing to Hoover’s budget

requests. Moreover, the FBI practice of building political dossiers was long known. For example, in 1960 Hoover told Congress the Bureau maintained more than five million files and forty-seven million index cards on subjects.¹⁰⁰

How did the FBI avoid congressional inquiry for so many years? Members of Congress feared Hoover's power to red-bait critics or otherwise undermine them. They assumed Hoover amassed political intelligence and might dig up dirt on them if they directly challenged FBI power. Katzenbach, who served under President Kennedy, noted, "Anyone contemplating an investigation of Mr. Hoover's Bureau would have had to face the strong likelihood that Mr. Hoover would have vigorously resisted. At least he would have asserted that the investigation was unnecessary, unwise, and politically motivated. At worst, he would have denounced the investigation as undermining law and order and inspired by Communist ideology. No one risked that confrontation during his lifetime."¹⁰¹

As the hearings on the FBI came to a close, Attorney General Edward Levi outlined plans for a new FBI intelligence gathering role to end a long history of political policing. The implementation of the so-called Levi Guidelines in 1976 would mark a historic change in the history of the Bureau. Instead of investigating "subversives," a very broad category of ideological offenders, the FBI would limit themselves to individuals or groups who planned to break the law. The political beliefs of subjects were no longer a matter of legitimate contention. The process of changing the FBI had begun in May 1975, about four months after the commencement of the Church Committee, when Levi organized a Justice Department committee to review FBI conduct and draft guidelines for the future. FBI "counterintelligence" that consisted of harassment of subjects would be forbidden. Levi hoped to "place strict controls upon the use of any technique by the FBI which goes beyond the gathering of intelligence. COINTELPRO was the name given the use of such techniques. As I have said before, some of the activities in COINTELPRO were outrageous and the others were foolish."

He outlined five areas where spying on Americans was justified. Of these five areas, the FBI would be able to investigate subjects based on their political ideas in only one area: "overthrowing the government of the United States or of a State." While the Supreme Court decision in *Yates v. United States* (1957) established that advocating the overthrow of the government is protected speech and cannot result in legal prosecution, the FBI still would be empowered to monitor American revolutionaries. One other area created potential civil liberty problems. The FBI could investigate subjects related to "creating domestic violence or rioting when such violence or rioting would necessitate as a countermeasure the use of Federal armed forces."¹⁰² So the urban race riots of the late 1960s, if repeated, would justify FBI investiga-

tion. Since most race riots involve spontaneous formations of angry people in the street responding to a case of perceived police brutality, how would the FBI implement investigations? The final Levi Guidelines did try to make a distinction between peaceful street protests and riots: "In the absence of any information indicating planned violence by a group or enterprise, mere speculation that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this section." What about cases of peaceful civil disobedience? Civil disobedience falls between the category of ordinary street demonstrations and riots. Presumably, civil disobedience would not activate investigations unless federal armed forces were deployed to contain them.

Black Bag Jobs

In late spring of 1976, as the Church Committee neared completion of sixteen months of hearings, the Justice Department initiated the Surreptitious Entry Task Force to study illegal break-ins by the FBI. Hoover usually asked the attorney general for permission to conduct wire taps, but did not consult with the Justice Department about break-ins because they were against the law. As the attorney general wrote Hoover in 1952, "The use of microphone surveillance which does not involve trespass would seem to be permissible under the present state of law." However, break-ins to plant microphones were recognized as illegal: "Such surveillances as involve trespass are in the area of the Fourth Amendment, and evidence so obtained and from leads so obtained is inadmissible."¹⁰³ Thus, information gathered during black bag jobs could not be used in a court of law. But Hoover used this technique anyway to gather intelligence. Until 1966, when Hoover ended the routine use of break-ins as a spying practice, the FBI conducted them without authorization. Official William C. Sullivan indicated in a 1966 memo,

We do not obtain authorization for "black bag" jobs from outside the Bureau. Such a technique involves trespass and is clearly illegal; therefore, it would be impossible to obtain any legal sanction for it. Despite this, "black bag" jobs have been used because they represent an invaluable technique in combating subversive activities of a clandestine nature aimed directly at undermining and destroying our nation.¹⁰⁴

After 1966, the FBI continued to conduct break-ins in only select cases. Hoover limited the practice because he had reached mandatory retirement age and feared being forced out of the director's job if the public discovered he approved break-ins.¹⁰⁵

The Task Force narrowly focused on break-ins during Weatherman investigations in New York in 1972 and 1973. In order to determine the full extent of illegal activity against the Weathermen, the Task Force reviewed all major Weatherman files at FBI Headquarters and in more than two dozen field offices. The agents looked for any documents that might point not only to a break-in but also to illegal wiretaps or mail opening. On May 28, 1976, the Justice Department ordered the FBI not to destroy documents relating to surreptitious entries. Three days later Kelley wrote all SACs and LEGATs to implement this order.¹⁰⁶

The Task Force identified eighty-one volumes of Weathermen FBI documents, including information on all known members, supporters, and relatives and acquaintances of fugitives. According to the director, “Many of these documents are of a sensitive nature and relate to intelligence sources and methods and ongoing operations.” Justice Department officials were authorized to inspect these documents and the director warned government attorneys are “inexperienced as relates to clearances, accountability, transmission and storage of classified national security information and material.”¹⁰⁷ In the Bureau’s view, their raw files should not be viewed by anyone, including officials at the Justice Department, and the Task Force opened a lid on them.

As a result of the Task Force investigation, the Justice Department issued indictments on April 10, 1978, against three top FBI officials—Felt, Miller, and Gray. They were charged with violating the Fourth Amendment prohibition against unreasonable government “searches and seizures.” At the time of the indictments, all three officials had retired. Putting them on trial was unprecedented. The Carter administration sent a strong signal: It would not tolerate illegal FBI conduct.

Why these officials and not others? Felt and Miller directly authorized the break-ins. As deputy associate director, Felt was privy to virtually every document generated by the Domestic Intelligence Division. Miller served as assistant director in charge of the Domestic Intelligence Division, which conducted the Weathermen investigations. As career FBI officials, Felt and Miller served more than fifty years combined. Gray as director was responsible for the behavior of his subordinates, although he did not know about the break-ins before they occurred.

The victims of the break-ins included the relatives and acquaintances of Weathermen fugitives Jennifer Dohrn, Judith Clark, Susan Roth, Frances Shreiberg, Benjamin Cohen, Mortimer Bookeshir, and Leonard Machtinger.

“This is an unusual indictment,” the lawyers for Miller argued. “The offense alleged is that the defendants conspired to ‘utilize the technique of surreptitious entry’ in the Weatherman investigation in 1972–1973. We have found no statute which prohibits the technique of surreptitious entry. On the

contrary . . . the Government has contended in many cases that surreptitious entries are not inherently unlawful, even in cases not related to national security.”¹⁰⁸ To an extent, Miller’s attorneys had a legitimate point. Before 1978, the Congress never passed laws about FBI break-ins, refusing to engage such a controversial matter. The Justice Department gave the FBI wide latitude by declining to conduct oversight. In short, the Congress and the president let Hoover run the FBI as he pleased. This does not mean that break-ins were legal; rather, this illegal technique was used in the absence of any outside supervision.

The defendants argued that Hoover and Sullivan, who directly oversaw COINTELPRO, made exceptions to the break-in ban after 1966 so their actions were not an aberration. Sullivan had noted in an interview, for example, that in 1970 and 1971 he orally approved some break-ins. He said this was not often done, “but it was not excluded either, if the case was important enough.” He also recalled three instances in which Hoover at the time approved of break-ins.¹⁰⁹

The defendants engaged in very broad requests for information to prepare their defense. They made 153 separate discovery requests calling for the production of materials and the government agreed to comply in full with twenty-nine of them and in part with fifty-one. Judge William J. Bryant noted, “These Weatherman files contain all known information concerning the FBI’s Weatherman investigation, including information relating to the use of warrantless surreptitious entries and searches, wiretaps, microphone installations, mail covers, informants and undercover agents.”¹¹⁰ Only material up to June 30, 1974, was included in discovery. The Weatherman investigation continued past this date but none of the defendants were employed by the Bureau after that time.

As one example of a discovery request rejected by the judge, Gray requested all “June Mail” and “Do Not File” records from 1960 to 1978 in an effort to uncover information on every act of electronic surveillance, mail opening, and break-in. The judge limited the request to only Weatherman records. Gray also asked for all reports by the FBI’s Inspection Division to establish the proposition that “FBI inspectors routinely destroyed papers in field offices relating to black bag jobs.” The judge ruled that Gray’s claim was “accurate as to procedures used prior to Director Hoover’s 1966 ban on black bag jobs. However, government counsel are unaware of any support for the proposition of that such routine destruction continued as a matter of policy thereafter.”¹¹¹ He rejected this request. To date, few if any FBI Inspection Reports have been declassified.

The Bureau destroyed some Weatherman files. Initially, the Task Force on August 19, 1976, seized twenty-two cabinets of material from the FBI. Several

months later they returned portions of the files and at that point the FBI destroyed substantial material. How much was lost is unknown. According to one estimate, 20–40 percent of the files willfully were destroyed. An FBI official said, “There is no way we could ever determine what was destroyed since only the folders seized by the Department were inventoried, but the contents of the individual folders were not.”¹¹² Was file destruction by the government enough for the judge to throw out the case? No, but as one FBI official noted, it could “have a severe impact on a most important commodity in this case, i.e., the government’s credibility and good faith in the eyes of the Court.”¹¹³ Incredibly, some additional file destruction occurred by the Justice Department. As government prosecutor Barnet D. Skolnik admitted on July 7, 1978, “Additional loss and destruction has occurred since then [1976], which we have not attempted to trace. Folders have been completely destroyed, culled for nonessential material, and rearranged—all in the normal course of business. It is impossible to determine the quantity of material lost.”¹¹⁴

Is There a Weatherman Cover-up?

The FBI conducted an internal “damage assessment” about revealing their intelligence secrets during a public trial. They hoped to assure the confidentiality of their informers or other casual sources. Defense attorneys located about 1,200 Weatherman documents they wanted to introduce at trial to demonstrate the crimes of the Weatherman and their alleged foreign influences. While the names of informers and third-party sources would be redacted, the information if disclosed would tend to suggest their identities. The FBI cited several examples: “A physician furnished details regarding his treatment of an individual affiliated with the Weatherman. While the doctor’s name will be redacted, the disclosed information, if read by the patient, would undoubtedly disclose his identity.” The FBI feared that the cooperation of some New Left activists also would be disclosed: “Also, contained in these documents is information furnished by people who were involved with various New Left groups and later cooperated. Some of the more detailed information obtained during our investigation of the Weatherman was obtained in this fashion. Because the information is so detailed, disclosure will, in some instances, pinpoint the source of the information even when the identity is redacted.”

This is not a minor issue from the FBI’s point of view. Informers formed the cornerstone of the intelligence system. The system was already under strain from civil lawsuits against spying: About a dozen were filed in the mid-1970s, putting the FBI on trial for the first time in its history. Some informer identities were disclosed in these lawsuits, particularly if the informers engaged in illegal activity. Moreover, in 1974 Congress for the first time made FBI records sub-

ject to the Freedom of Information Act (FOIA). The FBI leadership bitterly opposed the application of the FOIA to its records, worried that disclosure would adversely impact their ability to recruit informers. FBI intelligence official E. J. O'Malley commented on these questions in a secret memo.

INTD [Intelligence Division] is seriously concerned and objects to the disclosure during trial of information furnished to the FBI in confidence by public, private, or foreign sources. It is not sufficient to redact the identities of banks, telephone companies, and physicians if the nature of the information itself will compromise the source. Such a compromise directly relates to the keystone on which rests the FBI's ability to function as an investigative agency. . . . The chilling effect on informant development caused by the mere existence of civil suits against the FBI and the Freedom of Information Act (FOIA) is well known. We have no control over the institution of a civil suit against us or the information we legally release under the FOIA, but the costly perception persists in some areas that we cannot protect our sources. How much greater will be the damage if Government releases compromising information in a prosecution? It is no defense to say that the disclosure was made in a very special case or that it was disclosed despite FBI objections. Nor will it help to say that we are seeking relief from FOIA requirements. The impact on the disclosure will be squarely on the FBI and it is we who will pay the price in terms of future support from public utilities, banks, and private citizens.¹¹⁵

The FBI also worried about intelligence disclosure during oral testimony at the trial. Government officials who testified were told by the judge not to stray beyond the content of FBI documents presented in court. Testimony would be limited to preclude a witness from putting into evidence information which had been removed from a document. Although informer identities would be protected, the Bureau decided parents and close relatives of Weatherman fugitives who cooperated with the Bureau could be identified in court.¹¹⁶

In addition, the FBI worried that revelation of past break-ins could cause damage to their public reputation. The defense wanted to introduce evidence about other FBI break-ins beyond the Weatherman investigations conducted at about the same time. They referred, for example, to an FBI break-in against the U.S.-China People's Friendship Association (USCPFA) in San Francisco on February 15, 1973: "Disclosure would degrade the effectiveness of the continuing full domestic intelligence investigation of the Revolutionary Communist Party (formerly the Revolutionary Union)."¹¹⁷ Moreover, the FBI did not want to disclose break-ins against two top U.S. Communist Party leaders, Claude Lightfoot and John Abt, who remained under investigation at the time of the trial. Although the Lightfoot and Abt break-ins occurred during the late 1950s, the FBI feared their exposure at any time would blow the cover on their

efforts against the CP. The FBI argued, “The disclosure of either [break-in] is likely to place live assets in substantial jeopardy.” Specifically, they referred to the so-called operation “Solo” spying—“a sensitive operation directed against the CPUSA for over 25 years.” Disclosure of the Lightfoot break-in might reveal the identity of a Solo asset who was close to Lightfoot, a national Communist leader in the Chicago area. Abt was a prominent attorney who defended Communist members from attacks by the United States government. Disclosure of the Abt break-in might reveal a Solo asset in New York causing serious damage to the future collection of intelligence. The Intelligence Division of the FBI argued:

Admission of the Abt entries allows additional assumptions of more serious consequences to be made. The CPUSA and the Soviets could first assume we had access to and understanding of all CPUSA records, including financial ledgers reflecting receipt of funds which came from the Soviets, maintained in Abt’s office, at least in the late 1950s. They could also assume we had conducted entries against similar targets, perhaps the offices of other national figures in the CPUSA and of the CPUSA itself. The task of conducting a damage assessment of the loss to be expected when all CPUSA premises must be considered would be formidable and, we believe, less likely to be attempted. Once oriented to Abt and other targets of similar stature, the assessment is likely to be attempted and could be highly damaging to our investigation program and the security of our assets.¹¹⁸

Moreover, the whole Solo operation might collapse if these assets were revealed. The FBI told the Justice Department: “The international repercussions of the uncontrolled collapse of the SOLO operation are beyond our capacity to evaluate, particularly since the United States is in a time of increased tension with the Soviet Union.”¹¹⁹

The so-called “Keith” case, decided by the U.S. Supreme Court in June 1972, proved pivotal to the government’s prosecution. Otherwise known as *U.S. v. U.S. District Court*, the decision was issued shortly before the first break-in noted in the indictment. In Keith, the court prohibited warrantless entries in domestic security cases. Therefore, the defendants should have known the Weatherman break-ins they authorized were against the law. Moreover, soon after Keith, Attorney General Dick Kleindienst met with Felt and ordered the FBI to remove four telephone taps and two hidden microphones from Black Panther and Weather Underground targets (but to leave in place one directed against the U.S. Communist Party).¹²⁰ Felt knew that the Justice Department would not support additional illegal break-ins without its approval.

Did Nixon give approval for the FBI break-ins? The defense suggested this line of inquiry, but could not document it. The only evidence consisted of

a memorandum prepared before the Keith decision by Robert Haynes, FBI liaison to the White House, reporting that President Nixon wanted the FBI to use all means possible to stop terrorist activities. Felt also argued that Nixon's 1970 Huston Plan approved of break-ins against domestic targets, including the Weatherman. Although Hoover rejected the plan in a memo to the attorney general, the defense argued without any documentation that parts of the Huston Plan secretly were implemented. In 1978, as FBI officials prepared material for the trial, they rejected this claim: "We have not located any material in Bureau files indicating the Huston Plan was initiated."¹²¹

The Justice Department claimed they did not know of the Weatherman break-ins until the Task Force exposed them in 1976. Nixon, who expressed sympathy for the defendants at the time of the trial, never testified he authorized the break-ins. The judge wrote, "It is undisputed that there was never any specific Presidential or Attorney General authorization for the searches." Both Felt and Miller were aware of this lack of higher authorization. Gray denied he gave authorization to Felt or Miller. However, Gray's desire to break the Weather Underground included this note to Felt on July 18, 1972: "Hunt to exhaustion. No holds barred." Felt said, "I was convinced by his remarks and by that handwritten note that the use of surreptitious entries was to be resumed in domestic terrorist cases. I proceeded on that assumption."¹²² Felt elaborated in an interview:

I really have no strong, clear recollection of conversations with Gray where he specifically said yes, this is all right. My conversations were with Miller, and Miller told me of his conversations with Gray. However, you'd have to understand what was happening in the FBI at that time. Believe me, you were lucky to get Mr. Gray's ear for five minutes because he was extremely busy. He was traveling all over the country. So perhaps one Assistant Director would talk to him for a few minutes today, another tomorrow, and much of what I got was second-hand.¹²³

The break-ins occurred in New York and New Jersey. Should the Justice Department prosecute the specific agents who conducted the entries? The government decided these "street agents" were innocent of wrongdoing because, in contrast to Felt or Miller, they were following orders from a higher authority. Still, students of state crimes and human rights often argue that low-level collaborators should be held accountable.

In a last attempt to defend themselves, Felt and Miller argued the Weatherman collaborated with foreign governments. The Keith decision did not apply to break-ins in foreign intelligence cases. The defense lawyers asked in discovery for any FBI documents related to the foreign ties or influence of the Weatherman. As the FBI searched their files for this material, they again

worried about exposing the sources of their intelligence: "In order to avoid disclosure of foreign influence data obtained by the Bureau from cooperative foreign intelligence agencies," Special Counsel John W. Nelds Jr. wrote, "the government made four admissions concerning foreign influence . . . available for use at trial." Of the four, two of the admissions are redacted in the declassified Gray file. The remaining two include travel to Cuba by WUO members with the assistance of the Cuban government and "leaders of SDS and WUO were also in contact with suspected Cuban intelligence officers." In addition, "Members of the SDS and WUO were in contact with representatives of the USSR."¹²⁴ However, the court concluded that the level of foreign influence was not substantial. It did not help the defense that in 1976 Miller told *Time* magazine, "I wish I could tell you that the foreign ties of the Weatherman were a factor, but I can't. We looked into those connections and didn't find enough to justify the suspicion of espionage. My motivation in approving the break-ins was the bombings, the terrorism and my own desire to solve those cases."¹²⁵

The prosecution's case against Gray was considerably weaker than against Felt and Miller. Gray did not know about the break-ins either before or after they occurred. He never saw any of the memoranda in connection with them. Field agents suggested the details for break-ins and Gray never knew of these suggestions.

The criminal proceeding lasted two years. The trial itself lasted about seven weeks. Several victims of the break-ins testified, in addition to Miller, Felt, and Gray. Five former attorney generals as well as Nixon took the stand and all but one of these officials (Ramsey Clark) supported Felt's defense: The warrantless break-ins were justified to defend national security. They disregarded the legitimacy of Keith. It is somewhat surprising that Nixon defended Felt considering Nixon long suspected Felt leaked information against him during Watergate. Nixon buried the hatchet to fight any attack on government spying. Nixon claimed the presidential authority to order such searches long had been delegated to the FBI director.¹²⁶ Felt recalls, "I have never regarded surreptitious entry for intelligence purposes as illegal. And this is the way all the people in the FBI felt." On the day of the arraignment, about 1,200 agents and former agents held a vigil in front of the U.S. Courthouse in Washington to support their former colleagues.¹²⁷ Such mass disrespect for Keith seemed alarming. But the agents were gagged: Director Webster had told them to refrain from public comment on the prosecution.

The defendants never served jail time despite a guilty jury verdict for Felt and Miller. In 1981, President Reagan pardoned both leaders. Reagan said:

America was at war in 1972, and Messrs. Felt and Miller followed procedures they believed essential to keep the Director of the FBI, the Attorney General, and the President of the United States advised of the activities of hostile foreign pow-

ers and their collaborators in this country. They have never denied their actions, but, in fact, came forward to acknowledge them publicly in order to relieve their subordinate agents from criminal actions.

Four years ago, thousands of draft evaders and others who violated the Selective Service laws were unconditionally pardoned by my predecessor. America was generous to those who refused to serve their country in the Vietnam war. We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threatening our nation.¹²⁸

Carter Appoints a New Director

FBI policing emerged as an issue in the 1976 Presidential campaign. Carter, as an outsider from Georgia championing an anti-Washington posture, called for Kelley to resign. Mondale, his vice presidential running mate, criticized both the FBI and CIA in strong terms. He told *Time* magazine, “Those bastards down there have got to figure out that there are some rules in this society that they’re going to live with, along with everyone else. They’re going to tell the truth; they’re going to obey the law, and they’re going to listen to people. . . . But the idea that you can defend this nation within the Constitution, under the law, and tell the truth is still considered a sort of childish, feminine position.”¹²⁹

Meanwhile, President Ford stuck by Kelley, and Kelley appreciated the support, penning a note to the president on September 9, 1976: “I sincerely appreciate the fairness so evident in the manner you dealt with the situation involving me. I realize how easily you could have taken a different course and one which could have been less troublesome . . . I do hope the problems of the FBI soon subside. I’ll do all I can to achieve this.”¹³⁰

However, Carter changed FBI directors in early 1978. By the time William Webster, a former federal judge, assumed the mantle, the turbulent era of the 1960s and early 1970s largely had subsided. Overall, the level of political violence declined. According to FBI statistics, about one hundred violent political acts occurred annually in 1975, 1976, and 1977 in contrast to fifty-two acts in 1978 and forty-two acts in 1979.¹³¹ Less violence coincided with fewer security investigations. Webster shifted some priorities. After Watergate, the area of “public corruption” became a top concern. By the end of 1978, the FBI conducted about one thousand public corruption cases focused on crimes by congressmen, governors, state legislators, mayors, and police chiefs—almost double the number of cases when Webster assumed the director’s job earlier in the year.

Yet the FBI definition of public corruption was flawed, limited to government officials who took bribes. By concentrating only on the transfer of money, they ignored “abuse of power” crimes. For example, while no govern-

ment officials ever went to prison for political policing, if government agents tempted a mayor or congressman to accept money to promote a particular policy they faced prosecution. Moreover, the FBI's public corruption cases had a built-in ideological goal: to restore public confidence in government, fighting the "credibility gap" that developed after Watergate and the Church Committee hearings. By the late 1970s, many Americans had lost faith in their elected leaders. As Webster noted, "It's reported that public officials today rank somewhere in popularity below that of the used car salesman." While he derided popular "cynicism" toward public officials, he offered no admissions that past bad behavior by the FBI itself helped shaped this view. Moreover, why should the scandal-ridden FBI become empowered to protect the integrity of the institutions of government? The immense power to investigate—and destroy the reputation of accused public officials—bestowed a high level of public trust on a Bureau which did not seem to earn it. Webster noted in a speech, "That is a very sensitive thing, and just to have it known that a public official is under any kind of investigation may jeopardize his reputation." But he believed the FBI had a major role to play to restore regime legitimacy: "The abuse of public trust through corruption undermines all Government including the lessening of respect for law enforcement." He mentioned Watergate: "Perhaps nothing could be more important as we emerge from the post-Watergate era. . . . Public corruption involving kickbacks is very widespread"¹³²

The ABSCAM investigation became the first big Webster initiative. The use of undercover agents to entrap public officials built on past investigative techniques. For example, under COINTELPRO undercover informers and agents routinely advocated violence within groups and organized crime to tempt people to break the law. But in ABSCAM, the FBI dealt with members of Congress, not radicals. There was no shortage of critics. For example, soon after details of the investigation reached the press, Adlai Stevenson, the former liberal Democratic candidate for president, said, "The FBI is trying to harass and entrap innocent citizens, and to play games with U.S. Senators."¹³³ Was this payback for the Church Committee hearings? The FBI wanted to punish the Congress for exposing its past corruption. Webster noted, "In the FBI we've been under attack for past incidents and circumstances. It's quite understandable for those in Congress who love their institution, who are trying to rebuild its reputation and the confidence of the American people, to have an encounter and deal with a situation of this kind, and emotions run high. It's my sense that the good sense of the Congress, similar to the emotions in the Bureau when they had their times, that now people are saying, well, let's wait and see what the facts are, and at the proper time and in the proper forum, I'll be prepared, the Attorney General will be prepared to discuss in great detail the way in which these undercover operations function."¹³⁴

In ABSCAM, the FBI filmed the scenes where alleged corrupt deals transpired. The filming aided the prosecution and also generated a public response when aired on news programs. The FBI claimed they used “deception”—not “entrapment”—in these encounters to find officials who have a “predisposition” to take bribes. When does deception become an abuse of power? Webster can say, “I don’t believe that we are luring people into traps.”¹³⁵ But some critics charged the use of deception/entrapment on such a large scale led the FBI back into a position of violating individual rights.

The sting operation began when the FBI set up a phony corporation, Abdul Enterprises, staffed by undercover agents. They chose an Arab name for the scam after hearing that some Arab immigrants used their money to buy stolen art and bogus securities. The mayor of Camden, New Jersey, emerged as one of the first targets. He took a \$25,000 bribe from an undercover agent to help secure a casino gaming license in Atlantic City. In a second case, the FBI set up a meeting in Florida on a yacht the FBI called the *Left Hand* where a U.S. senator was asked by an undercover agent posing as an Arab sheik if he could help him gain sanctuary in the United States. He suggested that two congressmen might introduce a bill and when undercover agents approached them, they each accepted \$50,000 to provide assistance.¹³⁶ What is the practical difference between a bribe and a campaign contribution?

In ABSCAM, the FBI used undercover agents, not informants: “We are now using undercover agents—our own Special Agents—rather than relying exclusively upon informant information as we have done in the past,” Webster told the Aspen Institute of Humanistic Studies on July 11, 1978. “The utilization of undercover agents is a fairly new development in the FBI,” he told the Rotary Club of Chicago on September 12, 1978. “We used to rely substantially upon informant information and forensic evidence, but now we have a large cadre of volunteer Special Agents acting in undercover capacities.”¹³⁷ This new policy occurred despite a drop by about 10 percent in the number of special agents employed by the Bureau between 1976 and 1982.¹³⁸ As Webster explained, the benefit of the undercover agent over the informer is training: “The undercover Agent is more disciplined and obviously more trustworthy than the conventional informant.” Agents were preferred in cases with a large transfer of money. In a context of “extreme danger,” so too the agent was favored over the informer. Agents, as opposed to informers, were more likely to have the “psychological capacity to deal effectively with role playing.” Were undercover agents permitted to engage in violence? Could they watch others engage in violence without intervening? “Obviously, our undercover agents are not going to engage in the type of illegal activity that involves violence or bloodshed, but it is necessary for them to go along with some of that activity in order to preserve their cover.” Here is the same old

rub: Like the informer inside the Klan of the 1960s, he did not blow his cover to prevent violence or crimes. In fact, he sometimes broke the law to get along: “Almost every undercover operation exposes the undercover Special Agent to one or more technical violations of the law.”¹³⁹

While the use of the agent to penetrate and infiltrate groups rose, the use of informers declined. Although there are no declassified statistics on informers deployed during the late 1970s, Webster notes in a speech that “the informant is becoming an endangered species.”¹⁴⁰ In a Weather Underground investigation, Webster boasts of agents going deep undercover “to learn about planned criminal acts in time to stop them.” Webster described how two “men went undercover, living as radicals for four and seven years. They dressed as radicals might and worked at menial jobs to establish a cover. They became ‘moles,’ a term used by the intelligence community to identify long-term double agents. With faction members they met in restaurants to discuss revolutionary strategy and communist thinkers. Often the group would explicate line by line pages and pages of Mao’s ‘On Protracted War.’ Eventually, the Agents learned of a bombing plot.”¹⁴¹

By the mid-1970s, a large segment of the American population lost faith in the honesty and integrity of their elected leaders. These attitudes created what has been termed a “credibility gap,” a “crisis of confidence,” or a “crisis of legitimacy” in the system. Typically, scholars cite the Vietnam War and Watergate as explaining the development of this crisis. (At the end of the 1970s, 47 percent of poll respondents believed that most government officials were crooked, slightly higher than at the time of Nixon’s resignation.¹⁴²) Usually overlooked is the revelation of routine government spying on Americans. Much of the general public had come to view the FBI G-man as a villain. Spying in politics was perceived as lacking legitimacy. For the government to maintain a stable and effective legal order, they needed to restore popular confidence. When a regime is perceived to lose its legitimacy, the consequences may be large-scale violations of the law or increased risk of rebellion or revolution. The evolution of spying during the 1970s left the Bureau on shaky ground.

Notes

1. David Cunningham, “State versus Social Movement: FBI Counterintelligence against the New Left,” in *States, Parties and Social Movements*, ed. Jack A. Goldstone (New York: Cambridge, 2003), 71–72.

2. Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime, From the Sedition Act of 1798 to the War on Terrorism* (New York: W.W. Norton, 2004), 482.

3. Stone, *Perilous Times*, 464–66.

4. Loch K. Johnson, *A Season of Inquiry: The Senate Intelligence Investigation* (Lexington: University Press of Kentucky, 1985), 80–81.

5. G. C. Moore to C. D. Brennan, "Extremist Activities in the United States," Aug. 13, 1970, L. Patrick Gray III FBI File.
6. FBI Director, "Letter to All Special Agents in Charge," Aug. 17, 1970, Gray FBI File.
7. J. Edgar Hoover to Richard Nixon, Aug. 17, 1970, Gray FBI File.
8. FBI document, "Specific Recommendations From Conference, 9/10-11/70, Concerning New Left Movement," n.d., 1-12, Gray FBI File.
9. Roger Streitmatter, *Voices of Revolution: The Dissident Press in America* (New York: Columbia University Press, 2001), 200, 215-17; Michael Linfield, *Freedom Under Fire: Civil Liberties in Time of War* (Boston: South End Press, 1990), 236.
10. FBI document, "Specific Recommendations From Conference, 9/10-11/70, Concerning New Left Movement," n.d., 1-12.
11. FBI document, "Specific Recommendations From Conference," 1-12.
12. J. Edgar Hoover, "Memorandum for the Attorney General Re: Students for a Democratic Society," Nov. 13, 1969, Gray FBI File.
13. J. Edgar Hoover, "Memorandum for the Attorney General Re: Students for a Democratic Society," Feb 13, 1970, Gray FBI File.
14. W. Mark Felt and John O'Connor, *A G-Man's Life: The FBI, Being "Deep Throat," and the Struggle for Honor in Washington* (Cambridge: Public Affairs, 2006), 85-87.
15. Felt and O'Connor, *A G-Man's Life*, 90-92.
16. Robert C. Mardian to FBI Director, "New Left Movement," Sept. 29, 1971; Mardian to Director, "New Left Movement," Jan. 18, 1972. Gray FBI File.
17. Athan G. Theoharis and John Stuart Cox, *The Boss: J. Edgar Hoover and the American Inquisition* (Philadelphia: Temple University Press, 1988), 17.
18. Richard Gid Powers, *Secrecy and Power: The Life of J. Edgar Hoover* (New York: The Free Press, 1987), 2, 489.
19. L. Patrick Gray III with Ed Gray, *In Nixon's Web: A Year in the Crosshairs of Watergate* (New York: Times Books, 2008), 38.
20. Senator Sam J. Ervin Jr. to Director, Nov. 3, 1972, Gray FBI File.
21. Office of the Inspector General, U.S. Justice Department, "The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines (Redacted)," September 2005; Report of the Subcommittee on Security and Terrorism, *Impact of Attorney General's Guidelines for Domestic Security Investigation (The Levi Guidelines)*, 1984, 5, 9.
22. "Behavior of Informers Employed by FBI, Other Agencies Disturb Some Critics," *Wall Street Journal*, March 23, 1976.
23. Gray and Gray, *In Nixon's Web*, 56-57.
24. FBI Director, "Memorandum to All Special Agents in Charge," March 6, 1973, Gray FBI File.
25. FBI document, "Suggested Responses to Interrogatories as They Pertain to [text redacted]," n.d. [1979], 8. This document is contained in FBI material on the lawsuit *Price v. Kearney*, Clarence M. Kelley FBI File. On ADEX, see also Frank J. Donner, *The Age of Surveillance: The Aims and Methods of America's Political Intelligence System* (New York: Random House, 1980), 166-67.
26. Daniel M. Armstrong III to L. Patrick Gray III, June 2, 1972, Gray FBI File.

27. Hearings before the Senate Select Committee on Intelligence (Church Committee), Nov. 18, 1975, 37.
28. Hearings of the Select Committee to Study Governmental Operations with Respect to Intelligence, Nov. 18, 1975, 17, http://aarclibrary.org/publib/church/reports/vol6/html/ChurchV6_0011b.htm (Oct. 20, 2009).
29. Hearings of the Select Committee to Study Governmental Operations with Respect to Intelligence, Dec. 2, 1975, 145.
30. SAC Portland to Acting Director, "Ghetto Informant Program," Oct. 9, 1972, Ghetto Informant Program FBI File.
31. SAC Newark to Acting Director, "Ghetto Informant Program," Oct. 5, 1972, Ghetto Informant Program FBI File.
32. T. J. Smith to Mr. E. S. Miller, "Testimony of John T. Elliff," March 3, 1973, Gray FBI File.
33. Francis J. Martin to Paul V. Daly, "United States v. Felt," June 8, 1979, Gray FBI File.
34. FBI Director, "Memorandum to All Bureau Officials and Supervisors," Nov. 22, 1972.
35. G. Davidson-Smith, *Combating Terrorism* (London: Routledge, 1990), 53–54.
36. R. L. Shackelford to Mr. E. S. Miller, "Weatherfug," May 8, 1972, Gray FBI file.
37. Shackelford to Miller, "Weatherfug."
38. Director to All SACs, "U.S. vs. L. Patrick Gray III, W. Mark Felt, and Edward S. Miller Trial—Source Protection," Sept. 19, 1980, 3, Gray FBI File.
39. Joseph L. Tierney to Mr. Baily, "U.S. vs. W. Mark Felt, et al.," Jan. 1, 1980, Gray FBI File.
40. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," Hearings before the Committee on the Judiciary, United States Senate, June 19, 20 and 25, 1973, 42–43.
41. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 43.
42. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 43.
43. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 99–100.
44. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 98.
45. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 70.
46. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 102.
47. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 41.
48. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 41–42.
49. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 110.

50. "Nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation," 120.

51. Mr. Marshall to Mr. Malmfeldt, "Reasoner Report (ABC Television), Interview of Mr. Kelley," August 8, 1973; FBI briefing paper, "Questions and Suggested Answers for Mr. Kelley's Use on this Program" (n.d.), 5, 39. Kelley FBI File.

52. "Questions and Suggested Answers for Mr. Kelley's Use on this Program," 13–14.

53. Springfield FBI office to Director, May 8, 1974; Springfield FBI office to Director, May 10, 1974. Gerald R. Ford FBI File.

54. Buffalo FBI office to Director, May 11, 1974; Buffalo FBI office to Director, May 20, 1974. Ford FBI File.

55. Detroit FBI office to Director, May 23, 1974, Ford FBI File.

56. Boston FBI office to Director, June 1, 1974, Ford FBI File.

57. Cincinnati FBI office to Director, June 5, 1974, Ford FBI File. Ford maintained a close friendship with the FBI throughout his political career. He secretly communicated with J. Edgar Hoover while he served on the Warren Commission, reporting on sentiment within the Commission that disagreed with the FBI view that the JFK killing did not constitute a conspiracy.

58. At least half of the file consists of copies of the journal.

59. Milwaukee SAC to Director, "Radical America," Information Concerning (IS)," April 4, 1969, *Radical America* (RA) FBI File.

60. SAC San Francisco to Director, "Radical America," May 14, 1969, RA FBI File.

61. SAC Alexandria to Director, "Radical America," July 31, 1969, RA FBI File.

62. Paul Buhle to Ivan Greenberg, email, May 30, 2009.

63. SAC Milwaukee to Director, "Radical America," June 6, 1969, RA FBI File.

64. SAC Milwaukee to Director, "Radical America IS–SDS," March 27, 1970, RA FBI File.

65. SAC Milwaukee to Director, "Radical America," Jan. 8, 1971, RA FBI File.

66. Buhle to Greenberg, May 30, 2009.

67. SAC Milwaukee to Director, "Radical America," Sept. 14, 1971, RA FBI File.

68. SAC Boston to Director, "Radical America," Dec. 9, 1971, RA FBI File.

69. SAC Milwaukee, "Radical America," Dec. 30, 1971, RA FBI File.

70. SAC Boston to Director, "Radical America," Feb. 1, 1972, RA FBI File.

71. Buhle to Greenberg, May 30, 2009.

72. SAC Boston to Director, "Radical America," Feb. 26, 1973, RA FBI File.

73. SAC Boston to Director, "Radical America," Feb. 26, 1973.

74. Director to SAC Washington, "Institute of [*sic*] Policy Studies," Nov. 1, 1968, Institute for Policy Studies (IPS) FBI File.

75. SAC Washington to Director, Nov. 7, 1968; Washington field office report, "Institute for Policy Studies," March 14, 1969; SAC Washington to Director, "Institute for Policy Studies," July 11, 1969, IPS FBI File.

76. R. L. Shackelford to C. D. Brennan, "Institute for Policy Studies," Jan. 26, 1971, IPS FBI file.

77. SAC Washington to Director, "Institute for Policy Studies," May 24, 1971, IPS FBI File.

78. SAC Washington to Director, "Institute of [sic] Policy Studies," Oct. 28, 1971, IPS FBI File.
79. Director to SAC Washington, "Institute for Policy Studies," Dec. 16, 1971, IPS FBI File.
80. R. L. Shackelford to E. S. Miller, "Institute for Policy Studies," May 15, 1972, IPS FBI File.
81. SAC Washington to Acting Director, "Institute for Policy Studies," Aug. 29, 1972, IPS FBI File.
82. SAC Washington to Acting Director, "Institute for Policy Studies," Sept. 15, 1972, IPS FBI File.
83. Washington report, "Institute for Policy Studies," March 15, 1973, IPS FBI File.
84. Mitchell Rogovin to William Ruckelshaus, May 25, 1973, IPS FBI File.
85. [Text redacted] to [text redacted], "Mr. and Mrs. Marcus Raskin—Victims Civil Rights," July 16, 1973, IPS FBI file.
86. "Institute Says FBI Spied on It," *Washington Post*, Oct. 10, 1973.
87. Director to Acting Attorney General, Oct. 31, 1973, IPS FBI File.
88. SAC Washington to Director, "Marcus Raskin and the Institute for Policy Studies—Victims Conspiracy Against Rights," Nov. 11, 1973, IPS FBI File.
89. Director to Assistant Attorney General, "Marcus Raskin and the Institute for Policy Studies—Victims Conspiracy Against Rights," Nov. 8, 1973, IPS FBI File.
90. "Wiretaps Alleged by Institute," *Washington Post*, Feb. 26, 1974.
91. SAC Washington to Director, "Institute for Policy Studies," Feb. 28, 1974; Director to SAC Washington, "Institute for Policy Studies," March 18, 1974; R. L. Shackelford to W. R. Wannall, "Institute for Policy Studies," March 14, 1974. IPS FBI file.
92. FBI report, "Institute for Policy Studies," May 31, 1974, IPS FBI File.
93. Director to Attorney General, "Institute for Policy Studies," Aug. 29, 1975, IPS FBI File.
94. William W. Keller, *The Liberals and J. Edgar Hoover: Rise and Fall of a Domestic Intelligence State* (Princeton, N.J.: Princeton University Press, 1989), 111–53; Michael Signer, *Demagogue: The Fight to Save Democracy from Its Worst Enemies* (New York: Palgrave Macmillan, 2009).
95. Senator Mike Mansfield and Senator Hugh Scott to Clarence M. Kelley, Jan. 27, 1975; FBI Director to all SACS and LEGATS, "Destruction of Field Files and Records," Jan. 29, 1975, Kelley FBI File.
96. Johnson, *A Season of Inquiry*, 29, 56–57, 125; Statement of F. A. O. Schwarz before the Select Committee to Study Governmental Operations with Respect to Intelligence, Nov. 18, 1975, 12, http://aarclibrary.org/publib/church/reports/vol6/html/ChurchV6_0011b.htm (Oct. 20, 2009).
97. Quoted in hearings of the Select Committee to Study Governmental Operations with Respect to Intelligence, Nov. 18, 1975, 1–2.
98. Quoted in hearings of the Select Committee to Study Governmental Operations, Nov. 18, 1975, 43.
99. Quoted in hearings of the Select Committee to Study Governmental Operations, Nov. 19, 1975, 81.
100. Quoted in hearings of the Select Committee to Study Governmental Operations, Dec. 3, 1975, 196.

101. Quoted in hearings of the Select Committee to Study Governmental Operations, Dec. 3, 1975, 201.
102. Quoted in hearings of the Select Committee to Study Governmental Operations, Dec. 11, 1975, 316–17, 329.
103. Attorney General to Director, “Wire Tapping Surveillances,” Feb. 16, 1952, Gray FBI File.
104. W. C. Sullivan to C. D. DeLoach, “‘Black Bag’ Jobs,” July 19, 1966, Gray FBI File.
105. Johnson, *A Season of Inquiry*, 88.
106. FBI Director to all SACS and LEGATS, “Surreptitious Entry,” June 1, 1976, Gray FBI File.
107. FBI Director to Attorney General, “Safeguarding National Security Information and Material,” May 9, 1978, Gray FBI File.
108. “Memorandum of Points and Authorities in Support of Defendant Miller’s Motion for Discovery,” *U.S.A. v. L. Patrick Gray, III, W. Mark Felt, Edward S. Miller*, 1–2, 1978, Gray FBI File.
109. “Memorandum of Points and Authorities,” 5–6.
110. “Response of the United States to Defendants’ Motions For Discovery and Inspection,” *U.S.A. v. L. Patrick Gray, III, W. Mark Felt and Edward S. Miller*, June 15, 1978, 1–2; “Memorandum in Support of the Response of the United States to Defendants’ Motions For Discovery and Inspection,” *U.S.A. v. L. Patrick Gray, III, W. Mark Felt and Edward S. Miller*, June 15, 1978, 20, Gray FBI File.
111. “Response of the United States to Defendants’ Motions For Discovery and Inspection,” 6–7.
112. H. N. Bassett to Mr. McDermott, “U.S. vs. L. Patrick Gray III, et al, Material Seized in 1976,” June 28, 1978, Gray FBI File; “Some Break-In Case Evidence Reportedly Destroyed by FBI,” *Washington Post*, June 21, 1978.
113. Francis J. Martin to John J. McDermott, “United States v. Gray, et al,” June [text redacted] 1978, Gray FBI File.
114. Barnet D. Skolnik, “U.S. vs. L. Partick Gray III, et al, Defense Discovery,” July 7, 1978, 5, Gray FBI file.
115. W. L. Bailey to Mr. Colwell, “U.S. vs. Felt et al,” June 15, 1980, 2, 5, Gray FBI File.
116. Director to All SACs, “U.S. vs. L. Patrick Gray III, W. Mark Felt, and Edward S. Miller Trial—Source Protection,” Sept. 19, 1980, 3, Gray FBI File.
117. FBI Director to Assistant Attorney General, Criminal Division, “Trial Preparation—Damage Assessment,” Feb. 26, 1980, 3, Gray FBI File.
118. “Trial Preparation—Damage Assessment,” 5.
119. “Trial Preparation—Damage Assessment,” 8.
120. Gray and Gray, *In Nixon’s Web*, 62–63.
121. [Text redacted] to Mr. Bassett, “U.S. v. L. Patrick Gray III, et al,” Nov. 17, 1978, Gray FBI File; “Nixon Approved Break-Ins, Ex-FBI Aide Tells Court,” *Washington Post*, Nov. 16, 1978.
122. Felt, *A G-Man’s Life*, 259–260.
123. DOT TV Reports, “An Interview with Mark Felt,” April 11, 1978, 9, Gray FBI File.

124. John W. Nields Jr. to William O. Cregar, "Declassification—Foreign Influence," Jan. 11, 1980, Gray FBI File.
125. "Memorandum in Support of the Response of the United States to Defendants' Motions For Discovery and Inspection," 24.
126. R. P. Finzel to Mr. Colwell, "U.S. vs. Felt, et al.," Oct. 10, 1980; P. L. Andrews to Mr. Finzel, Feb. 17, 1981. Gray FBI File.
127. Felt, *A G-Man's Life*, XLII, 271, 277.
128. Quoted in John T. Woolley and Gerhard Peters, "The American Presidency Project," www.presidency.ucsb.edu/ws/?pid=43698 (April 6, 2009).
129. "Getting 100% of the Vote," *Time*, July 26, 1976.
130. Clarence Kelley to Gerald R. Ford, Sept. 8, 1976, Kelley FBI File.
131. William H. Webster speech at the Atlanta Bar Association, Oct. 17, 1980, 6–7, Kelley FBI File.
132. Webster speech at the Atlanta Bar Association, 19–20, 28, 36–37.
133. Quoted in Webster speech at the Atlanta Bar Association, 39.
134. Webster speech at the Atlanta Bar Association, 40.
135. Webster speech at the Atlanta Bar Association, 53.
136. William H. Webster speech, July 26, 1982, 10–11, Kelley FBI File.
137. Mr. Divan to Mr. Boyton, "Comments by Director Webster on Undercover Agents, Public Corruption and Abscam," Feb. 27, 1980, 2, Kelley FBI File.
138. William Webster speech at the Bohemian Club, San Francisco, CA, July 23, 1982, 1, Kelley FBI File.
139. Mr. Divan to Mr. Boyton, "Comments by Director Webster on Undercover Agents, Public Corruption and Abscam," 3, 9, 12–13.
140. Mr. Divan to Mr. Boyton, "Comments by Director Webster," 10.
141. Mr. Divan to Mr. Boyton, "Comments by Director Webster," 4.
142. Seymour Martin Lipset and William Schneider, "The Decline of Confidence in American Institutions," *Political Science Quarterly* 98 (Autumn 1983): 382.

3

Did the FBI Really Change?

IN EARLY 1976, PRESIDENT GERALD R. FORD ordered Attorney General Edward Levi to issue the first ever guidelines for FBI investigations to rein them in legally and constitutionally. In the wake of the Watergate scandal and the Church Committee hearings, the Justice Department reformulated FBI policing practices. The Bureau would be limited to investigating only “terrorists” in its domestic security investigations. Presumably, the era of decades-long, open-ended investigations would come to a close and the FBI would limit surveillance to people or groups intent on breaking the law.¹ The Levi Guidelines were hailed as ushering in a new era when government would not spy on people based on their political views. Political policing would cease, ending a long history of official repression.

These changes were close to revolutionary for the FBI by fundamentally upending their role as the conservative guardian of capitalism and freedom. The FBI described its new approach in the investigative field as one that stressed “quality over quantity.”² A dramatic withdrawal by the Bureau occurred: Compared to 21,414 active investigations in 1973, the FBI allegedly conducted only 4,868 investigations in 1976, a decline of more than 400 percent. Clarence M. Kelley, FBI director when these changes took place, made no apologies for past investigations. Recalling the era of the 1960s and early 1970s, he said, “That was a tense and frightening period. We had riots, terrorist bombings, fiery speeches, a lot of fear and anger. The country seemed to be in danger, and [FBI] agents simply did what they thought was needed to protect the country.” In the absence of guidelines, agents acted like vigilantes to preserve the status quo. Kelley admitted that the absence of government

guidelines for the FBI proved problematic. "That was a big part of the problem," he told an interviewer. "The guidelines were obscure or nonexistent. Congress had never really told the FBI what to do in a situation like that, so all any agent could do was use his own judgment. Then, later, people came around and criticized him for judging wrong. That wasn't quite fair. The guidelines should have been laid down before the emergency, not after."³

By 1978, the FBI claimed only 102 investigations were conducted nationwide. The overall pattern of investigations "underwent a radical change, both in number and in scope," as the new director William Webster testified before Congress.⁴ But the FBI was hardly out of the business of surveillance, as Webster indicated in a speech before the American Bar Association in Atlanta on October 17, 1980. "We know who the major domestic terrorist groups are," he said. "And we are aware of what tactics they have used in the past. Today, we have an interest in fourteen domestic groups who advocate and practice terrorism as an instrument of racist, anti-establishment, or 'pro-independence' policy."⁵

FBI surveillance now largely distinguished leaders of groups from rank-and-file members. Prior investigations of the rank-and-file were dropped in favor of continuing surveillance of people in policymaking positions. However, closing rank-and-file cases may not have diminished the level of FBI informant coverage. Even in closed investigations, the FBI did not necessarily tell their informants to leave the organizations because they wanted to retain them for the future. The names of rank-and-file members still made their way in a secondary fashion into FBI files since informers routinely reported the names of all people who attended meetings or signed petitions.⁶

As late as 1980, the Carter administration defended the end of political policing. The Levi Guidelines were considered to be effective, as the new attorney general Benjamin R. Civiletti testified, "I believe the experience of the last three years with the Levi Guidelines has been highly encouraging. It has demonstrated that guidelines can be drawn which are well understood by Bureau personnel and by the public and which can be filed and reviewed by the appropriate congressional committees."⁷ Webster noted, "From two important standpoints, these Guidelines have been effective. Since their introduction four years ago, there has not been a single successful tort claim against any special Agent of the FBI for violation of a citizen's constitutionally protected rights. This record is matched by a steady decline in terrorist bombings."⁸ For the first time in its history, the FBI rejected congressional attempts to increase its budget for spying. Conservatives decried the success of the "anti-intelligence lobby."⁹

Historical analysis should consider the complex ways that "the old becomes the new."¹⁰ In what ways did the FBI really change from the extralegal days

of COINTELPRO? As I show, the old way of doing things under Hoover persisted to a degree despite the “revolution from above” within the Justice Department. While this chapter cites different examples of political policing from 1976 to 1990, it is by no means a definitive record since the details of many investigations largely remain secret. To combat this secrecy, I draw upon more than a dozen recently declassified FBI files to gain new insight into FBI policing practices.



The Levi Guidelines took effect on April 5, 1976. The FBI continued to investigate the Black Panther Party (BPP) and the American Indian Movement (AIM), even though both groups no longer had large followings and did not plan political violence. The Bureau devoted so much attention to neutralizing them in the past that it proved hard for them to cease their activity. A racial element may be at play: White intelligence agents continued to view people of color as the “other” constituting a special threat. Moreover, the FBI worked under the assumption that Left radical groups were in coalition with one another. The BPP and AIM must be terrorists because other violence-prone holdovers from the early 1970s (the FALN, the Black Liberation Army, and the Weather Underground) still operated.¹¹

The FBI’s “Domestic Terrorist Digest,” issued two and a half months after the adoption of the Levi Guidelines, privileged the threat posed by AIM. It warned about the potential for AIM violence during the upcoming July 4 Bicentennial celebrations: “Support for American Indian protest was a theme of the National Conference for a People’s Fourth of July. An AIM spokesman told this conference that the candles on America’s birthday cake would definitely be blown out.” Of course, anger at the government does not constitute specific criminal threats. What specific plans on the part of AIM were illegal? The FBI described a series of planned protests and extrapolated from one prior event to predict a broad plan of insurrection. The Digest states, “Indian militants have scheduled a caravan to arrive at Little Big Horn River, Montana, on June 26, the 100th Anniversary of General Custer’s defeat there. Further, a shoot-out last November between Indian militants and an Oregon state police officer revealed Indian interest in Bicentennial activities, and their possession of a large amount of explosives and weapons.” We now know that the FBI repeatedly exaggerated and made up false items in their AIM intelligence reports. From May through August 1976 memos mistakenly reported that AIM had two thousand “Dog Soldiers” ready to engage in violent acts throughout the Northwest, including “shooting incidents and hostage situations” and a plan to join with former members of SDS to “kill a cop a day” and to use “various ruses” to “lure enforcement into an ambush.”

When Director Kelley was questioned about these memos, which were leaked to the press during a criminal trial of two AIM activists who eventually were acquitted, he acknowledged no tangible evidence supported the allegations.¹²

In September 1976, the attorney general reauthorized the AIM investigation for an additional year. The official documentation states, “Although AIM leaders claim they wish to bring about change through peaceful means rather than violence, they have resorted to the use of force, or have threatened violence, in every confrontation since 1970.” This evaluation should not have met the threshold for investigation. As one FBI memo indicated, informer reports from within AIM about violence often were false: “[Text redacted] is well known to the Bureau and in the past has furnished several false reports concerning violence on the part of AIM. Therefore, recipients should conduct no active investigation concerning [text redacted] allegations beyond contact of sources in an attempt to verify [text redacted] information. Also, appropriate military authorities should be contacted along with appropriate west coast sources to determine if, in fact, AIM is [text redacted] as [text redacted] alleges.” The memo also noted that the informant “is an AIM member and has been involved in violent activities in the past.”¹³

The FBI file on AIM totals more than twenty thousand pages covering the period 1969–1979. The material after 1976 records protected First Amendment political activity, such as peaceful protests, conferences, and political literature. Some of this activity may be controversial, but it should not have been subject to investigation under the Levi Guidelines. For example, in 1977 a group called the Minnesota Citizens’ Review Commission on the FBI held a four-day conference and teach-in on FBI political repression at the University of Minnesota. AIM leader John Trudell spoke about his group’s experience of government harassment. Nothing in his speech was considered criminal by the FBI—that is, Trudell did not incite people to riot or advocate violence against the government. Yet the FBI covered the conference in detail and placed conference leaflets and pamphlets in its files.¹⁴ As in previous years, the only “crime” was public criticism of Bureau activity.

Among those investigations dropped by the FBI, right-wing groups seemed to get off the hook more easily than left-wing groups. Notably, the Bureau closed the investigation of the neo-Nazi National Alliance led by white supremacist William Pierce. Pierce wrote the infamous *The Turner Diaries*, a fictional text which later inspired Timothy McVeigh to bomb the federal office building in Oklahoma City. The Alliance, unlike AIM, advocated violence in direct and specific ways. A series of articles published in 1972 in their newspaper, *Attack*, instructed readers in the construction and deployment of explosives and techniques of guerilla warfare. The articles advocated political assassination and destruction of the system through revolution. An FBI

memo in June 1975 focused on the serialization of *The Turner Diaries* in the newspaper and especially a section of the novel which depicts the bombing of FBI headquarters. An October 1975 FBI memo noted that the group “is controlled by individuals who militantly promote white racism and anti-Zionism and who suggest violent revolution ultimately as a means for implementing their racial and political ideas in America.” A March 1976 memo tracked the violent tendencies of the group, including the sale of books to members with titles such as “Booby Traps,” “Counter guerrilla Operations,” “Explosives and Demolitions,” “Hand to Hand Combat,” “Improvised Munitions,” “Incendiaries,” and “Total Resistance.” Yet in August 1976 the FBI terminated its investigation, concluding, “Apparently due to the lack of acceptance by the general public, the NA de-emphasized their revolutionary philosophy and began to emphasize racism and the downgrading of the Jewish religion. [Text redacted] the NA has carried on his organization’s program by verbally attacking Jewish leaders, blacks in general, and prominent United States leaders who oppose racial segregation. . . . UACB, Alexandria Division is conducting no further investigation of the NA as the organization fails to meet the criteria established by the domestic security guidelines.”¹⁵

How could the FBI continue to investigate AIM but drop the National Alliance? While AIM functioned as a legitimate protest movement seeking cultural autonomy, civil rights, and local self-rule on reservations, the National Alliance was a hateful, racist group with no redeeming value. Moreover, AIM never advocated violence as part of a political program as did the Alliance. There is the issue of state genocide: Native Americans had been the victim of U.S. genocidal campaigns in the eighteenth and nineteenth centuries. AIM’s protest agenda focused on compelling the U.S. government to honor treaties it signed with Native American groups in the past. The National Alliance preached racial violence sympathetic toward Hitler’s Holocaust. Which group is a threat? The differential treatment is based on politics: The National Alliance was on the political Right, while AIM was on the Left. Leftists, who challenge the legitimacy of capitalism, always have been treated differently by the Bureau.

One Left group evading surveillance, at least briefly, was the Socialist Workers Party (SWP). Soon after the announcement of the Levi Guidelines, the FBI asked the attorney general for guidance on whether the SWP case met the criteria for investigation. A group of intelligence officials were unable to agree. The decision was left to the attorney general, who decided that although a Marxist group which supported revolution, the SWP did not advocate violence. So the government terminated its SWP investigation. At the time, the SWP was in the midst of a major civil rights lawsuit against the FBI and the Bureau recognized that any decision to reauthorize an investigation might be debated in court. Rather than face this prospect, the SWP case was closed.¹⁶

In some ways, the SWP investigation remains a mystery. Their FBI file is huge: According to a mid-1980s estimate, there are 8 million FBI documents dating from as early as the 1940s.¹⁷ In 2000, I filed a FOIA request for the SWP file for the period after 1975. The FBI sent me 860 pages. In 1979, the Federal Election Commission agreed to a SWP request to redact the names of its financial contributors on campaign finance reports submitted to the government; this secrecy was approved since donors might be harassed by the FBI if their identities were disclosed.¹⁸ In several subsequent rulings, the FCC agreed to extend the SWP exemption. Attorney Michael Krinsky worked on behalf of the SWP and documented extensive harassment: 70 incidents between 1990 and 1996 and an additional 74 incidents from 1997 to 2002.¹⁹

Surveillance of the U.S. Communist Party continued after 1976 on the basis of foreign counterintelligence. No one has yet to determine the size of the Party's FBI file, with estimates as high as twenty-six million pages over decades of intensive monitoring.²⁰ I tried to evaluate the CP surveillance by obtaining the file on Gus Hall, longtime chairman of the Party. I asked for material only after 1975 and the Bureau sent me approximately 2,900 pages. The investigation apparently closed in 1990 as the Cold War ended. Hall died at the age of ninety in the year 2000.

Concerned about street protest at the Bicentennial celebration, the FBI infiltrated a group known as the July 4th Coalition. This alliance of about 130 liberal Left groups organized demonstrations in Philadelphia and the attorney general, despite the new guidelines, ordered the surveillance and infiltration of the coalition.²¹

The government applied the terrorist label to activists protesting nuclear energy. In 1978, civil rights attorney Frank Donner wrote in the *Nation*, "A major goal of the intelligence community—both public and private—is (ironically enough) to put terrorist trousers on nonviolent nuclear protest movements."²² New research suggests that the state police worked with the FBI to infiltrate the Clamshell Alliance, which organized a series of protests between 1976 and 1980 at the Seabrook Nuclear Power Plant in New Hampshire. These protests constituted one of the biggest bottom-up challenges to the nuclear power industry.²³ The largest protest action took place on April 30, 1977, when about twenty-four thousand people occupied the site. After the police told them to leave, 1,401 people stayed to get arrested. The police knew what was coming beforehand. The state police infiltrated the group almost from its inception and cynically claimed the Seabrook protest was a cover for terrorist activity. An FBI informer in the July 4th Coalition reported that Coalition members were going to Seabrook to help precipitate a "violent encounter with the police when the police attempted to remove the demonstrators from the area."²⁴ In all, the Clamshell Alliance discovered at least

three police officers infiltrated their group and on more than one occasion the police lied about this surveillance.²⁵

Reagan Revives Spying

Yet the curbing of FBI spying did not last long. After Ronald Reagan, a former FBI informer during the late 1940s, became president in 1980, he instructed the Bureau to resume political policing. The change toward a more aggressive FBI did not come as a surprise. During the presidential campaign, Reagan criticized Jimmy Carter's restrained FBI policies and promised to unleash spying.²⁶ Despite vocal anti-statist rhetoric for domestic policy, represented in such slogans as "government is the problem" and "get government off our backs," the Reagan administration increased federal government power to subdue social movements. The FBI cynically used the rubric of fighting terrorism to conduct surveillance of a broad range of peaceful and lawful groups even when they found no plans for violence.

In 1981 and 1982, the new U.S. Senate subcommittee on security and terrorism, chaired by conservative Republican Jeremiah Denton of Alabama, held twenty-seven hearings and helped develop the terror framework Reagan relied on to develop security policy. Denton argued two related points: Soviet KGB agents backed many of the president's domestic political opponents and the nation faced a formidable terrorist threat. The domestic roots of the threat were tied to the Soviets' active sponsorship of terror worldwide. The born-again Christian Denton, who had been a prisoner of war in North Vietnam for seven years, hoped to smear liberal Left Americans as not only pro-Soviet but also pro-terrorist. He said, "When I speak of a threat, I do not just mean that an organization is, or is about to be, engaged in violent criminal activity. I believe many share the view that the support groups that produce propaganda, disinformation, or 'legal assistance' may be even more dangerous than those who actually throw the bombs." A key political objective was to expand the definition of terrorism to include nonviolent activity. Denton named the National Lawyers Guild, *Mother Jones* magazine, and the Institute for Policy Studies as examples of U.S groups which aided the Soviet terror conspiracy. The subcommittee's staff counsel, Samuel T. Francis, worked as a policy analyst for the conservative Heritage Foundation and recommended the Reagan administration vastly increase surveillance of dissent. In 1981, Francis wrote, "Terrorism as a weapon of political warfare also has an important nonviolent dimension that consists of propaganda, the garnering of support for the terrorists and their causes, legal and financial support and operational assistance."²⁷

Civil liberties groups worried that Denton and his allies in government would revive Cold War witch-hunts. As Aryeh Neier wrote in the March 1982 edition of the *Bulletin of Atomic Scientists*, “Denton has suggested that some persons and organizations that have sought controls on the activities of the intelligence agencies, ostensibly on civil liberty grounds, are actually motivated by an interest in aiding a Soviet plot to bring down the West by terrorism. This has aroused concern in some quarters that the anti-terrorist campaign of [Alexander] Haig, Denton and company will be the vehicle for the rebirth of McCarthyism.”²⁸ Victor Navasky, editor of the *Nation* magazine, echoed this view, as did Kathy Engel, director of the Fund for Open Information and Accountability, who stated bluntly, “Terrorism becomes an excuse, then, for developing a repressive mechanism to be used against those who oppose administration policies. . . . Terrorism is the new bugaboo.”²⁹

When Director Webster appeared before the Denton Subcommittee in 1982, he reversed his earlier support for the Levi Guidelines and foreshadowed a major change in FBI practice by justifying investigations based on the low standard of advocating violence. Webster said, “The question is whether words, unaccompanied by conduct, can be the subject of an investigation. We must be careful, of course, to preserve the right of free speech and to insure that investigations are not used in a way that would inhibit statements that present no serious threat to society. That is not to say that statements alone, particularly statements that advocate criminal violence, or indicate an apparent intent or ability to engage in violence, are protected against investigation.”³⁰ What events occurred between 1980 and 1982 to explain the change in Webster’s views? The level of politically motivated violence remained low when compared to the turbulent decade of the 1970s. There were no major domestic terrorist incidents in this period. Rather, Webster hoped to keep his job under a new president by parroting the New Right’s expansive Red Scare politics.

The legal basis to unleash the FBI first took form in 1981 with Executive Order 12333 and, later, in 1983 with the imposition of Attorney General William French Smith’s Guidelines for the FBI. Executive Order 12333 applied not only to the FBI but also the Central Intelligence Agency (CIA) and the Defense Department (DOD). The CIA and DOD were permitted to conduct domestic spying if coordinated with the Bureau. The FBI could investigate widely by claiming a domestic subject might have foreign ties.³¹ On March 21, 1983, the Justice Department set down the Smith Guidelines further to ease restrictions on spying. The guidelines made changes in bureaucratic language: Whereas the FBI could start an investigation under the Levi Guidelines only when “specific and articulable facts” suggested a threat, the Smith Guidelines authorized inquiries “when the facts or circumstances reasonably indicate” activities involving force or violence. Moreover, the Smith Guidelines incor-

porated the violent words/speech criteria for starting investigations: "When statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, an investigation under these guidelines may be warranted." Despite a legal challenge, a federal appeals court in a six-to-one ruling upheld the Smith Guidelines.³²

As a result, the FBI cynically claimed a broad range of individuals and groups advocated violence and supported terrorism. The list of suspects included critics of U.S. policy in Central America, environmental activists, the anti-nuclear and peace movement, animal rights advocates, gay and lesbian groups, antiapartheid (in South Africa) groups, black elected officials, and Arab Americans. As in prior years, records were kept on people who merely attended a meeting of a suspect group. Informers were deployed to find out from the inside about plans for protest, in addition to the use of phone taps, mail covers, and break-ins. An FBI insider told the *New York Times* in 1988, at a time when the Cold War almost was over, "They still see a Communist behind every tree. They speak of Communist plants in Congress. . . . Security agents don't have the constraints that [FBI] criminal agents do. They can use conjecture and make comments in their reports that they don't have to back up. If most people read the stuff they churn out, they would not believe it."³³

It is important to situate the FBI within the Reagan administration's fight against international Communism, which topped its policy agenda. The president heightened the Cold War fever during his first term, labeling the Soviet Union an "evil empire." In his view, the worldwide Communist movement was intent on spreading by force and elections, even in Central America. Reagan declared the socialist Sandinistas in Nicaragua an enemy and supported the Contras to overthrow them. The United States feared that Nicaragua and Cuba helped the left-wing rebel movement in El Salvador. The political activity of Americans sympathetic toward socialists in Central America was monitored and disrupted.

Along these lines, the FBI investigated the Committee in Solidarity with the People of El Salvador (CISPES) for five years, subjecting more than 2,300 people and 1,200 groups to surveillance merely for their political views. Intelligence analysts ignored their own reports to charge that CISPES was violence-prone. During the 1980s, no international terrorist incidents against the U.S. involved groups from Nicaragua, Cuba, or El Salvador. But the opposition of many Americans to U.S. policy prompted the FBI to use any pretext to fight the domestic Cold War. Why did the situation in El Salvador command so much attention? According to CIA Director Bill Casey, "El Salvador was symbolically the most important place in the world. If the U.S. could not handle a threat in its backyard, Reagan's credibility would be at risk in the rest of the world."³⁴

The CISPES probe involved all fifty-six FBI field offices with photo and visual surveillance of demonstrations in twenty-two cities; undercover agents attended CISPES meetings in five cities; informants inside CISPES (six cities); trash exams (six cities); the examination of bank records (six cities); the study of telephone records (four cities); FBI interviews of people visiting Central America (six cities); as well as the frequent use of records of activists' driver's licenses, credit reports, and employment earnings. The FBI visited CISPES activists at their workplaces in an attempt to get them fired from their jobs.³⁵

FBI informer Frank Varelli, a Salvadorian-born immigrant, infiltrated CISPES under false pretenses by claiming his family had been murdered by government death squads. In fact, Varelli's father was a high-ranking police colonel in the right-wing regime. Varelli offered insight into the FBI's mentality investigating legitimate First Amendment expression. As Varelli said,

All over the country that I was able to recall, investigations were opened based just on the fact that CISPES was a left-wing liberal group opposing the Reagan Administration. Nobody had at that time any reasonable doubt that any crimes were being committed. The groups of CISPES were penetrated . . . We infiltrated just on the assumption that these people were going to do something in the near future. . . . Mr. Ron Davenport, the head of the terrorism unit for El Salvador, once told me, I don't care what you do but go and get those guns. And he was talking that I should go to CISPES and find guns . . . I told him, and that was really hard for me. I told him how in the world was I going to see guns when there were none.

Varelli charged that the FBI established contacts with the National Guard in El Salvador using him as a conduit to exchange lists of subversives. This put American activists in danger if they visited Central America and allowed El Salvador's government to keep track of CISPES activists in the United States: "The program that the FBI wanted to implement and the Justice Department wanted to implement was to squeeze Communists from both sides. Get them in El Salvador if possible and get them here in the U.S. Either way we would exchange information."³⁶

Secret FBI memos on CISPES clearly show the policing of free speech. The New Orleans field office wrote to the Dallas office, "It is imperative at this time to formulate some plan of attack against CISPES and specifically against individuals [text deleted] who defiantly display their contempt of the U.S. Government by making speeches and propagandizing their cause." The FBI reported in detail on lawful, peaceful protest. The FBI director wrote, "The following information was obtained from the assets of several of our field offices. The information pertains to the peace march scheduled for November 12, 1983, in Washington, D.C., and other major cities in the United States. The Chicago CISPES chapter plans to be well represented at the march. . . .

Over sixty organizations have signed on to make the march the largest ever on Central America.” Why should a “peace march” be monitored? The widening net of surveillance on anyone merely associated with a CISPES event is evident in an Atlanta field office memo: “Observation of the Little Five Points Community Center, the evening of February 23, 1985, determined that there were only about a dozen vehicles in the parking lot and that a dance program was scheduled at the facility that evening. On February 23, 1985, the following license plates were observed on vehicles parked at the Little Five Points Community Center . . . [forty-one numbers follow].”³⁷

The FBI employed 1950s-style thinking by seeing in the group a secret program hidden from most members, as well as the use of “front groups.” “By positing a cover program, the FBI headquarters was able to reason away the lack of findings in investigations by the field offices,” noted Jinsoo Kim of the Center for Constitutional Rights. “So, when a field office reported that a local CISPES chapter pursued only such projects as teach-ins, slide shows, and pickets, the headquarters would remind the field office of the covert program.” Only a few CISPES members allegedly knew the secret program. Headquarters told its field offices to dig deeper: “And the deeper the field office dug, with no results, then clearly, reasoned the FBI, the deeper they needed to dig.” In other words, the FBI began with such a biased view that a lack of findings in intelligence reports merely served to justify that the enemy was smarter than originally thought, and more dangerous. Kim noted the revival of guilt by association: “Any organization which ever worked with CISPES, signed a petition, co-sponsored a demonstration or event, or had a single overlapping member, might be a front, and as any legal activity might be a cover for the covert program, there was no limit to the depth or breadth of the investigation.”³⁸

A Senate committee later faulted FBI conduct by pointing to a “serious failure in FBI management, resulting in the investigation of domestic political activities that should not have come under governmental scrutiny.”³⁹ FBI leader Oliver “Buck” Revell, who finally shut down the CISPES investigation in 1985, writes in his memoir that he “was surprised to find an investigation that had spread all over the country and taken on a life of its own.”

Over three years, no specific evidence of criminal activity had been found, and yet the investigation had continued to expand. If no evidence of criminal activity or any direct support of terrorism has surfaced by this time, it wasn’t likely to. I was concerned. This is exactly the kind of domestic security investigation that had gotten the Bureau into trouble before—an investigation that could appear politically motivated, as the country was then at odds with itself over Central American policy. If the FBI was discovered running a poorly focused investigation of political activists, it could well incite uniform outrage. So I immediately ordered the CISPES investigation closed.⁴⁰

In addition to surveillance of CISPES chapters, the FBI focused on religious organizations helping refugees from El Salvador seeking sanctuary from death squads. The FBI records on the sanctuary movement include this entry for Sister Peggy Healy, a leading activist: "She is a nun with the Maryknoll Order . . . a community of priests, brothers and sisters and lay people that are supposed to be spreading the gospel all over the world. Instead they are front runners in preaching the Marxist Leninist 'Liberation Theology.' . . . Operating under the banner of 'human rights violations' they are operating against the U.S. government."⁴¹ The criticism here is political: No laws are broken, no violence is advocated. As in the past, the government refused to tolerate free speech that includes Marxism in any form.

U.S. groups sympathetic to Nicaragua's Sandinistas faced FBI harassment. In 1983, Witness for Peace, a religious-based group, began to sponsor visits to Nicaragua by members to serve as a "shield of love" in the event of a U.S. invasion. The group included activists from many of the nation's peace and anti-war organizations, including the American Friends Service Committee, the Fellowship of Reconciliation, and the Women's International League for Peace and Freedom. Witness for Peace sponsored more than four thousand visits by U.S. citizens, including about two hundred long-term delegates who lived in war zones near the border where the U.S.-backed Contras were active. They reached out to the U.S. press to offer first-hand accounts of the war and organized lobbying to end U.S. aid to the rebels. Their newsletter reached forty thousand readers.

FBI and U.S. Customs officials responded to this domestic opposition by routinely "stopping U.S. citizens returning from Nicaragua, interrogating them in detail about their trips and professional lives, and searching, seizing and photocopying their address books, diaries, research materials and other written materials." The FBI acknowledged conducting about one hundred interviews in 1985, and several hundred over the next four years. They investigated these people at their homes and jobs, questioning their friends, neighbors, landlords and employers. Several activists were subjected to tax audits, a throwback to COINTELPRO, and others reported incidents of mail tampering. We know of one attempt to get a dozen people fired from their jobs: "The FBI agents asked the employers to call the [activists] into their offices, where the agents reproached them in front of their employers for 'helping the communists,' warning them not to travel to Nicaragua again." The Federal Bureau of Intimidation was at it again. One activist recalled, "When two guys in suits come up and say, 'We're from the FBI. Tell us what you did in Nicaragua' or 'I want to ask you about your activist friend,' of course the friends and neighbors got a little nervous. Which is just what the FBI wanted."⁴²

FBI Headquarters holds a thirty-seven-page file on Witness for Peace, half of which was withheld during the declassification process.⁴³ This file may not be the only one kept by the FBI, as local offices may have their own and key activists may have been under separate investigation. Nonetheless, the Headquarters file shows the type of surveillance in the early post-COINTELPRO era. First, we learn that most FBI surveillance never is written down in formal memos. For example, the interviews of people who visited Nicaragua are not mentioned in the declassified file. Nor are the visits to the workplaces of activists. In several memos the FBI described the group as nonviolent and refers to legal activity, so why were they under investigation? On December 31, 1984, a memo offered this description of Witness for Peace activity in Vermont and New Hampshire. “The group,” the FBI wrote, “is attempting to get pledges for people to commit themselves to either non-violent civil disobedience or other types of lawful protests.” An Albany, New York, memo quotes at length a Witness leaflet that urges nonviolence. According to FBI intelligence, “Non-violence training is being made available for all those who have not previously received it. All who wish to take part in civil disobedience are requested to take this day-long introduction to the philosophy of nonviolence. Those participating in legal demonstrations are also urged to receive this training.” The memo lists twenty-three political organizations that support Witness for Peace actions. Are all these groups under surveillance? The Bureau discusses the possibility of “civil unrest,” which resulted in alerting the Secret Service to Witness for Peace activity.⁴⁴

FBI Headquarters holds a forty-one-page file on the Pledge of Resistance, a group which also opposed war against Nicaragua. Formed in 1983 by religious peace activists who feared the recent United States invasion of Grenada was a prelude to an invasion of Nicaragua, the Pledge circulated a petition for people to sign that in the event of a U.S. attack they would “go immediately to Nicaragua to stand unarmed as a loving barrier in the path of any attempted invasion” or, alternatively, stage protests at U.S. congressional offices. The Pledge worked with the seven regional offices of Witness for Peace and established a national office at the National Council of Churches in New York. By 1986, more than eighty thousand Americans signed the Pledge (including myself) with support across the nation—Florida, Virginia, North Carolina, Texas, Colorado, Wisconsin, Massachusetts, New Jersey, California, and New York. More than three hundred local Pledge groups formed to hold nonviolent training sessions and several thousand Pledge supporters were arrested during street protests during the late 1980s.⁴⁵

How did the FBI respond? Pledge leader Ken Butigan said, “Our phones at the Pledge were tapped from the beginning. In Washington, whenever we were organizing a big event, for three weeks beforehand, my phone would have so

much popping and snapping on it you could hardly talk. Plus, there would be harassing callers bothering us all day long.” Jim Rice, a Pledge founder active in the Sojourners religious community, said, “Even though we knew what we were doing was right, when we became aware we were under surveillance, especially electronic and telephone surveillance, we began to tell ourselves, ‘We need to be careful here.’ We had to be very cautious about the things we said. You just couldn’t make jokes on the telephone anymore that could get you in trouble, even though they were really harmless. . . . Their obvious purpose is to intimidate you. . . . You just can’t let it intimidate you, especially when you realize that’s exactly what they want to do. So, it was important for us to keep our grounding when we knew that stuff was going on, like break-ins and surveillance over the phone lines. We had to say, ‘Yeah, it’s happening, but we’ll just keep doing what we’re doing and not let it get to us.’”⁴⁶

The terrorist bogeyman again reared its head. An FBI report on a Pledge demonstration in Chicago was titled, “Nicaraguan Terrorist Matters: International Terrorism—Nicaragua.”⁴⁷ No FBI memos indicate the Pledge endorsed violence or participated in violent or criminal activity. There are no references to overseas or international connections. The Bureau describes protests in several cities and the names of people arrested by city police were forwarded to FBI Headquarters, continuing a Hoover-era practice.⁴⁸ People who engaged in civil disobedience may become the subject of new investigations, as the FBI searches to contain and neutralize leading activists. In San Diego, the FBI described the routine surveillance of legitimate protest.

Approximately 75 individuals demonstrated outside the San Diego federal building during the noon hour to protest U.S. support of the soldiers of the El Salvadoran government. Approximately 40 demonstrators then entered the federal building and demonstrated at Congressman Bill Lowery’s 41st. District office located in Suite 6-S-15 of the Federal building. . . . Spokeperson(s) for the demonstrators engaged in dialogue with the Congressman’s assistant. Demonstrators milled around the reception area and in the hall next to the congressman’s office.⁴⁹

The FBI tracked the early development of an anti-war movement. A Boston memo discussed activism in several cities: “526 persons were arrested for trespass after notice [in Boston]. The number arrested in Springfield, Massachusetts, was 136 persons; Pittsfield, Massachusetts, was 16; Williamstown, Massachusetts, and Greenfield, Massachusetts, reported two arrests. No injuries to demonstrators or police personnel were reported in any of the four above-mentioned towns.”⁵⁰ In Louisville, Kentucky, a small protest of one hundred people prompted an FBI memo to Headquarters regarding “domestic terrorism” and “information relating to actual or threatened civil

disorders.” Both Witness for Peace and Pledge groups chose government sites as the focus of their protests, which raised special concerns among the forces of social and political control.⁵¹

In an ominous development, the National Security Council and the Federal Emergency Management Agency (FEMA) developed a top-secret emergency plan to construct ten military detention centers within the United States to house domestic opponents of a war against Nicaragua. The plan became known as “Rex 84” and in preparation for its implementation an index of FBI dossiers on twelve thousand Americans was forwarded to FEMA headquarters.⁵² The Rex 84 plan recalled the Hoover-era Security Index as well as ADEX. Political detention plans remained an integral part of security planning.⁵³

Spying on the Nuclear Freeze Movement

In 1982, Reagan made false public allegations that the nuclear freeze movement was Soviet-inspired with leaders recruited by the KGB. The FBI began investigating peace groups, refusing to view anti-nuclear organizing as an authentic response to the threat of war. A large segment of the American population opposed Reagan’s deployment of new nuclear missiles in Europe, his claim that a nuclear war was winnable, and his refusal to renounce the policy of first use of nuclear weapons. Although the freeze gained a mass following with an estimated ten million adherents (and about one million people participated in multiple protest events in any given year), the FBI spent considerable energy on surveillance. It did not seem to matter that freeze resolutions were adopted by the electorates of eight states and almost two hundred congressmen backed the Kennedy-Hatfield Freeze resolution in 1982 reflecting the mainstreaming of the movement.⁵⁴

We know the Bureau infiltrated the Physicians for Social Responsibility chapter in San Francisco, an organization of doctors who spoke about the medical horrors related to a nuclear war. Freeze supporters sometimes were added to the FBI’s terrorism files. For example, in 1982 ABC TV aired a fictional movie, *The Day After*, about the outbreak of nuclear war. More than one hundred million Americans watched this realistic account of the devastating destruction that would follow a nuclear exchange. A group of prominent scientists took out a full-page advertisement in the *New York Times* urging the public to write to them about their response to the movie, and to support the freeze with donations. The advertisement bore a post office box address and FBI Headquarters directed agents to put a mail cover on the box to record the names of all people who responded.⁵⁵ In a separate case, FBI agents

went undercover in the freeze campaign in Orlando, Florida, for at least seven months. One of the agents donated money to win the allegiance of local activists.⁵⁶ When the Washington office of the Committee for a Sane Nuclear Policy (SANE) was burglarized in 1986, some people suspected the FBI.⁵⁷

In 1983, the FBI's investigation of the freeze movement received a public airing when the House Intelligence Committee declassified an FBI report titled, "Soviet Active Measures Relating to the U.S. Peace Movement." The report concluded, "Based on information available to us, we do not believe the Soviets have achieved a dominant role in the U.S. peace and nuclear freeze movement, or that they directly control or manipulate the movement." Although this finding undermined Reagan's claims, the freeze still prompted Bureau investigations. A major portion of the report focused on an anti-nuclear demonstration in New York's Central Park in June 1982 in which close to one million people assembled. The FBI infiltrated the planning of the rally and, harking back to 1950s Cold War thinking, warned that members of the Communist Party USA had a major hand in organizing through one of its front groups, the U.S. Peace Council. "Soviet-controlled organizations participated at the highest levels of the June 12 Committee" that planned the Central Park rally, the FBI said, and during meetings the American Communists "actively campaigned to direct the focus of the demonstration exclusively against U.S. weapons systems."⁵⁸ Of course, U.S. peace activists would focus their attention on U.S. nuclear policy: They live in the United States, not the Soviet Union. For example, the FBI believed KGB agents were "attempting to develop contacts with religious figures in the United States" and were collecting information on American peace activists to determine if any of them might be "vulnerable to [KGB] recruitment operations."⁵⁹ FBI infiltration of peace groups remained a priority as long as large numbers of Americans protested the arms race in defiance of the government.

The full scope of FBI spying against the anti-nuclear movement largely is unknown because many of the groups disbanded without filing requests for their FBI files. I made FOIA requests on several older peace groups investigated under Hoover (SANE and the War Resisters League) and Washington Headquarters told me these groups were not investigated under Reagan. In addition to the FBI, other police agencies investigated the freeze. For example, the Connecticut state police infiltrated several organizations and when a Hartford newspaper exposed this spying, the head of the State Police Criminal Intelligence Division commented, "I know people don't like it, but if you go to a demonstration, you're probably waiving [your] right to privacy."⁶⁰ In northern California, naval intelligence planted informers inside the Livermore Action Group (LAG), an anti-nuclear civil disobedience organization. In 1982–1983, LAG organized about a dozen blockades outside the Lawrence

Livermore weapons laboratory, as well as at army bases, in which police arrested almost 3,800 protestors. An informer spied from inside the group throughout most of this period preparing monthly reports passed on to the FBI. In January 1983, the informer attended a planning session of fifty protest organizers and noted plans for demonstrations. In February, he reported that activists “were ecstatic at the total number of protestors that participated” at an action at the Concord Naval Weapons Station in San Francisco. Before the protest, the informer provided logistical information and he promised that “the forthcoming meeting regarding the spring-summer demonstration will be monitored and intelligence will be appropriately disseminated.” In March he wrote, “During a conversation with one prospective demonstrator, source was advised that although the march is being organized as a peaceful demonstration, the group is encouraging civil disobedience such as laying in the street.”⁶¹

Veteran FBI agent Jack Ryan protested the designation of anti-nuclear groups as terrorists resulting in his termination from the Bureau. Ryan worked on these investigations until he wrote a memo in 1987 to his superior in Springfield, Illinois, registering his opposition. Ryan believed the Bureau was “using this investigation not as a means of developing a case to be prosecuted but as an end in itself, a way of intimidating. And I know well how intimidating it can be to be investigated by the FBI.” Ryan focused on the Plowshares, a group that organized civil disobedience: “I do not see the activities committed by the ‘Plowshares’ group to be in any way acts of violence. . . . To my understanding, the term ‘plowshares’ is drawn from the Biblical edict: ‘they shall beat their swords into plowshares,’ and most pointedly refers to neutralizing military violence. The actions of Jean Gump, et al. [a local Plowshares group] are obvious violations of Destruction of Government Property statutes and I would have no problem investigating such matters but I do not believe any of their actions in this case constitute acts of violence bringing them under the scope of Domestic Security Guidelines.”⁶²

During the 1980s, Plowshares engaged in about thirty break-ins of army or navy missile sites. Protestors symbolically hammered on the heads of the missiles and poured their blood on them. In their view, they began the process of disarmament. As radical pacifists, they embraced religion and their acts were accompanied by prayer or other ceremonies. They made no effort to conceal their activity, waiting for police to arrive. They peacefully submitted to arrest, becoming anti-war political prisoners. About one hundred people participated in these symbolic actions.⁶³ When I requested the FBI file on the Plowshares, FBI Headquarters sent me only eight pages, which cannot be the full record on these groups. Again, political policing tries to conceal its conduct.

Many peace movements of the 1980s supported *nonviolent* direct action. Whether the issue was Central American policy or the nuclear arms race, groups of committed activists embraced mass civil disobedience to advance the movement and build nonviolent communities. They usually organized elaborate training to keep protests peaceful and developed strategies to avoid violent confrontations with the police. They engaged in political action through affinity groups, practiced decision making by consensus, and shared an ideology that combined feminism, ecology, and grassroots democracy.⁶⁴

The full extent of FBI surveillance on the environmental movement is difficult to determine with precision. In 1982, the assistant secretary of agriculture claimed socialists and Communists led the Audubon Society and the Sierra Club.⁶⁵ Were these charges based on FBI investigations? When I filed FOIA requests on these two groups, Headquarters reported “no records” on the Audubon Society. The Sierra Club FBI file is 107 pages with the last dated material from 1973.⁶⁶ However, we do know that the Bureau actively targeted the militant wing of the environmental movement, including Greenpeace USA and Earth First!.

In 1991, progressive journalist Chip Berlet attended a private security conference and heard that naval intelligence designated Greenpeace a terrorist threat. There is other evidence. Gerry Leape, the Oceans Campaign Coordinator for Greenpeace, recalled: “I worked for a member of Congress until 1989. In 1991, that Congressman called me to tell me that a constituent of his had been denied a security clearance because he said that he was a supporter of Greenpeace and that, at least at that time, Greenpeace was still listed by the FBI as a terrorist organization.”⁶⁷ In 2000, the Headquarters file on Greenpeace USA totaled 135 pages. The Bureau described the type of protest activity organized by Greenpeace: “Actions have been taken by Greenpeace in opposition to U.S. offshore drilling, and to nuclear submarines coming into port; in opposition to Spanish whaling; and against Japanese and Soviet fishing and whaling violations.” An effort by the Bureau to broaden its investigation to other groups, based on association with Greenpeace, failed: “FBIHQ records do not reveal any information concerning connections of Greenpeace with other organizations.”⁶⁸ Another memo noted, “On July 10, 1987, Greenpeace, an aggressive pro-ecology organization, launched a campaign called the ‘nuclear free seas campaign’ to protest the nuclear powered ships, military vessels and submarines that carry nuclear weapons. The campaign is particularly aimed at the American, British and French navies. The planning for the campaign originated at Greenpeace headquarters, 2007 R Street, N.W., Washington, D.C.”⁶⁹ The file also notes that when activists were arrested, their names were forwarded to FBI Headquarters. According to one memo, “Greenpeace had entered the Japanese Consulate in Chicago on Nov. 19, 1981

to protest the killing of whales by Japanese fisherman. Police subsequently arrested the following group members for disorderly conduct after they refused to leave the premises: [text redacted].” The FBI kept press clippings on the group, which claimed 250,000 U.S. members.⁷⁰

Spying on African American Elected Officials

During the 1980s, many African Americans wondered if the FBI had ceased their long history of racial policing. Should it come as a surprise that the Bureau, working with local police, targeted a wide range of black elected officials? According to the United Nations Commission on Human Rights, “A number of black elected officials were placed under surveillance, their phones tapped, subjected to investigations, spied on by cameras for corruption or embezzlement and juries hearing cases involving some of them were manipulated.”⁷¹ This FBI effort tried to police the emergence of mainstream black leadership. In 1964, approximately 280 black elected officials served nationwide, a low number. But by the late 1980s, the figure grew to more than five thousand.⁷² The FBI resisted this progress by starting dubious investigations of eight black Congressman (Ronald V. Dellums, Floyd Flake, Harold Ford, Mervyn Dymally, John Conyers, Charles Rangle, William Clay, and William Gray); seven black mayors (Andrew Young, Maynard Jackson, Tom Bradley, Coleman Young, David Dinkins, Harold Washington, and Marion Barry); and several other black leaders (Julian Bond, Clarence Mitchell III, and Alcee Hastings). Only Marion Barry was found guilty of a crime and questions remain about entrapment.⁷³ In the case of Alcee Hastings, the FBI’s attempt to remove him from the federal bench included partly falsifying evidence and making false and distorted statements before a legal panel. The Justice Department concluded that the FBI also “may have provided misleading testimony about the results of forensic tests [used] in the impeachment proceedings.”⁷⁴ Hastings subsequently was elected to the U.S. House of Representatives.

The campaign against black electoral activity included supporters of the Rev. Jesse Jackson’s 1984 presidential campaign. As the National Lawyers Guild reported, “Immediately following Jesse Jackson’s sweep of the 1984 Democratic primary [in Alabama], 80 FBI agents descended, seizing ballots and questioning over one thousand Black Belt voters. Agents visited the homes of elderly people, intimating that they may have been involved in illegal voting. Many were transported under state trooper escort to be photographed, fingerprinted and questioned before an all-white grand jury.” The FBI raided the offices of several civil rights workers and eight black leaders were indicted but subsequently acquitted of all major charges.⁷⁵

The Bureau kept tabs on Jackson from 1967 through at least the early 1980s. Jackson first came to the attention of the Bureau for his civil rights work with Martin Luther King Jr. In the late 1960s, the FBI tried to connect Jackson to the Black Panthers because he spoke at one fundraiser for Huey Newton and because of his later support for Angela Davis. The FBI also investigated his activities to find ties to the Nation of Islam, another group under investigation. The Bureau viewed him as an enemy in part because, as a December 22, 1971, memo noted, “Jackson in the past has been severely critical of the Director and the FBI.” The FBI started separate files on Operation Breadbasket and Operation Push, which Jackson helped lead. This included high-level infiltration: An FBI informer rose to the position of director of the Men’s Division of Operation Push. In 1981, the FBI investigated Jackson as a possible foreign agent for Libya.⁷⁶

In two other ways, the FBI fought black activism. During the congressional debate about establishing a national holiday for Martin Luther King Jr. the FBI secretly gave derogatory King material to members of Congress to urge them to vote against the holiday.⁷⁷ Race also came into play in the hunt for terrorists on the issue of South African apartheid. The FBI monitored some critics who advocated divestment—getting United States companies and the U.S. government to pull out of all business dealings in South Africa as a way to punish the white regime. Hundreds of people were arrested in peaceful civil disobedience, including several members of Congress. Terrorism? The FBI never found any, but the fact that U.S. activists expressed support for Nelson Mandela’s African National Congress (ANC)—a terrorist group according to Reagan’s government—was enough to justify guilt by association investigations. We know that in Albany, New York, in 1981 the FBI and police infiltrated the Coalition Against Apartheid and Racism. On the day of a major rally, agents broke into the home of one of the group’s leaders based on an informer’s erroneous report that the group stockpiled weapons. The FBI confiscated files, papers, and an address book, while detaining two leaders on bogus charges.⁷⁸ In New York City, nine members of the May 19 Communist Organization were arrested for trespassing during an anti-apartheid protest outside the South African Airways ticket office and the Bureau characterized this protest as a “terrorist incident” because the May 19 organization was a radical group already under investigation.⁷⁹

In general, peaceful street protests could activate surveillance. In 1983, the Georgia Committee against the Death Penalty held a vigil at the state capitol. Two FBI agents were among the protestors, dressed in plainclothes and wearing a green ribbon, the emblem of the protestors. One of the agents carried a video camera and filmed the demonstration for their files.⁸⁰ In 1985, the All People’s Congress planned a demonstration in Washington during Rea-

gan's second inaugural ceremony. Although the Buffalo FBI office informed Washington ahead of time that the group had "no propensity for violence," the FBI's Revell personally rejected this assessment and ordered surveillance of the protestors.⁸¹ In 1991, protestors gathered outside a Manhattan court building during the murder trial of El Sayyid A. Nossair, accused of assassinating Rabbi Meir Kahane of the Jewish Defense League (JDL). As angry Jews and Muslims faced off on the street, the FBI stood by filming the protestors, taking notes on each one of them. At the time, the FBI had a large ongoing investigation of the JDL. The Muslim supporters of Nossair were not yet under FBI investigation, but their mere presence on the street exercising their First Amendment rights prompted one.⁸²

In a variety of other contexts, the FBI spied on Americans fighting for their civil rights. Surveillance of gays and lesbians employed by government began during the late 1930s. In 1951, Hoover increased these efforts in a major surveillance campaign known as the Sex Deviates program to root out "homosexuals and other moral perverts" from government employment.⁸³ During the 1960s the gay power movement was surveilled as part of the New Left.⁸⁴ During the 1980s, the watchful eye of the state applied the terrorist label to a social service and educational group, the Gay Men's Health Crisis in New York, as well as the Coalition for Lesbian and Gay Rights and Senior Action in a Gay Environment. The protest group ACT UP (AIDS Coalition to Unleash Power) also became a target. Founded in 1987, ACT UP sponsored civil disobedience and strongly criticized the Reagan administration's lack of attention to the AIDS health crisis. The FBI investigated ACT UP as a terrorist group because they falsely claimed the group might throw HIV-infected blood during protests. At least sixteen field offices were involved in the probe, including the use of informers and undercover agents at meetings. In 1995, the FBI released a small portion of their file (twenty-two pages taken from 451 documents on the group).⁸⁵ In an interview, leader James Wentzy told me, "By the early '90s people in ACT UP were starting to get paranoid (and perhaps not without cause) about 'Who was an informer.' . . . Until the voice of reason was adopted saying, 'Look, we don't care who is or isn't an informer. Our work is open and public and is not about the FBI but rather fighting AIDS and the bureaucrats who continue to foster the AIDS crisis.' To my knowledge, no ACT UP member was 'knowingly' interviewed by the FBI. No doubt, however, members of the FBI were at general open-to-the public meetings."⁸⁶

Another context for surveillance involved animal rights. Again we see guilt by association: Since one radical group, the Animal Liberation Front (ALF), engaged in property vandalism, other nonviolent groups were put under surveillance. The FBI investigated People for the Ethical Treatment of Animals

(PETA), the largest animal rights group in the nation, looking for ties to the ALF. One FBI memo noted, the head of PETA “declined to be interviewed by the FBI in connection with a bomb threat investigation being conducted in 1985, wherein another international group called the Animal Liberation Front (ALF) was the primary suspect.”⁸⁷ A memo from the Charlotte, North Carolina, FBI office has the subject heading, “People for the Ethical Treatment of Animals (PETA) and Animal Liberation Front (ALF); Domestic Security.” The memo discusses PETA demonstrations against corporations that use animals in research testing and shows the FBI taking sides: “U.S. Surgical [corporation] has apparently been the target of a PETA demonstration and action. U.S. Surgical currently has a \$1.5 million grant relationship with Duke University research and development, Durham, North Carolina. [text redacted] recently learned that Jeanie Rausch, executive director of PETA, has stated that her organization has a disgruntled employee source at the Duke research and development center and that PETA plans to discredit Duke University due to its relationship with U.S. Surgical. [text redacted] would contact the Duke University Department of Public Safety and make them aware of the above information.”⁸⁸

The FBI kept notes when Americans had contact with Communist nations, a continuation of COINTELPRO tactics. More than two dozen members of Amnesty International were interviewed by the Bureau after they wrote to Soviet or Eastern bloc nations on behalf of political prisoners.⁸⁹ In the case of high school student Todd Patterson, the FBI investigated him for writing to foreign nations for a school project. When novelist E. L. Doctorow gave a speech at the Fourth Soviet-American Writers Conference in Los Angeles in 1980, the FBI added a nine-page report in his file.⁹⁰ The FBI tracked U.S. delegates to the 1987 World Conference on Women convention held in Moscow. Erwin Salk, a Chicago businessman and civil rights activist, was monitored because, as one informant wrote, he “attempts to be in the forefront among the individuals dealing with various Soviet delegations visiting Chicago in order to satisfy his personal need for attention. Although Salk appears to be genuine in his efforts to develop US-USSR relationships, he is easily manipulated due to naiveté.” John Black, a retired union organizer in Pennsylvania, was mentioned in spy files because he wrote a local newspaper calling on the United States to negotiate with the Soviets to eliminate nuclear weapons. Labor organizer Ignacio de la Fuente came to the FBI’s attention after he urged union meetings with Eastern bloc labor groups.⁹¹

Conducted from 1982 to 1988, the Library Awareness Program is another example of a Cold War program reminiscent of Hoover-era surveillance. The FBI visited private and public libraries in ten states to enlist librarians to spy on patrons. The FBI wanted to know if readers accessed public government

documents about scientific and technological issues. During congressional hearings, Representative Don Edwards articulated the fundamental problem with such monitoring: "The FBI should recognize that libraries and books and reading are special. In our nation libraries are sacred institutions which should be protected and nurtured. Going into libraries and asking librarians to report on suspicious users has ominous implications for freedom of speech and privacy." Even worse, when library groups and individual librarians protested the surveillance program, these critics were put under investigation to see if they were collaborating with Soviet agents. At least 266 FBI background checks were conducted in 1989, according to Herbert Forestel, who wrote a critical book on the FBI program and was one of those under investigation.⁹²

At a Brooklyn Public Library, an agent told a librarian to "look out for suspicious-looking people who wanted to overthrow the government." She should write down the books they read and call the Bureau. At a public library in Fort Lauderdale, Florida, an agent told the librarian, "We know for a fact that there are agitators in this area who are using the library for information." At three university libraries (Pennsylvania State University, the University of Wisconsin at Madison and the University of Michigan) the FBI had specific targets in mind, asking librarians to track the reading habits of Russian scholars. On at least thirty occasions the FBI tried to recruit librarians as paid informants.⁹³ The legacy of distrust between librarians and the FBI was evident in later years, as one librarian wrote in the *American Libraries* magazine: "Most online catalogs don't retain histories of patron use because once upon a time (about ten years ago) the FBI was leaning hard on libraries to release that information to them. . . . That is why so many states have patron confidentiality laws. One rule of thumb is if it can be subpoenaed, it needs to be destroyed."⁹⁴

Several other contexts show the broad range of the FBI's monitoring of Americans. In preparation for the 1984 Democratic Party Convention in San Francisco, the local police and FBI conducted a massive spying program on more than one hundred Bay Area political groups, including the ACLU, gay organizations, and labor unions.⁹⁵ In another case, when musician Willie Nelson, actor Robin Williams and several other entertainers performed at a benefit concert in 1987 to raise funds for the legal defense of Leonard Peltier, the Los Angeles FBI office sought retribution. They sent agents to local radio stations requesting they cease to play Nelson's music.⁹⁶

By the end of the decade, a Senate Intelligence Committee report stated that spying on peaceful protests was a "fairly routine practice." The U.S. House Subcommittee on Civil and Constitutional Rights found that the Reagan administration used FBI undercover operatives as a standard practice.⁹⁷ In this post-1976 era, Congress was capable of turning a critical eye on the FBI in reports or testimony marking a new development in the history of intelligence

oversight. However, Congress refused to muster the political will to reform FBI operations by enacting legislation to limit spying. Does congressional criticism serve as a cover to allow the FBI secretly to engage in political policing? During the 1980s, it seemed Reagan reached a tacit agreement within the government that the FBI gets to do whatever it wants as long as it subjects itself to occasional criticism.

When the U.S. Government Accounting Office (GAO) issued the first report ever to examine the FBI's program to counter international terrorism, the FBI refused to give the GAO full access to its files so it was unable to determine the extent of violations or misconduct. The GAO found a large number of investigations for the period 1982 to 1988—approximately 19,500 separate investigations and any single investigation can include one or many people. About 60 percent focused on immigrants or immigrant groups living in the United States with a large amount of attention to Arab American organizations critical of U.S. support for Israel.⁹⁸ The FBI investigated U.S. supporters of Hamas and Hezbollah by monitoring Islamic centers, charities, and criminal rings scattered from Washington to Detroit to Los Angeles.⁹⁹ Student groups also came under scrutiny. Between 1979 and 1989, the FBI conducted a nationwide investigation of the General Union of Palestinian Students (GUPS), a college organization supporting Palestinian identity and self-determination. The FBI described GUPS as wanting “to provide assistance to Palestinian students in their education and settlement in the United States and to report, explain, correct and spread the Palestinian cause to people.”¹⁰⁰ The FBI followed members of GUPS chapters, researching their backgrounds, and infiltrated meetings and conferences. They took pictures of students and collected political literature and articles written in student newspapers. The FBI expanded their investigation to include groups which showed “any interest in PLO issues.” Monitoring college groups, of course, is not new. In the 1960s and early 1970s, the FBI regularly surveilled black and Latino student organizations, as well as college chapters of SDS. No GUPS members were arrested for a crime.

By contrast, the government made arrests in the case of the “L.A. Eight.” In 1988, INS and FBI agents in Los Angeles charged seven Palestinian immigrants and one Kenyan immigrant, fearful they were part of a terrorist cell affiliated with the Popular Front for the Liberation of Palestine (PFLP). In court proceedings that lasted more than a decade, it became clear that the FBI lacked evidence to tie these individuals to criminal conduct. The FBI strategy was broader: “to identify key PFLP people in Southern California so that law enforcement agencies capable of disrupting the PFLP’s activities through legal action can do so.”¹⁰¹ The latter part of this statement demonstrates the revised political policing role: “disrupting . . . through legal action.” This is

the new FBI tactic—the Justice Department and Congress construct guidelines and laws so the secret police can fight political activity in legal ways. As criminologists increasingly argue, laws are not neutral, but are constructed to serve particular economic and political interests. In theory, at least, the First Amendment is not supposed to legitimate government containment of political activity.¹⁰²

The FBI monitored Columbia University Professor Edward Said, a leading Palestinian American intellectual, from 1971 to 1991. Scholar David H. Price obtained Said's file after his death. Price noted, "Most of Said's file documents FBI surveillance campaigns of his legal, public work with American-based Palestinian political or pro-Arab organizations, while other portions of the file document the FBI's ongoing investigations of Said as it monitored his contacts with other Palestinian-Americans." Like many subjects Said became aware of the surveillance. His wife, Miriam, noted, "We always knew that any political activity concerning the Palestinian issue is monitored and when talking on the phone we would say 'let the tappers hear this.' We believed our phones were tapped for a long time, but it never bothered us because we knew we were hiding nothing." Why does the file end in 1991? Price, who is an expert on the FOIA, speculated: "Curiously, Said's FBI file, as released to me, contains no information on the remaining dozen years of his life. Either the FBI stopped monitoring him, or they couldn't locate these files, or they won't release this information or even the fact that the information exists in the files. The latter two possibilities seem far more likely than the first."¹⁰³

Surveillance of Right-Wing Groups

Although a right-wing ideologue, Reagan turned the FBI's attention to a variety of small white supremacist groups with ties to violent crimes, including bank robberies and the assassination of Jewish radio personality Alan Berg. The FBI viewed the "White Power" movement as a form of extremism because it advocated violence and revolution. In 1985, fifty-two agents worked full-time investigating Aryan Nations, Christian Identity and neo-Nazi groups. One informer claimed there were "dozens" of undercover operatives inside Aryan Nations. The surveillance reached into prison, where from 1982 to 1989 the FBI investigated a California gang known as the Aryan Brotherhood.¹⁰⁴ More than one hundred white supremacists were indicted for crimes between 1980 and 1989, effectively decimating the leadership of many of these groups. The FBI arrested Richard Butler, head of the Aryan Nations, for sedition after advocating in a speech the violent overthrow of the government. Robert J. Mathews, the founder of The Order, engaged in several crimes, became a fugitive, and died in

a shootout with the FBI. His group emerged in 1983 as the most violent of all the right-wing organizations.¹⁰⁵

The FBI reopened its investigation of the neo-Nazi National Alliance in 1984. At least six FBI field offices monitored Alliance activities, and the investigation began as a spin-off of the Mathews probe. An FBI memo traced the origins: "On November 24, 1984, a search was conducted on the vehicle and rooms abandoned by Robert J. Mathews (deceased) and [text redacted] who were then Bureau fugitives. A review of material recovered from the above search indicated several coded lists of members of the 'Order.' Included in this list was a code name [text redacted] and the telephone number (703) 979-1886. This was the telephone for the National Alliance." Mathews's ties to the National Alliance were not new. The FBI noted he attended its meetings in the early 1980s, but now after the shootout they decided to target the group. They focused surveillance on William Pierce, a guru figure on the extreme Right. Putting him under surveillance proved useful as a way to keep a watch on others.

The legal basis of the investigation was advocacy of violence. The FBI focused on *The Turner Diaries*, describing the book as "a guide and 'bible' for members." The group's headquarters in Mill Point, West Virginia, came under heavy surveillance, as did Alliance activities in at least eleven other cities. While many Alliance members owned guns, the FBI was unable to pin any illegal weapons charges on them. Nonetheless, several FBI memos contain the following warning: "All individuals in this investigation should be considered armed and dangerous with unlimited ammunition and weapons, and appropriate caution should be exercised during any phase of investigation. Additionally, be advised of possible threats by [text redacted] members toward FBI personnel." The Alliance file includes membership lists, photographs, license plate numbers, phone numbers, correspondence, financial records, and political pamphlets. On one occasion an FBI agent in Mill Point followed an Alliance member to a local garbage dump and retrieved a large cache of internal group documents.¹⁰⁶ An FBI agent highlighted the following passage from a 1986 Alliance publication as proof that the group was a legitimate target of the Bureau. The passage suggests nothing that is violent or illegal, and any close reading should conclude it is a grandiose delusion reflecting the weak and marginal position of the group.

There is a greater need for recruiting members inside the system; persuading men and women who now occupy positions in the government, the armed forces, educational establishments and a wide range of industries to remain where they are and begin using their positions to serve the Alliance. This need is the consequence of both a decreased reservoir of potential cadres and the lengthened revolutionary time scale with which we must contend. When we cannot have as much internal strength as we would like, then we are more dependent on allies inside the enemy's camp.¹⁰⁷

The FBI file on the loosely organized group Sheriff's Posse Comitatus, based in the rural Midwest, totals 2,147 pages with records between 1980 and 1986. Founded in 1969 by Henry Beach, the group believed the nation's founders wanted to establish a Christian Republic and no legitimate law enforcement authority existed above the county sheriff. They advocated abolishing the tax system and voiced strong anti-Semitic and anti-black views. The FBI identified all of its chapters, with attention to leaders and allegedly violence-prone members. They gathered information about the group's finances and recruited informers from within. The FBI director wanted information on "specific actions taken by members of the SPC which would justify continuation of the DS/T [Domestic Security/Terrorism] matter."¹⁰⁸

When white supremacist Louis Beam, promoter of the idea of a "leaderless resistance," organized a weeklong gathering at Hayden Lake, Idaho, in July 1984, about one hundred people attended, a virtual who's-who of the extreme Right. About sixty of these people are mentioned in declassified FBI files, of whom eight subsequently were convicted for various crimes.¹⁰⁹

The FBI's ambivalent relationship to the John Birch Society (JBS) offers an interesting study of the Bureau's ties to the right-wing in American politics. While the Bureau worked with the JBS during the late 1950s and early 1960s in the hunt for the Red Menace, they also investigated some of its more extreme members. FBI Headquarters holds approximately twelve thousand pages on the Society with many more documents scattered in local field offices. The career of JBS member David Gumaer shows an unreliable informer turned bad, investigated by the Bureau for a variety of criminal violations eventually leading to conviction. This informer circulated in an extreme world of guns and right-wing political paranoia, which made the FBI uncomfortable. In the 1960s, Gumaer infiltrated the Students for a Democratic Society and W. E. B. DuBois Clubs and also served as an undercover operative for the Chicago Police Department. Gumaer joined the JBS in 1964, gave speeches under the auspices of the Society, and served as a contributing editor to the JBS weekly magazine, *Review of the News*. For the FBI, a problem emerged when Gumaer announced in his public speeches that he worked for the Bureau. The FBI repeatedly warned him not to discuss these associations. In 1970, the Chicago and Los Angeles FBI field offices contacted Gumaer "to advise him to cease and desist from making statements that his services have been requested by the FBI." During a 1971 speaking engagement in Reno, Nevada, under the auspices of the JBS front-group, Support Your Local Police, Gumaer again stated that he had been an informant for the Bureau. Headquarters instructed its San Francisco field office to immediately contact Gumaer "and once again admonish him for referring to the FBI in his speech in Reno and direct him to immediately cease and desist from making any further reference to the FBI in his talks." In October 1973, the FBI's Washington, D.C., field office sent a memo to HQ advising

that it had been contacted by “a confidential source who has provided reliable information in the past” and this informant advised that Gumaer “is alleged to be organizing right-wing airlines pilots to fly ‘hit teams’ around the United States to assassinate certain individuals. Henry Kissinger, secretary of state, was the only name mentioned.” The field office described Gumaer as “a right-wing anti-Semitic extremist.”¹¹⁰

His troubles with the law began in 1967, when Gumaer was convicted on charges of battery and received one year probation. In 1976, he was convicted of filing a false tax return and served thirty days in jail. The FBI’s efforts to contain him continued into the 1980s. In 1984, Headquarters authorized a full investigation of Gumaer. During 1985, he was under surveillance because of association with the Arizona Patriots, which the FBI described as an “anti-tax, neo-Nazi, paramilitary organization whose philosophy resembles the Aryan Nations, Posse Comitatus and other right wing extremist groups.” FBI memos distributed to multiple field offices refer to Gumaer as someone who “should be considered armed and dangerous.” In 1986, Gumaer was arrested by BATF and FBI agents in Phoenix for selling illegal weapons. An FBI memo notes that a coworker told Gumaer about Uzi machine guns for sale: “According to transcripts of secretly taped conversations by an FBI informant in the Arizona Patriots case, Gumaer attended some meetings of the fringe group, which planned to rob an armored truck leaving a Laughlin, Nevada, casino and bomb a Phoenix synagogue and the IRS center in Ogden UT. . . . Gumaer mentioned to the undercover informant, a former Sheriff’s Deputy who infiltrated the Arizona Patriots in 1984, that he knew a man in Colorado who could sell them eight Uzis. The informant . . . passed the information to federal agents who then used Gumaer to set up the sale.”¹¹¹

Conclusion

The Levi Guidelines marked the transition in FBI practice from subversive to terrorist investigations. This reform ended open-ended probes to focus narrowly on groups who were thought to be committing crimes, especially political violence. How much has the FBI really changed? After a major retreat during the late 1970s, the record of the 1980s suggests the Bureau revived its political policing function conducting surveillance and disruption against those who challenged U.S. policy. The government interpreted the terrorist label so broadly that a wide range of political activists became subject to investigation. The FBI still targeted individuals—writers, teachers, and activists—whose main “crime” was public anti-FBI views. As the Cold War raged, the FBI continued to believe that the Soviet Union was spreading its influence through groups

tied to the CP. According to this logic, if a single American Communist—and the CP was very small and irrelevant at this point—worked in a political group, the whole group must be a front for the enemy. As one FBI agent said about the 1980s: “[T]he Soviet Union now makes greater use of ad hoc front groups. These groups, which do not have an overt tradition of close association with communist and Soviet causes, try to attract members from a broad cross-section of the political spectrum. Nevertheless, they are dominated by pro-Soviet individuals and are, as a rule, covertly financed by the Soviet Union.”¹¹²

The FBI continued to target a whole political group based on the inflammatory statements (or behavior) of a single member. The FBI continued in some cases to engage in perjury in court and to deceive Congress about its activities, frustrating congressional oversight. Oversight: There is more of it by the Congress, but the legislative branch refused to limit FBI spying in meaningful ways. The culture of secrecy remained firmly in place with the FBI fighting the release of information about their conduct and covering up mistakes by withholding relevant documents. After a brief effort to end political policing under Ford and Carter, the government embraced it once again under Reagan without much consideration for civil liberties. In a major change, Reagan ushered in a new era of surveillance by broadly linking domestic dissent to terrorism, falsely associating violence with peaceful and lawful protest. The enhanced power to investigate political activity deliberately sought to silence outspoken voices for social justice. While all presidents struggle to balance the relationship between national security and constitutional rights, Reagan heavily tipped the scales away from protections for freedom of political expression.

Notes

1. The Levi Guidelines state that a domestic security/terrorism investigation may be “authorized on the basis of specific and articulable facts giving reason to believe an individual or group is or may be engaged in activities which involve use of force and which involve or will involve the violation of federal law.” The category of “foreign counter-intelligence” investigations still allowed open-ended inquiries to see if individuals or groups supported or acted as foreign terrorists or spies. John T. Elliff, *The Reform of FBI Intelligence Operations* (Princeton, N.J.: Princeton University Press, 1979), 62, 189.

2. U.S. Attorney General, “Material Regarding the FBI for Consideration in Conjunction with the President’s State of the Union Address,” Nov. 12, 1976, Gerald R. Ford FBI File.

3. Office of the Inspector General, U.S. Justice Department, “The Federal Bureau of Investigation’s Compliance with the Attorney General’s Investigative Guidelines (Redacted),” September 2005; Report of the Subcommittee on Security and Terrorism, *Impact of Attorney General’s Guidelines for Domestic Security Investigation (The*

Levi Guidelines), 1984, 5, 9; Max Gunther, "Top Cop Clarence Kelley Talks: Where the FBI is Heading," *Family Weekly*, July 16, 1976, Clarence M. Kelley FBI File.

4. W. Raymond Wannall, "The FBI's Domestic Intelligence Operations: Domestic Security in Limbo," *International Journal of Intelligence and Counterintelligence* 4 (Winter 1990): 452.

5. William H. Webster speech before the Atlanta Bar Association, Oct. 17, 1980, Kelley FBI File.

6. Elliff, *The Reform of FBI Intelligence Operations*, 92–93.

7. Quoted in "The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines (Redacted)"; Statement of Benjamin R. Civiletti, 1979–1980 U.S. House FBI Charter Bill Hearings, 4.

8. Webster speech, Oct. 17, 1980.

9. Brent L. Smith, *Terrorism in America: Pipe Bombs and Pipe Dreams* (New York: State University of New York Press, 1994); Samuel T. Francis, "The Intelligence Identities Protection Act (S.391–H.R.4)," Issue Bulletin 70, Heritage Foundation, November 1, 1981.

10. Herbert G. Gutman, *Power and Culture: Essays on the American Working Class* (New York: Pantheon Books, 1987), 256.

11. M. Wesley Swearingen, *FBI Secrets: An Agent's Expose* (Boston: South End Press, 1995); "Native American Movement Targeted Again," *Public Eye* 1 (April 1978); "Brink's Holdup Spurs U.S. Inquiry on Links Among Terrorist Groups," *New York Times*, Oct. 25, 1981.

12. Ward Churchill and Jim Vander Wall, *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Dissent in the United States* (Boston: South End Press, 1990), 273–287.

13. T. W. Leavitt to J.G. Deegan, July 3, 1976; SAC Oklahoma City to FBI Director, July 7, 1977. FBI Files on the Native Indian Movement and Wounded Knee, University Publications of America, Reel 16, 17.

14. SAC Minneapolis to FBI Director, Dec. 12, 1976; SAC Minneapolis to FBI Director, Jan. 13, 1977, FBI Files on the Native Indian Movement and Wounded Knee.

15. FBI memo, Alexandria, Va., office, June 26, 1975; FBI memo, Baltimore office, Oct. 23, 1975; FBI memo, Alexandria, Va., office, March 3, 1976; FBI memo, Alexandria, Va., office, Aug. 19, 1976. The files on the National Alliance are posted on the FBI's website (www.fbi.gov).

16. Elliff, *The Reform of FBI Intelligence Operations*; Wannall, "The FBI's Domestic Intelligence Operations."

17. Robert Justin Goldstein, "The FBI and American Politics Textbooks," *PS: Political Science and Politics* 18 (Spring 1985): 238.

18. "Socialist Workers Party Exempted From Listing Contributors," *Washington Post*, Jan. 10, 1979.

19. Federal Election Commission, Advisory Opinion 2003–2002, March 25, 2003; "SWP Wins Extension of Campaign Rights," *Militant*, March 31, 1997; "Socialists Defend Right to Campaign in Elections," *Militant*, Feb. 17, 2003.

20. John J. Abt with Michael Myerson, *Advocate and Activist: Memoirs of an American Communist Lawyer* (Urbana: University of Illinois Press, 1993), 282–83.
21. Elliff, *The Reform of FBI Intelligence Operations*, 94–95.
22. Frank J. Donner, “The Terrorist as Scapegoat,” *Nation*, May 20, 1978.
23. Barbara Epstein, *Political Protest and Cultural Revolution: Nonviolent Direct Action in the 1970s and 1980s* (Berkeley: University of California Press, 1993), 10.
24. “NCLC: American’s Largest Political Intelligence Army,” *Public Eye* 1 (Fall 1977): 18–20.
25. Interview with Robert (Renny) Cushing by Ivan Greenberg, Aug. 27, 1999. Cushing’s papers on Clamshell are stored at the University of New Hampshire Library. In 1988, Cushing’s father was murdered and in the course of the trial a state police officer working on the case was called to testify. While Cushing was sitting in court watching the proceedings, one of the prosecutors told him that this police officer earlier had infiltrated Clamshell. Cushing also notes that several state police brass later went to work for security at Seabrook or the state utility company that ran it. The Seabrook plant began operating in 1990. In 1977, Clamshell brought a civil suit to protest the way the police treated them while in custody after the arrests. In the course of civil depositions, the Clamshell lawyers deposed Supreme Court Justice David Souter, who was then attorney general of New Hampshire. Souter categorically denied police infiltration. However, during a demonstration at Seabrook in 1980, 15 people were arrested, but the charges were later dropped when it came out in court that one of the protestors was an undercover police officer who had been active in the group for several years, and this undercover agent passed along confidential defense legal planning to his police superiors. It seems likely that the police or FBI had infiltrated Clamshell when Souter gave his testimony.
26. William Kleinknecht, *The Man Who Sold the World: Ronald Reagan and the Betrayal of Main Street America* (New York: Nation Books, 2009), 42; Rhodri Jeffrey-Jones, *The FBI: A History* (New Haven: Yale University Press, 2007): 202–3. For an overview of the era, see Sean Wilentz, *The Age of Reagan: A History, 1974–2008* (New York: HarperCollins, 2008).
27. Eve Pell, *The Big Chill: How the Reagan Administration, Corporate America, and Religious Conservatives are Subverting Free Speech and the Public’s Right to Know* (Boston: Beacon Press, 1984), 191; Geoffrey R. Stone, “The Reagan Administration, the First Amendment, and FBI Domestic Security Investigations,” in *Freedom At Risk: Secrecy, Censorship, and Repression in the 1980s*, ed. Richard O. Curry (Philadelphia: Temple University Press, 1988), 277; Chip Berlet and Matthew N. Lyons, *Right-Wing Populism in America: Too Close for Comfort* (New York: Guilford Press, 2000), 224–25.
28. “Aryeh Neier Reviews,” *Bulletin of Atomic Scientists*, March 1982, 31–32.
29. Victor Navasky, “The New Boys on Terrorism,” *San Francisco Chronicle*, Feb. 14, 1981; Pell, *The Big Chill*, 191; Noam Chomsky, “Wars of Terror,” in *Peace Not Terror: Leaders of the Antiwar Movement Speak Out Against U.S. Foreign Policy Post 9/11*, ed. Mary Susannah Robbins (Lanham, Md.: Lexington Books, 2008): 62–66.
30. Pell, *The Big Chill*, 192–93.

31. Athan Theoharis, "Conservative Politics and Surveillance: The Cold War, the Reagan Administration, and the FBI," in *Freedom at Risk*, 270.

32. Stone, "The Reagan Administration, the First Amendment, and FBI Domestic Security Investigations," 276–83; "FBI Spying Is Permitted," *Washington Post*, Aug. 11, 1984.

33. Sanford Ungar, "The FBI on Defensive Again," *New York Times Magazine*, May 15, 1988.

34. Bob Woodward, *Veil: The Secret Wars of the CIA, 1981–1987* (New York: Simon and Schuster, 1987), 38–39.

35. Philip B. Heymann, *Terrorism and America: A Commonsense Strategy for a Democratic America* (Cambridge: MIT Press, 1998), 148.

36. Interview with Frank Varelli, Fund for Open Information and Accountability, n.d. Varelli testified before Congress. "FBI Broke into Group's Office, Informant Tells Subcommittee," *Chicago Tribune*, Feb. 22, 1987. See also Ross Gelbspan, *Break-ins, Death Threats and the FBI: The Covert War Against the Central America Movement* (Boston: South End Press, 1991).

37. Diarmuid Jeffreys, *The Bureau: Inside the Modern FBI* (New York: Houghton Mifflin, 1995), 253–54.

38. Jinsoo Kim, "Government Surveillance and Erosion of the Fourth Amendment: The CISPES Investigation," (paper presented at "Ending the Cold War at Home" conference, ACLU, 1991). Kim headed the Center for Constitutional Rights' Movement Support Network, which monitored FBI repression.

39. Quoted in Whitfield Diffie and Susan Landau, *Privacy on the Line: The Politics of Wiretapping and Encryption* (Cambridge: MIT Press, 1998), 147–48.

40. Oliver "Buck" Revell and Dwight Williams, *A G-Man's Journal: A Legendary Career Inside the FBI* (New York: Pocket Books, 1998), 293.

41. Jeffreys, *The Bureau*, 251. See also Ann Crittenden, *Sanctuary: A Story of American Conscience and the Law in Collision* (New York: Weidenfeld and Nicolson, 1988).

42. Christian Smith, *Resisting Reagan: The U.S. Central America Peace Movement* (Chicago: University of Chicago Press, 1996), 76–80, 282–85.

43. The total FBI file is 109 pages, but 72 pages cover a different Witness for Peace group active in the 1960s.

44. Boston FBI report, "Pledge of Resistance Network, Vermont-New Hampshire, Witness for Peace," Dec. 31, 1984; SAC Albany to Director, March 5, 1985, Witness for Peace FBI File.

45. Smith, *Resisting Reagan*, 60, 78, 81–86.

46. Smith, *Resisting Reagan*, 285, 324–26.

47. Gelbspan, *Break-ins, Death Threats and the FBI*, 16.

48. SAC Chicago to Director, Feb. 24, 1986; SAC Boston to Director, June 25, 1985; SAC Indianapolis to Director, May 14, 1985, Pledge of Resistance FBI File.

49. SAC San Diego to Director, June 13, 1985, Pledge of Resistance FBI File.

50. SAC Boston to Director, May 9, 1985, Pledge of Resistance FBI File.

51. SAC Louisville to Director, June 13, 1985, Pledge of Resistance FBI File.

52. During the 1987 congressional hearings on Iran-Contra, Oliver North was asked about Rex 84. But the questioning ended when committee co-chair Sen. Daniel

Inouye warned, "I believe that question touches upon a highly sensitive classified area, so may I request that you not touch upon it." Congress has never inquired publicly about this emergency detention plan. Smith, *Resisting Reagan*, 285, 290, 310–311.

53. Whether government detention plans existed under Clinton, Bush or Obama is not publicly known.

54. John Lofland, *Polite Protestors: The American Peace Movement of the 1980s* (Syracuse: Syracuse University Press, 1993), 139, 254–55; "Reagan Again Says Soviet Union Influences Anti-Nuclear Groups," *Washington Post*, Dec. 11, 1982.

55. Gelbspan, *Break-ins, Death Threats and the FBI*, 90.

56. Nat Hentoff, "Someone to Watch Over Us," *Washington Post*, June 19, 1984.

57. David Cortright to Ivan Greenberg, email, Aug. 23, 1999. Cortright served as executive director of SANE in the 1980s. He remembers that right-wing groups tried to portray the freeze movement as Communist-led, and linked him to this alleged conspiracy. Yet he does not recall FBI surveillance of the freeze: "I'm not aware of any evidence or files on FBI surveillance of the freeze movement. Such evidence probably exists, but we never thought to check into it. Government surveillance is not something that came up in our conversations and planning. We always operated very openly, so there was probably no need for FBI [secret] spying. They could have learned everything they wanted to know by coming to meetings or reading our newsletter and reports. . . . There was probably extensive surveillance of the various international delegations that we organized, including the early trips to the USSR, and the later delegation to Geneva for the Reagan-Gorbachev summit."

58. "Soviet Role in Nuclear Freeze Limited, FBI Says," *Washington Post*, March 26, 1983.

59. "Soviet Role in Nuclear Freeze Limited, FBI Says."

60. Hentoff, "Someone to Watch Over Us."

61. Brian Glick, *War at Home: Covert Action Against U.S. Activists and What to Do About It* (Boston: South End Press, 1989), 1–2; Jack Anderson, "Navy Infiltrates Group Opposing Nuclear Arms," *Washington Post*, Jan. 28, 1984; Epstein, *Political Protest and Cultural Revolution*, 130–31.

62. Ryan also wrote, "I personally find certain actions and positions presently being taken by our government, in particular relating to Central America, as violent, illegal and immoral. While I do not condone the use of illegal actions by anyone to oppose this position of our government, I realize such acts are often effective and have a longstanding tradition in our country's history, i.e., the Boston Tea Party, Civil Rights marches in the South, etc. and are especially effective because the perpetrators are usually willing to face the consequences of their illegal acts." Jack Ryan, "An FBI Dissenter," Political Research Associates, 1994, 1; "Firing of Pacifist FBI Agent Upheld," *Chicago Tribune*, Jan 23, 1991.

63. Fred A. Wilcox, *Uncommon Martyrs: The Berrigans, the Catholic Left, and the Plowshares Movement* (Reading: Addison-Wesley, 1991), 205–31; Lofland, *Polite Protestors*, 35, 152.

64. This is the conclusion of Epstein, *Political Protest and Cultural Revolution*; Lofland, *Polite Protestors*; and Smith, *Resisting Reagan*. Hoover's surveillance of the peace movement is discussed in Robbie Lieberman, *The Strangest Dream: Communism*,

Anti-communism and the Peace Movement, 1945–1963 (Syracuse: Syracuse University Press, 2000).

65. Herbert Mitgang, *Dangerous Dossiers* (New York: Donald I. Fine Books), 293.
66. Most of the Sierra Club file focuses on a lawsuit, *Environmental Defense Fund, Inc., et al. v. Environmental Protection Agency and William D. Ruckelshaus*.
67. Meghan Houlihan to Ivan Greenberg, email, Oct. 18, 1999.
68. FBI Director to Legal Attache, Paris, Oct. 18, 1985, Greenpeace FBI File.
69. Acting Director to Washington field office, Sept. 24, 1987, Greenpeace FBI File.
70. Anchorage office to Director, July 23, 1983, Greenpeace FBI File.
71. “Special Rapporteur’s Mission Report to USA,” United Nations Commission on Human Rights, Jan. 1995, 14.
72. Michael Parenti, *Land of Idols: Political Mythology in America* (New York: St. Martin’s Press, 1994), 140.
73. On the Marion Barry case, see Clarence Lusane, *Pipe Dream Blues: Racism and the War on Drugs* (Boston: South End Press, 1991), 142, 165–67, 186–91.
74. David J. Langum, *William M. Kunstler: The Most Hated Lawyer in America* (New York: New York University Press, 1999), 265–66.
75. Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild: From Roosevelt to Reagan* (Philadelphia: Temple University Press, 1988), 391–92; Glick, *War at Home*, 5.
76. O’Reilly, “Racial Matters”: *The FBI’s Secret Files on Black America, 1960–1972* (New York: The Free Press, 1989), 338; FBI memo, Chicago field office, Nov. 30, 1971; G. C. Moore to E. S. Miller, Dec. 22, 1971. FBI File on the Rev. Jesse Jackson, Scholarly Resources, 1988.
77. O’Reilly, *Hoover and the UnAmericans*, 217.
78. Glick, *War at Home*, 2.
79. Churchill and Vander Wall, *The COINTELPRO Papers*, 310.
80. Hentoff, “Someone to Watch Over Us.”
81. Ungar, “The FBI on Defensive Again.”
82. “N.Y. Bomb Probe Seeks Clues From ‘91 Trial,” *Washington Post*, March 21, 1993.
83. At that time, the FBI identified 406 homosexuals in government service but the surveillance soon went far beyond employment screening. According to historian John D’Emilio, “Regional FBI offices clipped press articles about the gay subculture, gathered data on gay bars, compiled lists of other places frequented by homosexuals, and infiltrated gay rights organizations such as the Mattachine Society and the Daughters of Bilitis. Agents sometimes exhibited considerable zeal in using the information they collected.” John D’Emilio, “The Homosexual Menace: The Politics of Sexuality in Cold War America,” in *Making Trouble: Essays on Gay History, Politics, and the University* (New York: Routledge, 1992), 62. FBI Files on the Gay Liberation Front total 1,115 pages and the file on the Gay Activist Alliance is 534 pages. See also Athan G. Theoharis, “The FBI’s War on Gays,” *Rights* 37 (April–June 1991): 13–15; David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago: The University of Chicago Press, 2004).

84. Athan G. Theoharis, *J. Edgar Hoover, Sex, and Crime* (Chicago: Ivan R. Dee, 1995), 100–108.
85. Dempsey and Cole, *Terrorism and the Constitution*, 52–53; “AIDS Groups Aware of FBI Spies,” Associated Press, May 15, 1995; “Act-Up, Other AIDS Groups Target by FBI Surveillance,” *AIDS Policy Law*, June 2, 1985, 7.
86. James Wentzy to Ivan Greenberg, email, Sept. 2, 1999.
87. FBI Director to Legat Paris, Nov. 27, 1990, PETA FBI File.
88. SAC Charlotte to FBI Director, Aug. 2, 1992, PETA FBI File.
89. Dempsey and Cole, *Terrorism and the Constitution*, 48–49.
90. Natalie Robins, *Alien Ink: The FBI’s War on Freedom of Expression* (New York: William Morrow, 1992), 360–61.
91. “At FBI, A Traitor Helps in Search for Subversives,” *Los Angeles Times*, July 29, 2001.
92. Herbert N. Forestel, *Surveillance in the Stacks: The FBI’s Library Awareness Program* (New York: Greenwood Press, 1991), 4–5, 14, 30, 112–15.
93. Robins, *Alien Ink*, 380–89.
94. Karen G. Schneider, “So They Won’t Hate To Wait: Time Control for Workstations,” *American Libraries*, Dec. 1998, 2.
95. Dempsey and Cole, *Terrorism and the Constitution*, 85.
96. Ward Churchill and Jim Vander Wall, *Agents of Repression: The FBI’s Secret Wars Against the Black Panther Party and the American Indian Movement* (Boston: South End Press, 1988), 379.
97. Dempsey and Cole, *Terrorism and the Constitution*, 55; Churchill and Vander Wall, *Agents of Repression*, 376–78.
98. “Report Cites F.B.I.’s Following of Terrorist Suspects,” *New York Times*, Oct. 9, 1990.
99. “FBI Gets 2nd Wind in Hamas, Hezbollah Probes,” *San Francisco Chronicle*, May, 9, 2003.
100. Dempsey and Cole, *Terrorism and the Constitution*, 45.
101. Dempsey and Cole, *Terrorism and the Constitution*, 36.
102. One of the L.A. Eight activists—Khader Hamide—was a high priority target. The FBI urged the INS to deport him because, according to the FBI, Hamide is “intelligent, aggressive, dedicated, and shows great leadership ability. . . . By removing Hamide through criminal or deportation proceedings, the PFLP will be severely hampered in Southern California.” The FBI conducted a larger investigation of PFLP activities beginning in 1984 and the PFLP file totals more than ten thousand pages. The group never engaged in terrorism in the U.S., although it was active against Israel. During the court proceedings the FBI acknowledged that a significant amount of PFLP activity in the U.S. focused on education, day care, health care and culture. The larger Palestinian American community also became a target any time a PFLP member circulated in its affairs. The monitoring included Palestinian American dinner dances, known as “haflis,” which are a routine part of the cultural life of the ethnic group and a principal means for raising humanitarian aid for poor Palestinians in the Middle East. Dempsey and Cole, *Terrorism and the Constitution*, 38–46.

103. David H. Price, "How the FBI Spied on Edward Said," *CounterPunch*, Jan. 13, 2006, www.counterpunch.org (Jan. 15, 2006).

104. "The FBI on Defensive Again"; Thomas Martinez, *Brotherhood of Murder* (New York: McGraw Hill, 1988), 213. The Aryan Brotherhood file is 141 pages.

105. Brent L. Smith, *Terrorism in America: Pipe Bombs and Pipe Dreams* (New York: State University of New York Press, 1994), 13–14, 19, 25–26; Kevin J. Flynn, *The Silent Brotherhood: Inside America's Racist Underground* (New York: Free Press, 1989), 87–89; Morris Dees, *Gathering Storm: America's Militia Threat* (New York: HarperCollins, 1996), 43.

106. FBI memo, Cincinnati office, June 3, 1985; FBI memo, Pittsburgh office, Sept. 10, 1987; FBI memo, Washington office, Sept. 22, 1987. The National Alliance files are posted on the FBI website (www.fbi.gov).

107. FBI memo, Pittsburgh office, Sept. 10, 1987.

108. Director to Minneapolis field office, Nov. 21, 1983.

109. Daniel Levitas, *The Terrorist Next Door: The Militia Movement and the Radical Right* (New York: Macmillan, 2002), 294.

110. Ernie Lazar, *JBS Report #3*, n.d., www.ernie1241.googlepages.com/jbs-3; Lazar is an expert on the John Birch Society and cites these FBI memos from the group's file: J. Edgar Hoover to SAC Chicago, Sept. 18, 1970; SAC WFO to Hoover, Oct. 26, 1973.

111. Lazar, *JBS Report #3*; Phoenix FBI file 100A-8715, SubG6, #8, Sept. 7, 1984; Phoenix FBI file 100A-8715, SubG6, #2, Aug. 26, 1985; Phoenix FBI file 100A-8715, Sub G6, #84 and #86, Phoenix to SAC Denver, Jan. 1, 1987.

112. Quoted in Gelbspan, *Break-ins, Death Threats and the FBI*, 91.

4

The Need for Enemies after the Cold War

WELL BEFORE 9/11, THE GOVERNMENT CONSTRUCTED an image of the terrorist as a dangerous entity needing to be isolated and contained. Although Reagan/Bush elevated the fight against terrorism during the 1980s to mobilize support for their policies, the issue moved to center stage under President Bill Clinton, supplanting the Cold War as a top U.S. concern. Four events solidified this replacement and led to the expansion of surveillance practices: the first World Trade Center bombing (1993), the Oklahoma City bombing (1995), the Tokyo subway nerve gas attack (1995), and the bombing of two U.S. embassies in east Africa (1998). While the last two incidents occurred on foreign soil, they still prompted U.S. policymakers to view many forms of domestic protest and social movement organizing as dangerous. Millennial anxiety also fueled the government's response. As the year 2000 approached, the FBI made exaggerated claims that a wide spectrum of political groups might turn to violence. The new intelligence thinking, which can be found in government reports and right-wing books, placed the threat in hostile foreign nations or freelance fanatics. While the Cold War helped to contain terrorism, the emergence of the United States as the sole superpower increased its vulnerability as the prime target of such attacks as resentment against its exercise of power fueled sporadic resistance.

In 1998, President Clinton told the United Nations General Assembly that fighting terrorism “should be at the top of the world’s agenda.” Should we be surprised that the leader of the richest nation was not giving priority to eradicating world poverty or other social sources of despair and alienation? Rather, he emphasized the “common obligation” of all nations, rich

or poor, “to give terrorists no support, no sanctuary, no financial assistance; to bring pressure on states that do; to act together to step up extradition and prosecution; to sign the Global Anti-Terror Conventions; to strengthen the Biological Weapons and Chemical Convention; to enforce the Chemical Weapons Convention; to promote stronger domestic laws and control the manufacture and export of explosives; to raise international standards for airport security; to combat the conditions that spread violence and despair.”¹

Terrorism is a rich nation’s problem and typical of its narrow geopolitics the United States often shunned U.N. efforts to solve the problems of the poor nations. The U.S. record in approving U.N. Conventions is highly selective: It refused to approve the Conventions against discrimination against women or to support the Convention on behalf of worker rights. Under Clinton, the United States rejected the international treaty against the use of land mines and opposed the creation of the International Criminal Court to address cases of government repression. If one compares the damage done by terrorism and by land mines, it becomes clear that the U.S. view is very particularistic. During the 1990s, about two thousand innocent civilians were maimed or killed each month as a result of mines left behind from armed conflicts.² These casualties far exceed the damage from all terrorist incidents worldwide. From a different point of view, land mines became a form of state terrorism against innocent civilians. Yet the fact that Americans never suffer from this problem framed its rejection.

Exaggerating the threat of violence served political ends because it helped justify massive defense spending endemic to the military-industrial economy. Although the Cold War ended, defense budgets soared by the end of the 1990s. Elites need enemies, both domestic and overseas, to help impose their vision on society. This need for enemies also served a conservative cultural purpose. The labeling of political dissidents as dangerous outsiders can remind “others to stay in line and can help bring a heterogeneous society together in a shared condemnation of the outsiders.” Gary T. Marx notes, “Devil creation [by the government] can also be seen as part of a scapegoating phenomenon wherein authorities’ conscious manipulation of the threat of a social movement takes mass attention away from the basic sources of grievances.”³ In an age of information diffusion, where the availability of objective knowledge might lead to less conflict, democratic government continues to try to demonize particular groups. Fighting the benefits of transparency, government struggles to manipulate “us” and “them” group dynamics to vilify certain entities. Dehumanization of enemies justifies violence. To dehumanize the enemy in a democracy with a free press requires persistent top-down messaging to counter contrary views.⁴

Additionally, enemies are used to maintain social control. In *Political Paranoia*, Robert S. Robins and Jerrold M. Post underscore this point: “Because enemies are necessary for self-definition, it is necessary to have enemies in our midst. . . . An important aspect of the development of group identity is symbols of difference shared by the other—symbols on which to project hatred.” Once again we hear that “the enemy provides cohesion for the social group, especially the social group under stress” and “enemies, therefore, are to be cherished, cultivated and preserved for if we lose them our self-definition is endangered.”⁵

The process whereby the FBI constructed enemies remained distorted as legal and peaceful political activity was designated terrorist to marginalize and undermine its legitimacy. Indeed, the government narrative identified the terrorist as the horrible Other, a Wild Man. Joseba Zulaika and William A. Douglas write, “The terrorist becomes the paradigm of inhuman bestiality, the quintessential proscribed or tabooed figure our time.” The terrorist is so taboo he has no human face, no culture, no history, and there is no reason or logic to his actions. There is a large degree of fictionalization in this narrative. The word itself is part of the problem. The “terror” in terrorism implies fear, fright, horror, panic, and the breakdown of all norms. It is a loaded term and if the government used the more neutral term “political violence,” the threat would not achieve the same proportion. The terrorist may be framed in religious terms, labeled “evil.” Political leaders speak of “the unspeakable act of terrorism.” Its perpetrators are wild and savage; they transgress everything and favor systematic disorder. Because of these traits, the terrorist Other should be blacklisted. He has been compared to the witch, shaman or trickster in traditional cultures, but government discourse finds him much more threatening than these figures because today he may possess Weapons of Mass Destruction (WMDs).⁶

The terrorist becomes the latter-day barbarian polluting society if he has any influence. Violations of civil liberties by the government become necessary to contain this monster. Government repression is the logical outcome when individuals or groups are depicted in this way. In this rhetorical environment “every imaginable form of terroristic atrocity is not only attributed to the other side, but becomes permissible for oneself.” In a democracy, the discourse on terrorism puts even greater stress on tabooing elements because it is “normal” for people to express their grievances through elections or peaceful lobbying. Those who support violence are “abnormal” and subversive to the rules of the whole system. Crimes such as homicide, burglary, domestic violence, and corporate crime remain in the realm of normalcy as long as there is a convenient abnormal Other. The government spends billions to fight terrorism, while often ignoring the social problems (poverty,

unemployment, discrimination) that lead to normal criminality: “Terrorism is the ultimate bogeyman, the perfect taboo with which to identify and contain what is presumed to be supreme danger, while glossing over the real terrors of urban life.”⁷ If government is worried about violence, it should make it harder for ordinary people to obtain guns. Americans owned an estimated eighty million guns in 1998 and more than 650,000 Americans were confronted by a criminal with a gun. Almost 70 percent of all murders were carried out with guns. The difference is that ordinary people are not the Other: It is acceptable if they own guns and it is normal some of them will use them in crimes.⁸ Another so-called normal crime leading to high levels of fatalities is drunk driving. In 1998, almost 16,000 deaths occurred—1,300 per month or 425 deaths per week.⁹ Yet the framing of “normal” crime assured that drunk drivers are not isolated as criminal monsters like alleged terrorists despite the efforts of groups like Mothers Against Drunk Driving (MADD).

During the 1990s, it is notable how little violence was politically motivated especially when compared to bombings and arsons driven by monetary gain, revenge or other factors. For example, in 1997 the government reported 2,217 “nonpolitical” bombing incidents. Most occurred at commercial establishments, residential locations, universities, mailboxes, and vehicles.¹⁰

Moreover, the government’s discourse on the terrorist threat was reinforced in the media by images of mayhem and violence. By one estimate, about 40 percent of media time was devoted to crime, disaster, war, and terrorism. So when the government touted the terrorist threat, it fed into preexisting popular fears and the public too often uncritically accepted that their safety and security was at stake. As Sissela Bok noted, “You would not know, from watching local television news in many American communities, that crime rates have been going down in the 1990s . . . The media’s disproportionate emphasis on violence and mayhem contributes to skewing the perspective of unsuspecting viewers. And their skewed perspective may in turn lead to faulty reasoning and deliberation about choices in their own lives and in their communities, as well as in their views about collective policymaking with respect to crime and justice.”¹¹ Scare the public and they will accept a large FBI presence in society justifying the encroachment on civil liberties.

In this new era, terrorists allegedly were smarter than their predecessors. A Rand Corporation analyst wrote, “An almost Darwinian principle of natural selection thus seems to affect terrorist organizations, whereby every new terrorist generation learns from its predecessors—becoming smarter, tougher, and more difficult to capture or eliminate. Terrorists often analyze the mistakes made by former comrades who have been killed or apprehended. Press accounts, judicial indictments, courtroom testimony, and trial transcripts are meticulously culled for information on security forces and methods

and then absorbed by surviving group members.”¹² But the phenomenon of homegrown “lone-wolf” terrorists, such as the Unabomber, showed they also worked apart from any organized group, although the Unabomber felt part of the radical environmental movement. The potential for higher levels of lethality in terrorist acts was a recent trend and terrorist groups often declined to take public responsibility for their acts.¹³ If the enemy proved more difficult to identify, it was considered more dangerous. The approach of the year 2000 might bring new terrorism from apocalyptic groups. The likelihood of political violence was about 50 percent, according to a top FBI official: “In the final analysis, while making specific predictions is extremely difficult, acts of violence in commemoration of the millennium are just as likely to occur as not.”¹⁴

The enemy became harder to track. The decentralized structure of many domestic radical groups, especially on the Right, limited government efforts to infiltrate them. In the 1999 report, *Project Megiddo*, the FBI asserted: “While several ‘professional’ terrorist groups still exist and present a continued threat to domestic security, the overwhelming majority of extremist groups in the United States have adopted a fragmented, leaderless structure where individuals or small groups act with autonomy. Clearly, the worst act of domestic terrorism in United States history was perpetuated by merely two individuals: Timothy McVeigh and Terry Nichols. In many cases, extremists of this sort are extremely difficult to identify until after an incident has occurred. Thus, analysis of domestic extremism in which the group serves as the focal point of evaluation has obvious limitations.”¹⁵ Leaderless groups frustrate the FBI, noted James D. Kallstrom, head of the New York field office: “They don’t have a definitive hierarchical structure. They don’t have disciplined rules of engagement. They don’t have a clearinghouse of authorities. They don’t have central control. They don’t have all those things that allow you, if you get the foot in the door [through informers] of that organization, to pretty much know what the organization is doing.”¹⁶ If the enemy is harder to monitor, the FBI must spread out to track smaller groups.

The whole apocalyptic Weapons of Mass Destruction (WMD) government discourse is a post-Cold War product and was coupled to the fear of terrorism. In a 1997 report, the Department of Defense (DOD) argued that WMD terrorism was “not far-off or far-fetched scenarios. They are real—here and now.” DOD also invoked the millennium: “As the new millennium approaches, the United States faces a heightened prospect that regional aggressors, third-rate armies, terrorist cells, and even religious cults will wield disproportionate power by using—or even threatening to use—nuclear, biological, or chemical weapons against our troops in the field and our people at home.”¹⁷ The WMD anxiety fueled institutional change. In 1996, the FBI

established two WMD units at its Washington headquarters. Compounding the problem, the availability of information about WMDs increased with the expansion of the Internet. According to a 1997 FBI report, *Terrorism in the United States*, “[T]he means of carrying terrorist attacks continues to expand, as information related to weapons of mass destruction become further proliferate through such means as the World Wide Web.”¹⁸ FBI Director Louis Freeh testified before Congress in 1998, “Weapons of mass destruction represent perhaps the most serious potential threat facing the United States today.”¹⁹

It is not surprising to find that by the year 2000, the FBI was the only agency within the intelligence community not to have written a formal assessment of the threat posed by WMDs. Formulating a realistic assessment—apart from dire general warnings—would demystify the threat and undermine FBI power. As the year 2000 approached, most policymakers viewed government anti-terrorism efforts as inadequate.²⁰ The government made defending the security of the homeland a prominent issue, just as it did during the height of the Cold War. America returned to the practice of conducting drills to survive attacks with dozens of WMD military-oriented exercises.

Clinton’s government touted this menace because it provoked strong emotional reactions in the public. Nuclear, biological and chemical weapons evoke a visceral fear of being poisoned. Unlike conventional weapons, WMDs are uncivilized and repugnant to the human sensibility because they deliberately seek to cause disease. They infect the air we breathe, the water we drink, and the food we eat. Fighting disease is deemed virtuous in society. Warfare by poison always has been seen as immoral.²¹ Yet as early as 1950 the U.S. Air Force included biological warfare as part of its military strategy for fighting a war. The government developed a large biological weapons program.²²

During the 1990s, a large cottage industry of books delineated the “new” terrorist threat. Most of the authors can be labeled right-wing analysts affiliated with the government or independent policy groups that receive government financing. This “industry of experts” is not completely new. Writing in 1989, Edward S. Herman and Gerry O’Sullivan noted that such writers “are designed to give authoritative status to experts who will confirm and reinforce state propaganda, to occupy the informational space that might otherwise be used by dissident voices, and thus to ensure closure of fact and opinion.” All too often the end result is that the opinions of these conservative industry experts “become common sense; alternative views appear eccentric and wild.”²³ There were many examples of experts in the Clinton era reinforcing the latest state propaganda about terrorism, parroting government views or uncritically quoting official reports.

A literature published by quality academic presses reinforced conservative positions by advocating greater spying on Americans. In *America's Achilles' Heel: Nuclear, Biological and Chemical Terrorism and Covert Attack*, the authors mistakenly claimed "'Intelligence' is usually used to refer only to foreign intelligence, since U.S. intelligence agencies are largely prohibited from domestic spying. Improved intelligence on internal threats is needed, however, to respond effectively to covert NBC [nuclear, biological, chemical] threats." In another instance, the WMD threat provided a justification for the United States to "reform, reinvigorate, and modernize its intelligence community for the challenges of the post-Cold War era."²⁴ In *The Ultimate Terrorists*, author Jessica Stern also urges greater FBI power. The new era required it. Legal guidelines for the FBI were deemed too strict: "Given domestic and international groups' growing interest in WMD, the government may want to consider modifying existing rules to allow the FBI more leeway in initiating investigations." The reforms included greater wiretapping, surveillance of the Internet, government attacks on encryption, and more undercover informers: "Because many terrorist groups are using modes of communication that are difficult to monitor, infiltration may be the only way to gather intelligence about planned operations."²⁵

The threat mongering even entered the work of liberal humanist scholar Robert Jay Lifton, who too easily adopted the paranoid rhetoric about WMDs. Echoing the latest intelligence view, the Shinrikyo subway nerve gas attack in 1995 should not be understood as an isolated incident, but presented a new model of violence to be imitated in the future. "Asahara and Aum have changed the world, and not for the better," he wrote. "The next group of disciples to try might not be quite as small as Aum, or as inept, or as encumbered by its own madness." This largely misses the point because virtually all of the *thousands* of cults in American history have been nonviolent. If a violent cult emerges in the future it is likely to be small and inept, precisely the traits that Lifton claimed undermined Shinrikyo's effectiveness. There is no reason to believe the Shinrikyo action would occur on American soil. Recent American examples show that select cults turned to suicide (Jonestown; Heaven's Gate) but not to killing others. The only cult in recent history to attack others is the Charles Manson family, which murdered at least ten people in 1969, but Manson never thought in terms of WMDs. Lifton admits this point: "Manson's Armageddon lacked Asahara's high-tech visions. The weapons of his murderous thoughts and actions were confined to knives and guns."²⁶

A bottom-up critique of the new terrorism discourse challenges many of its underlying assumptions. The main problem facing the world community is not the insurgent, anti-state type of terrorism derided by the United States.

Rather, state terrorism against their own people in many nations, including nations that receive U.S. military and economic support, poses a greater problem. In the view of scholar Jeffrey A. Sluka, “[I]f terrorism means political intimidation by violence or its threat, and if we allow the definition to include violence by states and agents of states, then we find that the major form of terrorism in the world today is that practiced by states and their agents and allies, and that, quantitatively, anti-state terrorism pales into relative insignificance compared to it.”²⁷ To acknowledge this fact fundamentally undermines the rhetoric of enemies and the war on terrorism.

Moreover, not only the United States and its allies are the innocent targets and victims of terrorism. During the 1970s, all ten nations in Latin America with state-sponsored death squads were U.S. allies. About twenty-six of the thirty-five nations worldwide which employed torture against their citizens received direct U.S. military or other assistance to pursue their terror as a means to maintain power. In sum, United States support for repressive state regimes remained an integral part of its foreign policy. As Noam Chomsky noted, the United States long supported overseas regimes which conduct their own terror campaigns and recent history amply demonstrates this point, including U.S. support for the right-wing regimes in South Africa, Haiti, El Salvador, Chile, Argentina, Guatemala, and Somalia. The American government for many years, and until recently, provided training—including torture techniques—to state terrorists in Latin and South America. The American government also provided “the instruments of terror” to Third World client states, which are deployed on civilian populations. In 1996, Amnesty International criticized Western nations, led by the United States, for “trading in terror” to nations with poor human rights records and without accepting responsibility for atrocities in those nations. As one critic says, “Torture and death squads are as U.S.-related-American as apple pie.”²⁸

The global arms industry formed a multibillion market led by U.S. corporations, and advanced by the U.S. government, supplying the weapons and surveillance technology that state terrorists use against their citizens. Corporations sell weapons without criteria for how they were used. The American government regulated this trade and allowed sales to repressive clients. Moreover, the black market in weapons, which puts military hardware in the hands of human rights abusers, is quietly sanctioned by the most powerful nations. As Human Rights Watch noted in 2000, “Many of the weapons on the black market at some point were legally transferred by governments or with government approval. And governments have failed to rein in unscrupulous arms traffickers or enforce arms embargoes imposed on human rights abusers.”²⁹

There were other unanticipated consequences of these policies. The arming of repressive regimes came back to haunt the U.S. Four times in the early 1990s the United States sent troops into conflict in substantial numbers—in Panama

(1989), Iraq (1991), Somalia (1991), and Haiti (1994)—and faced forces that had received U.S. weapons, training or military technology in the period leading up to the outbreak of hostilities. Since the 1980s, the United States often supported precisely the type of insurgent terrorism in overseas struggles that it fears at home. U.S.-backed insurgents used terrorism in Nicaragua, Afghanistan, Cuba, Angola, Vietnam, Mozambique, and Iraq.³⁰ When the American government gave military aid to terrorists, it was done under the banner of “freedom fighters.” Terrorists supported by the West certainly harm innocent civilians. The moral designation of good guys and bad guys is not always clear.

Several high-profile terrorists were once on the payroll of the United States government. The United States armed and trained them for one battle and these terrorists later changed their targets, turning against the United States. For example, the Islamic insurgents that the CIA trained and financed in Afghanistan in the 1980s soon began mounting terrorist attacks on U.S.-backed governments in Algeria, Egypt, Israel, and Saudi Arabia. Two of the men convicted in the World Trade Center bombing in 1993 received weapons training by the CIA in the Soviet-Afghanistan conflict. These same Islamic fundamentalists also provided support for the terrorists who bombed the American embassies in Kenya and Tanzania in 1998.³¹ These examples predate 9/11.

The FBI exhibited a serious deficit in historical thinking. In their view, the past (i.e., before the World Trade Center bombing of 1993) is no indicator of the future. We are in a new era when past constraints no longer apply. The United States has a rich history of social protest with civil disobedience and small-scale violence. Since the nation’s founding, no insurgent political movement endorsed large-scale killing or property destruction. As for chemical and biological weapons, there is only one recorded fatality due to their use by radical groups between 1900 and 1998. This incident involved the Symbionese Liberation Army in 1973.³² Intelligence analysts prefer to discard the study of history altogether if it undermines their political views.

It is deliberate, and this is crucial—constructing the terrorist menace became a tool for the FBI to prevent serious reform of its own actions. The agency argued no one should restrict spying because terrorists using WMDs would have a free reign to carry out their terrible misdeeds. Since most FBI intelligence on the alleged terrorist threat is secret, lawmakers have to take them at their word. Lawmakers who oversee the FBI operate under the assumption that the terrorist menace is large and growing.

Enemies at the Millennium

The Great Fear of the late 1990s was compounded by the coming of the millennium. Who had the anxiety? The FBI or political groups on the fringe? My

study of the era finds that only a few groups exhibited heightened rhetoric before the year 2000, while the FBI trumpeted a Great Fear way beyond any sound reading of reality. By the mid-1990s, FBI reports started to discuss threats of millennial violence and the analysis intensified over the next four years. In a typical statement, Agent Carl J. Jensen wrote, “The millennialist, apocalyptic view of the world, which many groups and individuals hold, likely will become an area of increasing concern to law enforcement, especially as the year 2000 approaches.” Jensen reiterated the widely shared FBI view that their efforts were insufficient to contain the threat.³³ The threat of violence at the millennium formed the theme of the special *Project Megiddo* report. Headquarters told each of its field offices to develop a threat assessment for violence around January 1, 2000. The report named followers of white supremacy, Christian Identity, the militia movement, Black Hebrew Israelites, and apocalyptic cults as potential terrorists. According to the FBI, there were about one thousand cults in the United States and the Bureau tracks some of these groups, including the use of undercover informers.³⁴ It is noteworthy that the government was not content to analyze the “publicly stated goals and objectives of cults.” They need to get deep inside and study subtle behavior shifts. This means intrusive surveillance without a sound legal basis: By the FBI’s own analysis, they targeted groups merely because of beliefs defined as eccentric. Under the law, the FBI is not permitted to monitor cults or other groups because of their views. Moreover, the right to bear arms is protected under the Constitution and gun ownership is not grounds for an FBI investigation. Efforts at social control were aimed not only at existing fringe groups, but also toward “new clandestine groups [who] may conceivably form to engage in violence towards the U.S. government or its citizens.”³⁵ When I filed a Freedom of Information Act (FOIA) request with the FBI on *Project Megiddo*, Headquarters sent me less than ten pages of material. By concealing their records, the FBI refused to make clear the criteria used to designate a group as a dangerous cult and the degree of surveillance devoted to them.

Two months before the millennium, the FBI announced a major internal reorganization, the biggest shake-up in decades. Instead of two divisions, the FBI created four, a change which promised increased domestic spying. As FBI Deputy Director Robert M. Bryan said, “We collect a lot of information, but . . . our predictive intelligence is poor.”³⁶ The government expounded the threat in new ways. One month before the millennium, officials explained putative threats from “agro-terrorism.” Terrorists might create an economic and health crisis by sneaking foot-and-mouth disease into the nation’s livestock yards or by spraying cornfields or other produce with a blight to damage developing crops.³⁷ Two weeks before the year 2000, an eighteen-member special government commission concluded that WMDs pose a “genuine threat”

to U.S. security and existing anti-terrorist efforts were inadequate: "A major cultural change is needed in government that will allow the exchange of critical information between . . . authorities about actual and potential threats."³⁸ In a related move, the FBI canceled the vacations of all 650 FBI agents who worked in the Washington, D.C., area in order for them to be on guard in case of millennium disruptions around January 1, 2000.³⁹

In addition, the fight against terrorism was waged without requisite public support. A 1996 poll conducted one year after Oklahoma City found that two out of three Americans (66 percent) were not much concerned about domestic terrorism. Only 13 percent worried about terrorism a "great deal." About 65 percent believed that it will *not* be "necessary for the average person to give up some civil liberties" to fight domestic terrorism.⁴⁰ In other polls, Americans were asked to list the major problems facing the nation and terrorism did not register a double-digit response. A poll in October 1999 reported that among those who were "worried" about the coming of the year 2000, none listed terrorism as a reason for their pessimism.⁴¹

Indeed, the number of terrorist incidents declined during the 1990s. For example, in 1997 only two terrorist incidents occurred on U.S. soil and both involved small letter bombs. Despite this absence of activity, the FBI wrote in its annual *Terrorism in the United States* report that the country "faces a formidable terrorist threat."⁴² It often is overlooked that the Oklahoma City bombing was the only terrorist act in the United States in 1995. The wider statistics for the 1990s showed a very low number of incidents and these figures are reduced if we exclude incidents in Puerto Rico. In only one year—1993—did the number of U.S.-based incidents exceed four. In that year, the majority of incidents were attributed to one group—the Animal Liberation front—whose small-scale acts of property vandalism resulted in no fatalities.⁴³ Statistically, one is more likely to choke to death during a meal than die during a terrorist incident. Between 1974 and 1994, more people in the United States died of bee stings than terrorism. Between 1989 and 1992, there were no fatalities in the United States due to terrorism in contrast to approximately one hundred thousand homicides.⁴⁴

Moreover, terrorist incidents worldwide in the 1990s were lower than in the 1980s. The number of incidents also declined as the decade progressed. There were 484 incidents in 1991, but only 250 in 1996, marking a twenty-three year low.⁴⁵ According to government ideology, it is not the number of actual incidents that is important, but the potential for a single Big One. Even if there are no incidents, the FBI still demands large budgets and intrusive investigative activities as long as there are angry people in the world who potentially could get their hands on WMDs. But there is another way to think about the issue—the decline of incidents indicates groups and individuals found nonviolent means to express their grievances.

In a March 1999 speech on the terrorist threat, Clinton seemed to acknowledge the post–Oklahoma City efforts were an overreaction: “The only cause for alarm would be to sit by and do nothing to prepare for a problem we know we could be presented with. Nothing would make me happier than to have people look back 20 years from now and say, ‘President Clinton overreacted to that, he was overly cautious.’ The only way they will say this is if we are overly cautious, if we’re prepared, if we can keep bad things from happening.”⁴⁶

Peace Dividend

It could have been different. We often forget that a unique historical opening occurred with the end of the Cold War. American policymakers might have embraced a politics free of devil creation and scapegoating. A new type of politics might have emerged based on the “from warfare to welfare” idea. That is, substantial resources previously devoted to fighting international Communism could now be spent on improving the well-being of the domestic society. Throughout the early 1990s the idea of a peace dividend seemed to take hold in American politics.⁴⁷ In 1992, during the U.S. House of Representatives debate over the annual intelligence budget, Republican Congressman Larry Combest of Texas rose to denounce its proponents.

Today, some people want to slash the intelligence budget. “Peace dividend! Peace dividend,” they chant. They are shortsighted. Some never understood the value of our intelligence services. In fact, some genuinely detested them. Now many want to use the changes in the world to accomplish what they have always desired, to destroy America’s intelligence services.⁴⁸

Some minor changes took place in government. The FBI publicly hailed the transfer of three hundred agents from domestic security to the criminal division to focus greater attention on urban street gangs. Congress adopted the Edwards Amendment forbidding the FBI from conducting surveillance of protected First Amendment political activity. Since 1999, Representative Edwards introduced the First Amendment Protection Act “to establish a simple principle: the Federal Bureau of Investigation should not be monitoring First Amendment activities—taking pictures at demonstrations, collecting leaflets and publications, writing down license plate numbers outside conferences—without some direct relevance to the investigation of criminal activity.”⁴⁹ (Congress repealed the Edwards Amendment in 1996.) Within the FBI, Director Freeh issued the “Bright Line” policy in 1994 to enhance institutional integrity. The Bureau would dismiss any employee who engaged in lying under oath or disclosed classified material. Scholar Richard Gid Powers remembers:

In those days, you walked down FBI corridors and you couldn't miss the Director's ethical maxims—placards were everywhere proclaiming his bright line policy of zero tolerance for dishonesty and his core FBI values of respect for civil liberties. In the Freeh years, FBI reports led off with homilies by the director that treated agent misconduct like the first step to the Holocaust. He was training ethical G-Men at Quantico. Agents with Ph.D.s in philosophy drilled trainees in the moral logic of Plato, Aristotle, St. Thomas, and Kant, guiding them through tricky case studies in which a failure to turn in an errant fellow agent would eventually have that sinner mitigate his punishment by serving you up for not turning him in.⁵⁰

However, by the late 1990s the peace dividend idea had been pushed out of the public debate by other notions such as the threat posed by terrorists and spies. As Freeh told Congress in 1996, "Some ideological and military adversaries continue their targeting of U.S. economic and technological information as an extension of a concerted intelligence assault on the United States conducted throughout the Cold War. The end of the Cold War has not resulted in a peace dividend regarding economic espionage."⁵¹ In 1998, he presented a fuller statement of this point of view.

At the outset, I want to emphasize that the "fall of communism" has not reduced the level or amount of espionage and other serious intelligence activity conducted against the United States. . . . Let me summarize this general overview by stating that the simple truth is that there has been no "peace dividend" in the form of a reduced need for FBI counterintelligence operations.

Although I believe the FBI is well positioned for the counterintelligence challenges before us, what some pundits have called the "end of history" is definitely not the end of dangerous intelligence attacks against the United States.⁵²

In fact, President Clinton presided over one of the largest expansions of the FBI in U.S. history. Beginning with the end of World War II, the FBI budget almost doubled every ten years. The greatest increases occurred after the J. Edgar Hoover era. A 1990 budget of about \$1.7 billion reached \$3.1 billion in 1999. A \$1 billion increase in funding occurred over a short four years (1996–1999), including a tripling of funding for counterterrorism initiatives.⁵³ The number of FBI agents employed per capita in 1997 was more than at any time in the prior five decades. The FBI retained 11,269 agents under its command, almost double the number (6,451 agents) in 1952.⁵⁴

The Bureau vastly expanded investigative activity after the bombing of the Alfred P. Murrah federal building in Oklahoma City in 1995. While the FBI claimed only one hundred full terrorist investigations were open in 1994, they admitted to conducting about one thousand investigations, a tenfold increase, by 1998. A single investigation may cover hundreds of people and organizations.

Syracuse University researchers present a substantially different set of data affirming the trend toward vastly increased spying after Oklahoma City. Based on FBI budget reports, submissions, and congressional research service studies, they found 7,125 domestic terrorism investigations open in 1997; 9,046 investigations in 1998; 10,151 investigations in 1999; and 10,538 investigations in 2000.⁵⁵ By the late 1990s, the FBI budget devoted half of spending to investigative activities and about 14 percent of field agent time was devoted to counterterrorism, up from 9 percent in 1994. The National Security Division included about one-third of total FBI manpower.⁵⁶

After Oklahoma City, presidential mandates expanded the powers of the FBI in several areas. Clinton issued three new Executive Directives (#39, #62, #63) designating the FBI as the lead agency responsible for preventing and responding to domestic terrorist incidents. The FBI, not the Bureau of Alcohol, Tobacco, and Firearms (BATF) or local police, provided the management to handle a crisis and its Crime Laboratory would supervise the collection of forensic evidence. The FBI created a new Counterterrorism Center to disseminate information and established special Joint Terrorism Task Forces (JTTFs) to work with city police to conduct surveillance. By 1998, eighteen JTTFs policed the nation's largest urban centers, reversing a trend toward reduced city police spying since the late 1970s.⁵⁷ Meanwhile, under Clinton's leadership Congress passed the Effective Death Penalty and Anti-Terrorism Act (1996), one of the most sweeping attacks on civil liberties in decades. The Act continued the trend of treating nonviolent activity as subject to discipline if it could be linked to terrorism. Ideological targeting of immigrants recalled the McCarran-Walter Act (1952) of the McCarthy era as did placing weight on guilt by association practice so membership in an alleged terrorist group, without regard to actual conduct of a crime, became the basis for exclusion and deportation of noncitizens. In addition, a broader provision of the act made it a federal crime to provide "material support" for a group designated as terrorist. This placed a ban on financial contributions, or fundraising, for the lawful activity of suspect groups. The act potentially had broad implications for FBI investigations by providing the Bureau with the legal justification to conduct "support for terrorism" inquiries without much accountability.⁵⁸

Just as consequential, the government created the institutional basis for a new political blacklist by establishing a special email and fax communication system with private industry known as ANSIR or Awareness of National Security Issues and Response. By 1998, about forty thousand U.S. businesses linked into the system and an ANSIR coordinator in every FBI field office disseminated "unclassified national security threat and warning information to U.S. corporate security directors and executives . . . [ANSIR] should accommodate every U.S. corporation who wishes to receive information from the FBI."⁵⁹ When an ANSIR "Terrorism Advisory" in 1998 warned of enemy

attacks by Islamic militants tied to Osama bin Laden, business leaders were encouraged to serve as the eyes and ears of the secret police creating an atmosphere where employers singled out their Arab American workers for special watch.⁶⁰ A similar ANSIR advisory focused on domestic right-wing threats. Titled "U.S. Government Remains the Target of Antigovernment Groups," it counseled that "recipients should remain sensitive to this continuing rhetoric by these antigovernment groups" and urged executives to monitor the politics of their employees.⁶¹ Do business executives and FBI agents talk about the "subversives" and "UnAmerican" people in their worlds? Does the exchange of information include political gossip, innuendo, and right-wing slander against liberal Left groups?

Under the rubric of fighting terrorism, the FBI placed itself at the nerve center of U.S. capitalism. While since the late 1960s the intelligence community studied ways to protect the nation's critical infrastructure from terrorist attack, Clinton finally framed a policy after a special infrastructure commission issued a report in 1997. Under presidential directive #63, the critical infrastructure is defined as both physical and cyber systems: electrical power, gas and oil, telecommunications, banking and finance, transportation, vital government operations, emergency services and water supply. Clinton instructed the Bureau to establish the National Infrastructure Protection Center (NIPC), run as a public-private venture with local chapters (termed *InfraGard*) whereby intelligence agents met with private industry to jointly organize seminars, conferences, discussion groups, and training, and to issue local newsletters. A special members-only website complete with a chatroom furthers the secret collaboration of government and business. The Bureau states that increased surveillance is part of a new effort to "increase the quality and quantity of infrastructure intrusion/threat reports provided to local FBI field offices for investigation and follow-up."⁶²

Clinton's FBI, as well as other branches of the intelligence community, also confronted the rapid growth of the World Wide Web. In 1995, a Pentagon official warned that "the political process is moving on to the Internet" and urged the Pentagon to scan "left-wing" sites in order to keep tabs on activists. The Defense Intelligence Agency maintained a list of at least seventy "rebel" websites it regularly monitored.⁶³ The Defense Department and the FBI viewed websites as public documents, like newspapers, so surveillance was not subject to a warrant. Fighting cyber attacks became a top NIPC initiative.⁶⁴ A new phrase from state propaganda entered the popular vocabulary: "electronic Pearl Harbor." Defense and intelligence analysts employed the term to suggest a sneak cyber attack by an enemy.⁶⁵

However, during the 1990s virtually all "cyberterrorism" originated with very young, mischief-minded hackers in the "cyberpunk" community who liked to annoy the government. They had no ulterior motive beyond the mere

challenge of solving a puzzle or cracking a security system for amusement. The head of NIPC said, "A good percentage of the incidents we see all the time involve DOD, because DOD is such a prime target for even individual hackers who want to test their skills. They see the Department of Defense as the big banana, the final exam, the ultimate challenge to test their skills."⁶⁶ Indeed, most hackers arrested were juvenile offenders.⁶⁷

As the Internet emerged as a site of struggle, the FBI demanded the power not only to monitor Web traffic, but also to plant monitoring devices directly in individual computers to access hard drives. When the Justice Department initially proposed allowing the FBI to conduct legal break-ins to achieve this objective, vociferous criticism from a broad range of groups prompted the Clinton administration to withdraw the proposal. Who would be targeted? Criminals or terrorist suspects who used encryption programs and otherwise were able to foil FBI hacking into their computers. As the Center for Democracy and Technology noted, "The encryption debate, which up until now has been about privacy and security in cyberspace, is becoming a struggle over the sanctity of the home."⁶⁸ Later, Clinton by executive fiat granted the FBI such break-in authority.⁶⁹

New surveillance technologies pose real threats to privacy by attacking the level of anonymity in society. The boundary between public and private is tested in new ways. For example, Clinton's FBI began monitoring a new communication system—email—all in the name of fighting terrorists. In the past, the FBI was known to open mail illegally, but the task was time-consuming. Now, the government can monitor all email very easily by employing software programs to scan for suspicious keywords. The FBI may intercept and copy email while it is being transmitted between two people. There is some debate about the effectiveness of this type of spying. The American Bar Association says, "Because the specific route taken by each e-mail message through the labyrinth of phone lines and ISPs is random, it would be very difficult consistently to intercept more than a segment of a message by the same author."⁷⁰ But this type of interception is effective because it is the basis of the global spying system Echelon, run by the National Security Agency in cooperation with foreign governments. Echelon intercepts email and faxes that contain key words that spy operators deem suspect.

The FBI can compel an Internet Service Provider (ISP) to retrieve all data under the screen name registered to an individual. It does not matter if a subject deletes the email on their computer. Law enforcement can retrieve deleted messages from server backup files. But relying on the service provider for communications data was not enough. The FBI wanted to wire in their own surveillance capability. In 1998, a new email surveillance system called "Carnivore" debuted, in which the FBI installed a surveillance device directly

in the systems of ISPs to retrieve all email within the system. They also put “covers” on email accounts, recording the addresses of senders and receivers of email.

Under COINTELPRO the FBI used the regular mails to send forged and phony publications and correspondence. Why not for email?⁷¹ It is technically possible for the FBI to alter incoming email and to send out false email under any screen name. This practice, called “spoofing,” is very low-tech: All you need is the user’s account password. There are also high-tech ways to do it by using software to divert incoming mail to a hacker’s address. In 1995, an American Bar Association attorney described the process: The hacker “reconfigures his machine to emulate the recipient’s machine. When data comes along the network that is intended for the actual recipient, the spoofer receives it instead and automatically sends a packet to the sender which makes the sender believe that the message was properly received. In fact, the spoofer can read the e-mail, and concoct a reply and send it aback to the unsuspecting person who is unaware that he is communicating with an imposter. More subtly, the spoofer can alter the original e-mail and then relay it to the intended recipient.”⁷² The public soon recognized the vulnerability of email to snooping. Clinton let it be known that he never emailed his daughter Chelsea while she studied at Stanford University, fearing his letters might be intercepted. In fact, few computers at Clinton’s FBI were wired to the Internet in order to limit hacking of their systems.⁷³

In addition to email, the FBI began monitoring Web browsing. Working with an ISP, they can receive a record of all navigation online, relying on records known as “clickstream” data. Every click of the mouse leaves a trail that includes the date and time you entered a site, the pages accessed, the documents downloaded, and the type of browser used. All of this information became available for law enforcement to study.⁷⁴ No laws then or now restrict the accumulation of clickstream data.

Computer hard drives also were subject to government surveillance. Anytime a computer is online, it becomes vulnerable to hackers who can access stored files. During the late 1990s, police developed a Trojan horse program called DIRT (Data Interception by Remote Transmission), which required a subject to install the program—that is, download a program or email attachment—that secretly contained it. “Once inside a target Windows 95/98/NT computer, it gives law enforcement complete control of the system without the user’s knowledge,” *PC World* magazine reported. “It starts off by secretly recording every keystroke the user makes. The next time the user goes online, DIRT transmits the log for analysis . . . government agencies have even managed to open encrypted files by obtaining password locks.” DIRT-infected computers gave the FBI everything: “DIRT allows authorities to invisibly snoop inside a target PC’s

entire hard drive—not just monitor electronic communications.⁷⁵ This type of spying amounted to a search and seizure of one's possessions, as if the police came into the home and rifled through private papers.

With TEMPEST (Transient Electromagnetic Pulse Emanation Standard), first developed in the 1960s, special equipment catches the electromagnetic waves off a computer screen and reconfigures them to obtain a copy of the material on the computer screen as well in the hard drive. There was some debate about how close the TEMPEST equipment needs to be to the targeted computer. Several hundred feet will do, but the closer the better. If the snoopers are in an adjacent room or apartment, the capability to view and copy everything on the computer is uninhibited. Police often place TEMPEST equipment in unmarked vans parked outside a building housing the targeted computer. With TEMPEST, the FBI does not have to wait for the ISP to send them copies of email and the transmission of data is not dependent, as in DIRT, on usage of the Internet.⁷⁶

In virtually every speech or testimony on the enemy terrorist threat, the FBI leadership warned that criminals and terrorists block police monitoring by using encryption. This big Encryption Debate of the late 1990s was largely a false one created by the government to seek greater surveillance powers. The FBI's own statistics show the low degree of the problem. In 1999, the FBI encountered encryption in only fifty-three cases.⁷⁷

Clinton signed legislation redesigning the nation's communication infrastructure to enhance eavesdropping on telephones and the Internet. The Communication Assistance for Law Enforcement Act (CALEA) of 1994 allowed the FBI to dictate to the phone companies how to design their technology. The FBI demanded the capability to simultaneously wiretap about 1 percent of the total number of telephone lines. Initially, the phone companies and civil liberty groups blocked CALEA's implementation by initiating a lawsuit. After negotiations between the FBI and industry representatives failed to reach an agreement, the Federal Communications Commission ruled in the FBI's favor and also granted the capability to monitor cellular phones and track their location.⁷⁸ In the debate over CALEA, Freeh initially claimed his agents would not seek to record the geographical location of cellular phone users. After passage of the law, "the FBI fought tooth and nail to include complete location tracking information in the CALEA requirements," as the ACLU's Barry Steinhardt told Congress: "The whole history of CALEA implementations demonstrates why we should not be so quick to accept the FBI's assurances that it will strictly adhere to the Constitution and the relevant statutes. The FBI has demonstrated that it has very expansive notions of what it is entitled to intercept and when it is entitled to those intercepts."⁷⁹

Who Are the Terrorists?

Director Freeh, in assessing the domestic terrorist threat in the late 1990s, asserted that groups on the Left were not as large a concern as groups on the Right. This change from the past was due in large part to the Oklahoma City bombing. The FBI conducted a major investigation of the Right, interviewing about twenty-six thousand people and found that McVeigh had ties to several white supremacist groups. He made several phone calls to an unknown member of the National Alliance two weeks before the bombing. According to FBI agent Danny Coulson, "FBI agents interviewed National Alliance founder William Pierce, the notorious white supremacist and author of *The Turner Diaries*, but Pierce insisted he never talked to McVeigh or heard of him before the bombing, and no evidence contradicts this." McVeigh also made calls to the neo-Nazi commune Elohim City near Muldrow, Oklahoma, which already was under investigation. "The most troubling call [by McVeigh] was to Elohim City," Coulson writes. "The person who spoke with McVeigh isn't known, since nobody in the compound has owned up to it. Telephone company records show only some sort of brief exchange." In the past McVeigh had visited the commune. In addition, a BATF informer inside Elohim City warned federal law enforcement weeks before McVeigh's bombing that residents were agitating to attack the government. Other ties included the Michigan Militia, where McVeigh attended several meetings but was kicked out when he discussed violence. He frequented gun shows to sell photocopies of *The Turner Diaries* and visited Waco during the standoff with the FBI. McVeigh probably participated in a December 1994 bank robbery in Ohio with Aryan Nations robbers.⁸⁰

The FBI infiltrated the white militia movement, which grew swiftly in 1994 in Montana and Michigan in response to the government's actions at Ruby Ridge and Waco. An early slogan of the movement was "Remember Ruby Ridge and Waco." As one historian writes, these two events "galvanized thousands of Americans who had distrusted the government but until then had not believed that FBI agents might actually invade their homes or kill their wives and children."⁸¹ Perhaps forty thousand people joined paramilitary groups by the year 2000, with perhaps several million sympathizers in the anti-government Patriot movement. We know that an FBI informer served as chief of security for the Viper Militia in Phoenix, Arizona; as head of intelligence for the West Virginia Mountaineer Militia; and as one of the top leaders of the Tri-State Militia in Gregory County, South Dakota. One of these cases fits a pattern we have already noted whereby extremists turn to violence in response to a well-publicized instance of government repression. Members of the 112th Georgia Militia began

talking about bomb making after the FBI began its eighty-one-day siege of the Montana Freemen in 1996. Before the Freemen standoff, the militia members had not discussed acting on their paranoid views. Once the siege began, their discourse changed. Two government infiltrators inside the group taped meetings and conversations. When several members were brought to trial and convicted, the defendants claimed the informers encouraged the bombing plans and badgered them into breaking the law.⁸²

Significantly, the Bureau did not view most militia members in enemy terms. Freeh reassured Congress and the public they were law-abiding citizens and the FBI made public relations overtures to militias by sending agents overtly to meetings to diffuse anti-government sentiment.⁸³ But not all militia groups viewed such public gestures positively. A writer in the *Patriot News and Militia Views* noted the following: “Three FBI Agents and six members of the Greene County Militia gathered on 10-14-99 for an unusual meeting. The purpose was to discuss ways the two groups could better improve communication. The gathering was ordered by [Attorney General] Janet Reno, the queen of Waco, and her co-conspirator FBI director Freeh as part of an ongoing government program to reach out to Militias. Several Militia members in attendance loudly commented about the many FBI conspiracies and criminal actions. Just how can any patriot fall for this trap? The Feds are merely gathering intelligence about the Militias who are dumb enough to cooperate. A kinder and gentler machine gun? Don’t believe it!”⁸⁴ If the armed militias had been Leftists, critical of American capitalism, it is hard to imagine the FBI waging a public relations campaign with them. In the FBI’s view, right-wing radicals were merely misguided and in need of civic education.

Clinton’s FBI also developed a major surveillance program to track anti-abortion protestors. Started in 1994, the Violence Against Abortion Providers Task Force, known as VAAPCON, included the building of a database on about nine hundred groups or individuals including the American Life League, the Christian Coalition, Jerry Falwell, Pat Robertson, Women’s Coalition for Life, Feminists for Life, Concerned Women for America, Americans United for Life, the National Rifle Association, and the National Conference of Catholic Bishops. The rash of bombings against reproductive health clinics and attacks on doctors prompted law enforcement to look for a conspiracy. Overall, fifty-six people were convicted for violating the Freedom of Access to Clinic Entrances Act (1994). Right-wing leaders viewed the FBI investigations as a broader attack on conservative Christians. According to Judicial Watch, “The database was created, using abortion clinic violence as an excuse, over the objections of some in the FBI, but the upper levels of the Clinton Justice Department ordered its creation anyway.” The Right believed that Clinton “used the FBI as a political weapon.”⁸⁵

While the FBI sought to contain white supremacists because they made “whiteness” look bad, efforts against Arab Americans engaged foreign policy issues. The government profiled Arab Muslims as supporters of overseas terrorism against Israel and U.S. interests in the Middle East. The onset of the Persian Gulf War in 1991 increased surveillance. A nationwide FBI probe questioned Arab Americans about terrorism with agents making visits to workplaces and homes. This racial profiling tested loyalty based solely on ethnic and religious backgrounds. According to Gregory Nojeim, head of legal services for the Arab American Anti-Discrimination Committee, the interviews followed a deceptive script: “The agents would typically enter a person’s home by indicating that they were there to tell them should there be any instances of anti-Arab backlash that the FBI was there to protect them and to prevent that kind of thing. Once inside, they would ask, ‘Do you know any terrorists? Do you know of anyone who might commit a terrorist act?’” The FBI also inquired if individuals received visitors from Iraq. As Nojeim said, “We have spent a lot of time trying to convince the FBI that there is not a terrorist gene [in Arab Americans] and that there is no cultural tendency to know something about terrorists or to have special knowledge about terrorism. I’d say that on that score we’ve failed.”⁸⁶

Arab American leaders complained about FBI intimidation within their communities. In 1998, the FBI made arrests or subpoenaed Arab Americans before grand juries in New York, Chicago and Tampa. Maha ElGenaidi, a prominent Islamic American writer, pointed to the impact of the Anti-Terrorism Act (1996), which “gives the FBI a legal green light to step up its surveillance of immigrant communities and hundreds of organizations in the US that support struggles for freedom and justice abroad.”⁸⁷ When the American Muslim Council (AMC) received a letter from Freeh informing them that the Bureau would be sensitive to the religious convictions of Kosovo Muslim victims, the AMC director used the occasion to voice American Muslim resentment: “AMC also hopes that such consideration and sensitivity will become a standard practice when the FBI deals with members of the American Muslim community at home as well.”⁸⁸ In Milwaukee, the anti-Arab bias was on display when the FBI conducted broad questioning of individuals about their political views and asked them to inform on others. An Arab American leader indicated, “They told us that they have little information about the Muslim community in Milwaukee and (the visits were) an effort to gain information.” They asked residents to supply them with names of local community leaders.⁸⁹ In Detroit, home of the largest concentration of Arab immigrants outside of the Middle East, the FBI went public about its investigations as early as 1993. Civil liberty groups began distributing flyers in Arabic and English informing Arab Americans

they do not have to speak to FBI agents who try to interview them. The Bureau studied Arab American groups for fundraising for Hamas and for distributing anti-Israel literature.⁹⁰ Nationally, at least twenty Arab American groups were under FBI investigation by the late 1990s. The *Washington Post* editorialized, “A government taking punitive steps against members of a community can ask that community for trust only so many times.”⁹¹

Documenting secret surveillance of other groups with international agendas is no easy task. Peace and anti-war groups diminished as a mass protest movement with the end of the Cold War and with the reduction of the nuclear arsenals of the United States and Russia. While anti-war Plowshares groups still engaged in select actions and several national peace organizations continued to lobby on disarmament issues, it is hard to judge if the FBI devoted significant surveillance to them. In 1999, a leader of Peace Action, an organization founded as the successor of SANE and Freeze groups, told me, “The Secret Service regularly checks out our Web site. We learned this directly from one of their officers when, after our director had been arrested at a White House protest of NATO bombing [in Yugoslavia], I was given a lift by the relevant officer to the prison to wait and pick up arresters.”⁹² When Maryknoll priest Roy Bourgeois organized the first of a series of annual protests against the School of the Americas, a U.S. military training center housed at Fort Benning in Georgia, the intelligence community responded with surveillance.⁹³

Despite dire predictions, no violence broke out on January 1, 2000, in the United States or anywhere else worldwide. It is astonishing: *No political violence anywhere in the world.*⁹⁴ The government’s prediction of apocalyptic millennial mayhem by radicals proved greatly exaggerated. Yet there was near panic in some cities. Seattle canceled its New Year’s celebrations out of fear of terrorism. In New York City, about eight thousand uniformed police and seven hundred undercover were assigned to the Times Square celebration. The undercover police mingled in the crowd to listen to conversations. The NYPD removed all garbage cans, locked all mailboxes, and welded shut all manhole covers in a ten-block radius around Times Square. The FBI conducted a national sweep of suspected terrorists two days before the millennium, interviewing dozens of Muslims—mostly of Algerian background—in several cities.⁹⁵ The high alert included the establishment of a special Y2K Command Post at FBI Headquarters staffed twenty-four hours a day from December 29, 1999, to January 5, 2000. A frenzied media published dozens of stories highlighting the threat posed by terrorists based on exaggerated government assessments.

In a new initiative, the FBI assembled dossiers on the growing protest movement against global capitalism, including demonstrators at the World

Trade Organization (WTO) meetings in Seattle in 1999. During the “Battle of Seattle,” a coalition of labor, environmental, human rights and other liberal organizations took to the streets and about fifty thousand protestors managed to close down some WTO meetings resulting in about five hundred arrests. The FBI and city police spied on activists for months before the demonstrations with visits to activists’ homes to inquire about their plans. Government spies went undercover dressed as protestors. The National Lawyers Guild (NLG) chapter in Seattle noted, “As activists began planning their demonstrations, they were targeted by federal, state and local law enforcement officials. The activists found their meetings infiltrated, their public gatherings disrupted, their phones tapped, and police posted outside their homes and offices.”⁹⁶ The ACLU reported, “The police made hundreds of improper arrests, detaining for days people who would never stand trial. Then, after the demonstrations were over, charges were dropped.” Those arrested during the protests were treated harshly by the police: “Some of the mistreatment was directed at protestors who made demands to see their lawyers. Some officers singled out, threatened and assaulted individuals for exercising or demanding their constitutional rights. Some officers used pepper spray against non-threatening prisoners who posed no threat to officer safety.”⁹⁷

In the spring of 2000, street protests occurred outside the International Monetary Fund and World Bank meetings in Washington, D.C., and charges of terrorism again accompanied police surveillance with visits to the homes of activists across Washington prior to the meetings. Police also tried to shut down a homeless shelter where out-of-town protestors were lodged. The *Washington Post* noted, “Some of the protestors think they are being watched. They are correct.” *USA Today* wrote about Internet surveillance against the protestors, who had set up websites to coordinate the demonstrations. Government agents “have been monitoring 73 Internet sites where the groups had been exchanging messages to learn more about their plans. Sometimes, officers have even gone on line passing as protestors.”⁹⁸ Rob Cavanaugh, legislative director of the American Universalist Association, took part in street protests and wrote at the time, “The police are acting like terrorism is imminent. Much of the apprehension about this weekend, Meg and I believe, is being caused by the actions of the police themselves. I personally have seen and heard many very clear cases of police intimidation, including gangs of police vehicles parading past protest headquarters, following and photographing of protestors, etc.”⁹⁹ As police stood atop buildings taking pictures, nearly 1,200 people conducted peaceful civil disobedience. According to the U.S. Attorney’s Office, “The FBI provided valuable background on the individuals who were intent on committing criminal acts and were able to impart the valuable lessons learned from Seattle.”¹⁰⁰

The FBI placed “anti-globalization” protests under its terrorist rubric even though no acts of violence were linked to the movement apart from select petty street vandalism. The Bureau distorted their overwhelmingly nonviolent orientation intent on smearing all challenges to corporate power. The NLG insightfully described a three-step process whereby this new repression was legitimated based on raising fears of violence.

First police departments, often in conjunction with city government, begin a multi-faced media campaign designed to make protest organizers appear to be involved in preparations for violence. . . . Once the public is predisposed to expect violence from activists, the second step in the process involves a specific claim of evidence suggesting an imminent act of violence. These claims will later be retracted, corrected or will simply remain unsubstantiated. . . . The third step in this tactic follows the second closely or simultaneously. It involves a police action publicly justified in the climate of imminent terrorism. It has the effect, however, of a prior restraint on free speech and intimidation of those who would speak their mind against the government. Examples have included seizing training and puppet making materials; seizing training, art and medical supplies; and seizing hard drives and political literature. Potential protestors have been arrested, beaten and had bail set at ridiculously high amounts to hold them past the event around which the protest was scheduled.¹⁰¹

The FBI kept lists of anyone who publicly challenged global capitalism. When more than one hundred CEOs from Europe and America met in Cincinnati in late 2000, the FBI worked with local police in advance to monitor protests.¹⁰² The BBC in England reported that before World Bank meetings held in Prague in 2001, the FBI sent lists of U.S. activists to the Czech government to try to deny entry visas to American protestors.¹⁰³ In one of his last appearances before Congress, Freeh singled out the anti-globalization movement as an example of a serious enemy threat: “Anarchist and extremist socialist groups—many of which, such as the Workers World Party, Reclaim the Streets and Carnival Against Capitalism—have an international presence and at times also represent a potential threat in the United States. For example, anarchists, operating individually and in groups, caused much of the damage during the 1999 World Trade Organization ministerial meeting in Seattle.” An FBI spokesman told the Leftist magazine *In These Times*, “There are a lot of groups in the anti-globalization movement who have exhibited some potential to commit a terrorist incident.”¹⁰⁴ While many progressives considered the anti-globalization protests to be one of the few bright signs for social justice to emerge in recent years, the police were out in force to monitor and suppress its development.

In authorizing surveillance of protest, Clinton’s FBI echoed Reagan’s earlier efforts to frame dissident activity as terrorism. Thus, it is not too surpris-

ing that before the 2000 Republican National Convention in Philadelphia, police raided and shut down a warehouse where activists were lodged on the pretext of looking for bombs, which they did not find. They rounded up hundreds of activists in preemptive arrests, including leaders, on charges later dropped. The Red Menace of past years lurked in the background. One police affidavit used to justify surveillance claimed that funds for a protest group “allegedly originate with Communist and leftist parties and from sympathetic trade unions” or from “the former Soviet-allied World Federation of Trade Unions.” What made matters worse is that the police commissioner in Philadelphia repeatedly denied government infiltration of protest groups. In fact, Philadelphia police were sent to New York City, Washington, D.C., and Seattle to photograph demonstrators during prior May Day rallies—this intelligence gathering was done with the upcoming GOP convention in mind. The Pennsylvania State Police functioned as disrupters, according to the *Philadelphia Inquirer*: “Six undercover troopers joined protestors in blockading city streets and they were arrested by city police. . . . Pennsylvania State Police ran vehicle background checks on activists and took more than 100 photos of protestors at public demonstrations and on street corners.”¹⁰⁵

Notes

1. “Remarks by the President to the Opening Session of the 53rd United Nations General Assembly,” Sept. 21, 1998, 5. For a general overview of the 1990s, but with little attention to the FBI, see William L. O’Neill, *A Bubble in Time: America During the Interwar Years, 1989–2001* (Chicago: Ivan R. Dee, 2009).

2. Richard Anthony Matthew, Bryan McDonald, Ken Rutherford, *Landmines and Human Security: International Politics and War’s Hidden Legacy* (Albany: State University of New York Press, 2004), 21–34.

3. Gary T. Marx, “External Efforts to Damage or Facilitate Social Movements: Some Patterns, Explanations, and Complications,” in *The Dynamics of Social Movements*, ed. Mayer N. Zald and John David McCarthy (Cambridge: Winthrop Publishers, 1979), 117.

4. An interesting essay that explores some of these questions is Kristin M. Lord, *The Perils and Promise of Global Transparency: Why the Information Revolution May Not Lead to Security, Democracy, or Peace* (Albany: State University of New York Press, 2006).

5. Robert S. Robins and Jerrold M. Post, *Political Paranoia: The Psychopolitics of Hatred* (New Haven, Conn.: Yale University Press, 1997), 91–92. Dating from World War I, the FBI compiled a massive collection of radical pamphlets, books, periodicals, and newspapers. By the 1970s, this collection included more than 32,000 different publications forming the largest single holding of the alternative press. Athan G. Theoharis and John Stuart Cox, *The Boss: J. Edgar Hoover and the American Inquisition* (Philadelphia: Temple University Press, 1988), 9.

6. Joseba Zulaika and William A. Douglas, *Terror and Taboo: The Foibles, Fables, and Face of Terrorism* (New York: Routledge, 1996), 6, 29, 149–50. See also Corey Robin, *Fear: The History of a Political Idea* (Oxford: Oxford University Press, 2004).

7. Zulaika and Douglas, *Terror and Taboo*, 158–60, 189; Edmund Leach, *Custom, Law and Terrorist Violence* (Edinburgh: Edinburgh University Press, 1977), 36.

8. “Gun Crime in America,” *APBnews*, Sept. 20, 1999.

9. “As Drunken Driving Deaths Drop, Concerns Remain,” *APBnews*, Dec. 15, 1999.

10. Bureau of Alcohol, Tobacco and Firearms, “Total Number of Bombing Incidents by Targets: 1997,” www.atf.treas.gov/aaxis (Sept. 6, 2003).

11. Sissela Bok, “Violence, Free Speech, and the Media,” in *Perspectives on Crime and Justice: 1998–1999 Lecture Series* 111 (Washington: National Institute of Justice, U.S. Department of Justice, Nov. 1999), 60–61.

12. Bruce Hoffman, *Inside Terrorism* (New York: Columbia University Press, 1998), 25.

13. Hoffman, *Inside Terrorism*, 27–28.

14. FBI, *Project Megiddo*, Oct. 20, 1999, 4.

15. FBI, *Project Megiddo*, 4.

16. Quoted in Simon Garfinkel, *Database Nation: The Death of Privacy in the 21st Century* (Cambridge: O’Reilly, 2000), 216.

17. U.S. Department of Defense, *Proliferation: Threat and Response*, November 1997, quoted in Ivan Eland, “Protecting the Homeland: The Best Defense Is to Give No Offense,” *Cato Institute Policy Analysis* No. 306, May 5, 1998, 2.

18. FBI annual report, *Terrorism in the United States*, 1997, 21.

19. “Congressional Testimony of FBI Director Louis J. Freeh,” Sept. 3, 1998, 9.

20. “Panel Criticizes U.S. Anti-Terrorism Preparedness,” *Washington Post*, Dec. 16, 1999.

21. Jessica Stern, *The Ultimate Terrorists* (Cambridge, Mass.: Harvard University Press 2001), 37, 39. See also Leonard A. Cole, *The Eleventh Plague: The Politics of Biological and Chemical Warfare* (New York: W. H. Freeman and Company, 1998).

22. Ed Regis, *The Biology of Doom: The History of America’s Secret Germ Warfare Project* (New York: Henry Holt, 1999).

23. Edward S. Herman and Gerry O’Sullivan, *The Terrorism Industry: The Experts and Institutions that Shape Our View of Terror* (New York: Pantheon Books, 1989), 230; Joseba Zulaika, *Terrorism: The Self-Fulfilling Prophecy* (Chicago: University of Chicago Press, 2009), 146.

24. Richard A. Falkenrath, Robert D. Newman, and Bradley A. Thayer, *America’s Achilles’ Heel: Nuclear, Biological and Chemical Terrorism and Covert Attack* (Cambridge: MIT Press, 1998), 265–66, 281–82.

25. Stern, *The Ultimate Terrorists*, 148–51.

26. Robert Jay Lifton, *Destroying the World to Save It: Aum Shinrikyo, Apocalyptic Violence, and the New Global Terrorism* (New York: Henry Holt, 1999), 272, 343–44.

27. Jeffrey A. Sluka, “State Terror and Anthropology,” in Sluka, ed., *Death Squad: The Anthropology of State Terror* (Philadelphia: University of Pennsylvania Press, 2000), 1.

28. Sluka, "State Terror and Anthropology," 7–8; Michael Stohl, "International Dimensions of State Terrorism," in *The State as Terrorist: The Dynamics of Governmental Violence and Repression*, ed. Stohl and George A. Lopez (Westport, Conn.: Greenwood Press, 1984), 55; Noam Chomsky and Edward Herman, *The Washington Connection and Third World Fascism: The Political Economy of Human Rights* (Boston: South End Press, 1979).

29. "Stop Weapons Flows to Human Rights Abusers," Human Rights Watch, Feb. 28, 2000.

30. Herman and O'Sullivan, *The Terrorism Industry*, 37–39.

31. Jack A. Blum, "Covert Action: The Blowback Problem," in *National Insecurity: U.S. Intelligence After the Cold War*, ed. Craig Eisendrath (Philadelphia: Temple University Press, 2000), 86–87; "If We Hate Terrorism, Why Does the U.S. Keep Arming and Training Terrorists?" Libertarian Party, Aug. 28, 1998.

32. John V. Parachini, "Combating Terrorism: Assessing the Threat," U.S. House Subcommittee on National Security, Veteran Affairs and International Relations, October 20, 1999, 4. Parachini worked for the Monterey Institute of International Studies. He writes:

We recognize that history is not a perfect guide to the future, but without any understanding of the historical record, people are merely speculating about what actions terrorists might take. . . [we are] building a database of terrorist incidents with unconventional weapons materials that now includes more than 520 cases [worldwide]. The cumulative result of this quantitative and qualitative research is a baseline understanding rooted in a thorough examination of the historical record. Some general observations emerge from this body of research. First, several of the cases commonly cited in the scholarly literature as incidents where terrorists sought to or succeeded in employing chemical or biological weapons turned out to be apocryphal. Upon further inspection, three of the twelve cases examined, which are frequently cited in the scholarly literature, lack sufficient evidence to be considered as actual incidents of CBW terrorism. This is an important finding because an inflated and flawed data set will lead us to falsely appraise the threat and may lead to imperfect policy prescriptions for addressing it. Second, contrary to much of the popular discussion of terrorist use of chemical and biological weapons, employing chemical and biological weapons for terrorist purposes is technically complex. Procuring the proper materials, fashioning them into a weapon, maintaining an organization that avoids infiltration or defection, and finally, delivering the weapon to a meaningful target, is far more difficult than often portrayed in many Hollywood films, the popular press and as sometimes described by elected or appointed officials. Third, according to the historical record, attacks with chemical and biological weapons are strikingly infrequent and the number of fatalities and casualties are far lower than those caused by conventional explosives.

Another assessment urges the government to rethink its WMD policy. Jonathan B. Tucker and Amy Sands, "An Unlikely Threat," *Bulletin of the Atomic Scientists* 55 (July/August 1999).

33. Carl J. Jensen and Yvonne Hsieh, "Law Enforcement and the Millennialist Vision: A Behavioral Approach," *FBI Law Enforcement Bulletin*, Dec. 1999.

34. FBI, *Project Megiddo*, 4, 28. The broad range of FBI investigations of cults needs further study. During the 1960s, for example, the FBI has “thousands of document pages” on this topic. See “Administrative Corner,” *FOIA Update*, U.S. Department of Justice, (Fall 1999). The Bureau holds a 429-page file on the Unification Church led by the Rev. Sun-Myung Moon with material from 1967 to 1988.

35. “FBI Warns of Millennial Violence Risk,” *Washington Post*, Oct. 31, 1999; *Project Megiddo*.

36. “FBI to Restructure, Adding Emphasis on Crime Prevention,” *Washington Post*, Nov. 11, 1999.

37. “Experts Warn of ‘Agroterrorism’ Threat,” *APBNews*, Dec. 2, 1999.

38. “Panel Criticizes U.S. Anti-Terrorism Preparedness,” *Washington Post*, Dec. 16, 1999.

39. “FBI, D.C. Cops Cancel Vacations For Y2K,” *APBnews*, July, 16, 1999.

40. “Public Apathetic About Terrorism,” Pew Research Center, March 1996.

41. “Americans Look to the 21st Century,” Pew Research Center, Oct. 24, 1999.

42. FBI, *Terrorism in the United States*, 21.

43. FBI, *Terrorism in the United States*, 22–23.

44. Zulaika and Douglas, *Terror and Taboo*, 6.

45. Hoffman, *Inside Terrorism*, 11, 16.

46. William J. Clinton, *Public Papers of the Presidents of the United States* (Washington, D.C.: Federal Register, 2000), 378.

47. See for example, Paul Joseph, *Peace Politics: The United States Between the Old and New World Orders* (Philadelphia: Temple University Press, 1993); Richard Nixon, “Save the Peace Dividend,” *New York Times*, Nov. 19, 1992.

48. *Congressional Record*, June 25, 1992, H5261.

49. Representative Don Edwards in the U.S. House of Representatives, Jan. 3, 1989.

50. Richard Gid Powers, “Freeh Ride: In his Memoirs, the Former FBI Director Tries to Explain Away the Disasters on His Watch,” *Washington Monthly*, March 1, 2006. See also Rich Lowry, *Legacy: Paying the Price for the Clinton Years* (Washington: Regnery Publishing, 2004), 199.

51. Louis J. Freeh, statement before the U.S. Senate Select Committee on Intelligence and Senate Committee on the Judiciary, Subcommittee on Terrorism, Technology and Government Information, Feb. 28, 1996.

52. Louis J. Freeh, “Threats to U.S. National Security,” U.S. Senate Select Committee on Intelligence, Jan. 28, 1998.

53. Congressional Research Service, “The FBI: Past, Present and Future,” Oct. 2, 2003, 3–4; FBI, “Ensuring Public Safety and National Security Under the Rule of Law: A Report to the American People on the Work of the FBI, 1993–1998,” 1999, 5; Athan G. Theoharis, ed., *The FBI: A Comprehensive Guide* (Phoenix: Oryx Press, 1999), 4–5.

54. “FBI: New Findings,” Transactional Records Clearinghouse, Syracuse University, 1997; Theoharis, ed., *The FBI*, 4–5. Between 1994 and 1999, FBI personnel increased 15 percent, including the addition of 3,705 new special agents.

55. Southern Poverty Law Center, “Federal Terrorism Probes Skyrocket” *Intelligence Report* 89 (Winter 1998); Transactional Records Access Clearinghouse, “A Special TRAC Report: Criminal Enforcement Against Terrorists,” Dec. 2001.

56. U.S. Government Accounting Office, "Combating Terrorism: Observations on Federal Spending to Combat Terrorism," March 11, 1999, 8.

57. FBI website, www.fbi.gov (Oct. 6, 1998). See also Frank Donner, *Protectors of Privilege: Red Squads and Police Repression in Urban America* (Berkeley: University of California Press, 1990).

58. Jack X. Dempsey and David Cole, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (New York: The New Press, 2002), 117–126.

59. U.S. Government Accounting Office, "Combating Terrorism: Federal Agencies' Efforts to Implement National Policy and Strategy," Sept. 26, 1997; U.S. Government Accounting Office, "Combating Terrorism: FBI's Use of Federal Funds for Counterterrorism-Related Activities (Fiscal Years 1995–1998)," Nov. 20, 1998, 26; Congressional Testimony of FBI Director Louis J. Freeh, Sept. 3, 1998, 8.

60. "Spam from the Man: The FBI Gets into the Unsolicited E-mail Business," *StarNet Dispatches*, March 30, 1998; "Spam from the FBI" and "FBI Advisory #1," www.firstbase.com/fbi/fbi.htm (Jan. 9, 1999).

61. The advisory noted, "Although unclassified, this communication should be handled as law enforcement sensitive. This communication should not be furnished to the media or other agencies outside the corporate security, law enforcement/U.S. Government counterterrorism community without the permission of the FBI. Unauthorized disclosure of FBI communications could jeopardize ongoing FBI investigations. "FBI Advisory #2," www.firstbase.com/fbi.com/fbi/fbu.htm (Jan. 9, 1999).

62. NIPC website, "Outreach/Infragard," 3, www.nipc.gov (Jan. 10, 2003).

63. Electronic Privacy Information Center, "Critical Infrastructure Protection and the Endangerment of Civil Liberties," Oct. 1998, 14.

64. Richard A. Clarke, *Defending America's Cyberspace* (Washington, D.C.: White House, 2000), www.fas.org/irp/offdocs/pdd/CIP-plan.pdf (Aug. 25, 2010).

65. Gordon Smith, "An Electronic Pearl Harbor? Not Likely," *Issues in Science and Technology*, Fall 1998, www.issues.org/15.1/smith.htm (April 16, 2010); Porter Goss, "An Introduction to the Impact of Information Technology on National Security," *Duke Journal of Comparative and International Law* 9 (Spring 1999): 393.

66. "Agency Reports 'Substantial' Cyber Attacks Against U.S. Government Systems," *Reuters*, June 10, 1998.

67. "Most Federal Cybercases Are Dismissed," *APBnews*, Aug. 9, 1999; "White House Hacker Gets Prison Term," *APBnews*, Nov. 23, 1999; "'Global Hell' Hacker Gets Six Months," *APBnews*, March 2, 2000.

68. Center for Democracy and Technology, "Policy Post," Aug. 20, 1999, 2.

69. "Clinton Favors Computer Snooping," *Wired News*, Jan. 19, 2000.

70. American Bar Association, "Protecting the Confidentiality of Unencrypted E-mail," March 10, 1999.

71. A related issue is the forging or stealing of identification documents on another person. In 1998, Congress passed the Identity and Theft Assumption Deterrence Act, making it illegal. Yet there is an exemption for the police and the FBI to establish false identities for undercover agents and informers.

72. Robert L. Jones, "Client Confidentiality: A Lawyer's Duties With Regard to Internet E-Mail," *Computer Law Section of the State Bar of Georgia*, Aug. 16, 1995, 3–4.

73. "Wanted by the FBI: High-Tech Crime Fighters," *APBnews*, March 10, 2000; "Laptops Present Major Security Concerns," *Federal Computer Week*, April 10, 2000.

74. Susan E. Gindin, "Lost and Found in Cyberspace: Information Privacy in the Age of the Internet," *San Diego Law Review* 34 (Dec. 1997): 1153; William S. Galkin, "Your Clickstream Is Showing: Privacy of Online Consumer Information," *Computer Law Observer* (Jan. 1997).

75. "Getting DIRT on the Bad Guys," *PC World*, June 29, 1999; Winn Schwartau, "It's Getting Easier to Dig Up DIRT on Criminals," *Network World*, July 6, 1998; "Hackers Release Windows Surveillance, Control Tools," *Computer World*, Aug. 10, 1998.

76. Wim van Eck, "Electromagnetic Radiation from Video Display Units: An Eavesdropping Risk?" *Computers and Security* 4 (1985): 269–86. See also Markus G. Kuhn and Ross J. Anderson, "Soft Tempest: Hidden Data Transmission Using Electromagnetic Emanations," in *Information Hiding*, ed. David Aucsmith (New York: Springer, 1998): 124–42; "Is the Government Watching Your Computer," *APBnews*, Oct. 27, 1999; "TEMPEST Brewing for PC Privacy?" *Wired News*, Oct. 26, 1999.

77. Louis J. Freeh before the U.S. Senate Committee on Appropriations, Subcommittee for the Departments of Commerce, Justice, State, the Judiciary and Related Agencies, Feb. 16, 2000; Center for Democracy and Technology, "Policy Post," Feb. 16, 2000.

78. Whitfield Diffie and Susan Landau, *Privacy on the Line: The Politics of Wiretapping and Encryption* (Cambridge, Mass.: MIT Press, 2007), 220; ACLU, "Groups Initiate Court Challenge to FBI Wiretap Standards," Nov. 18, 1999.

79. Barry Steinhardt before the U.S. House Judiciary Committee, Subcommittee on the Constitution, July 24, 2000, 2–3. FBI surveillance increased overseas during the 1990s. Whereas in 1993 the Bureau operated twenty-one foreign offices, by the year 2000 they ran thirty-seven foreign offices, making it possible to conduct direct surveillance of Americans when they travel or live overseas. "The Intelligence Community in the 21st Century," Permanent Select Committee on Intelligence, U.S. House of Representatives, June 5, 1996; "Lawyers Discuss Counter-Terrorism Strategies," United States Information Agency, May 14, 1999; Richard Gid Powers, *Broken: The Troubled Past and Uncertain Future of the FBI* (New York: Simon and Schuster, 2004), 390–96.

80. Morris Dees, *Gathering Storm: America's Militia Threat* (New York: HarperCollins, 1996), 156, 162–63; Danny O. Coulson and Elaine Shannon, *No Heroes: Inside the FBI's Secret Counter Terror Force* (New York: Pocket Books, 1999), 528, 532; "Phone Trail to Oklahoma City," *New American*, July 8, 1996; Mark S. Hamm, *Terrorism as Crime: From Oklahoma City to Al-Qaeda and Beyond* (New York: New York University Press, 2007), 180; "FBI Destroyed Possible McVeigh Evidence," Associated Press, March 1, 2003.

81. Catherine McNicol Stock, *Rural Radicals: Righteous Rage in the American Grain* (Ithaca, N.Y.: Cornell University Press, 1996), 146.

82. Robert L. Snow, *The Militia Threat: Terrorists Among Us* (New York: Plenum Trade, 1999), 13–14, 21, 62, 72, 94, 103, 124–37, 163; Daniel Junas, "Rise of Citizen Militias," *Covert Action Quarterly* (Spring 1995): 14–20; "The FBI's Pipe-Bomb Provocateurs," *New American*, June 24, 1996; "Radicalizing the Right," *New American*,

Feb. 2, 1998; Chip Berlet and Matthew N. Lyons, *Too Close for Comfort: Right-Wing Populism, Scapegoating and Fascist Potentials in U.S. Political Traditions* (Boston: South End Press, 1996); Kenneth S. Stern, *A Force Upon the Plain: The American Militia Movement and the Politics of Hate* (New York: Simon and Schuster, 1996).

83. According to the FBI, "For several years, the FBI has had a program of reaching out to militias and their members to explain the FBI's role in investigating violations of law and to stress open lines of communication with militia groups. This was done also to ensure the militias that there was no intent to deny anyone their constitutional rights nor was there a targeting of any militia groups who were otherwise engaged in legitimate, protected activity." FBI Press Release, Oct. 20, 1999. Special Agent Carl J. Jensen, who served in the Behavioral Sciences Unit at the FBI Academy, wrote, "In the wake of the Oklahoma City tragedy, some members of the media portrayed militia group members as wild-eyed, violent and uneducated. This caricature seriously misstates the reality that many militia group members represent intelligent, law-abiding citizens who care deeply about their country but may question political and constitutional issues. Indeed, many militias condemned the Oklahoma City bombing." Jensen and Hsieh, "Law Enforcement and the Millennialist Vision," 2. See also James E. Duffy and Alan C. Brantley, "Militias: Initiating Contact," *FBI Law Enforcement Bulletin*, July 1997.

84. "Militia Members Hang with the FBI," n.d., 3, www.anglefire.com (Dec. 2, 2002).

85. Judicial Watch, "Keeping Tabs on Pro-Life Movement," July 13, 1999; ACLU, "FBI Goes Underground to Probe Clinic Attacks," Jan. 28, 1997; Judicial Watch, "Clinton Justice Department/FBI Keeps Computer Database on Pro-Life Leaders," July 12, 1999; Lowell Ponte, "Clinton's Other Domestic Spying Program," *FrontPageMagazine.com*, Feb. 22, 2006, www.frontpagemag.com/Articles/Read.aspx?GUID=112C46BB-EA83-4B57-AC4D-F67A85B0BB18 (Feb. 2, 2008); Civil Rights Division, U.S. Department of Justice, "National Task Force on Violence Against Health Care Providers," July 25, 2008, www.usdoj.gov/crt/crim/tfreppub.php (June 6, 2009).

86. Gregory Nojeim, "New Threats to Civil Liberties: Targeting Arab-Americans" (paper presented at "Ending the Cold War at Home" conference, ACLU, 1991); Dempsey and Cole, *Terrorism and the Constitution*, 45.

87. Maha ElGenaidi, "Muslims in the United States: How Stereotyping of Muslims Was Used to Pass New 'Anti-Terrorism' Law," *HRO Newsletter*, April–May 1998.

88. "FBI Director Pledges to American Muslim Community to Remain Sensitive to Religious Convictions While Investigating War Crimes in Kosova," *Musalman*, June 24, 1999.

89. "Muslims Speak Out Against Alleged FBI Intimidation," *ArabiaCulture*, March 1, 1999.

90. "U.S. Probes Ties to Palestinian Group," *Detroit Free Press*, Feb. 2, 1993.

91. "FBI Terror Probes Focus on U.S. Muslims," *Washington Post*, Oct. 11, 1998; "Investigating Arab Americans," *Washington Post*, Nov. 6, 1998.

92. James C. Bridgeman to Ivan Greenberg, email, Aug. 19, 1999.

93. ACLU, "FBI is Keeping Documents on ACLU and Other Peaceful Groups," July 18, 2005.

94. One exception involved the hijacking of an Indian airline several days before the year 2000; the hijackers released the passengers when the Indian government agreed to release several prisoners.

95. "Happy New Year? Thousands of Officers to Police Times Square," Associated Press, Dec. 26, 1999; "FBI Terror Sweep Nets Six," *APBnews*, Dec. 30, 1999.

96. National Lawyers Guild, Seattle, "Waging War On Dissent: A Report by the Seattle National Lawyers Guild WTO Legal Group," Nov. 2000, 1–3 www.Seattle.indymedia.org (Nov. 6, 2005). See also Luis A. Fernandez, *Policing Dissent: Social Control and the Anti-Globalization Movement* (Piscataway: Rutgers University Press, 2008); and David P. Waddington, *Public Order Policing: Theory and Practice* (Portland: Wilan Publishing, 2007), 110–138.

97. ACLU, "Out of Control: Seattle's Flawed Response to Protests Against the World Trade Organization," July 2000, 7.

98. National Lawyers Guild, "Waging War On Dissent," 3.

99. Rob Cavanaugh, April 4, 2000.

100. Abby Scher, "The Crackdown on Dissent," *Nation* 272 (2001): 23.

101. National Lawyers Guild, "Waging War on Dissent," 2.

102. "Ohio Braces for World Bank Protests," Associated Press, Oct. 29, 2000.

103. Scher, "The Crackdown on Dissent."

104. Louis Freeh, statement before the U.S. Senate Appropriations Committee, March 10, 2001; "FBI's New Generation of COINTELPRO," *In These Times*, March 18, 2001.

105. "State Police Infiltrated Protest Groups," *Philadelphia Inquirer*, Sept. 7, 2000; "Philadelphia Police Admit Spying on Activists," *Philadelphia Inquirer*, July 21, 2000; "State Police: Troopers Were Arrested at Protest," *Philadelphia Inquirer*, Nov. 16, 2000; "State Police Activity With Activists Is Bared," *Philadelphia Inquirer*, Nov. 18, 2000.

5

The Terror Scare

AFTER 9/11, A FULL-FLEDGED TERROR SCARE DEVELOPED in the United States rivaling the Red Scare during the long Cold War. Just as the fight against Communism became an international battle, the administration of George W. Bush argued that the struggle against radical Islam associated with Al Qaeda constituted a global war. They even coined the term GWOT (Global War on Terror) and viewed the struggle at home not simply as a law enforcement or political intelligence matter. Unfortunately, wars usually generate domestic “scares.” Enemies are defined. They must be located and defeated. Presidents engage in heated and overblown rhetoric to build popular support for these efforts. They unnecessarily demonize their opponents, look for scapegoats, and often sanction civil liberty violations justified as a temporary expedient. “Which is a greater threat: terrorism, or our reaction against it?” asked political scientist John Mueller. His dissenting voice concluded, “A threat that is real but likely to prove to be of limited scope has been massively, perhaps even fancifully, inflated to produce widespread and unjustified anxiety.”¹ Criminologist Michael Welch noted the outrage generated by U.S. leaders has been directed against innocent people “who become the targets of hate crimes and state crimes.”² The government attempted to construct a universal fear of terrorism and pushed it so hard it began to supplant the particular fear of street crime.

The “wartime society” justified an unprecedented expansion of presidential power. Bush, the former governor of Texas, embraced the idea of the “unitary executive” bound by little congressional oversight. “These are very bad people,” Bush said, promoting the view that the nation is under siege by terrorists.³ But

even if we approach the subject on Bush's own terms, the policies formulated to defend the homeland vastly exaggerated the threat. What has been labeled the "one percent doctrine," based on Vice President Dick Cheney's November 2001 decree to the CIA, treats all low-probability threats like a certainty.⁴ The threat of terrorism became a convenient excuse to advance the Republican corporate agenda.

The breath of the new scare was articulated at the 2004 Republican Convention, when the topic of terrorism dominated almost every speech. Bush opened his acceptance speech:

Mr. Chairman, delegates, fellow citizens: I am honored by your support, and I accept your nomination for president of the United States.

When I said those words four years ago, none of us could have envisioned what these years would bring. In the heart of this great city, we saw tragedy arrive on a quiet morning. We saw the bravery of rescuers grow with danger. We learned of passengers on a doomed plane who died with a courage that frightened their killers. We have seen a shaken economy rise to its feet. And we have seen Americans in uniform storming mountain strongholds, and charging through sandstorms and liberating millions, with acts of valor that would make the men of Normandy proud.

Later in the speech, Bush evoked Ground Zero and homeland defense in a patriotic call to vote Republican.

This election will also determine how America responds to the continuing danger of terrorism, and you know where I stand. Three days after September 11, I stood where Americans died, in the ruins of the Twin Towers. Workers in hard hats were shouting to me, "Whatever it takes." A fellow grabbed me by the arm and he said, "Do not let me down." Since that day, I wake up every morning thinking about how to better protect our country. I will never relent in defending America—whatever it takes.

So we have fought the terrorists across the earth—not for pride, not for power, but because the lives of our citizens are at stake. Our strategy is clear. We have tripled funding for homeland security and trained half a million first responders, because we are determined to protect our homeland. We are transforming our military and reforming and strengthening our intelligence services. We are staying on the offensive, striking terrorists abroad, so we do not have to face them here at home. And we are working to advance liberty in the broader Middle East, because freedom will bring a future of hope, and the peace we all want. And we will prevail.⁵

Scare politics served obvious political goals. The Republicans promoted fear to improve their standing in the polls. A Cornell sociologist studied twenty-six occasions between 2001 and 2004 when the federal government

issued terror alerts and tracked 131 Gallup polls taken in their aftermath. On average, each warning resulted in a 2.75 point increase in the president's approval rating during the following week.⁶ Tom Ridge, the former head of the Department of Homeland Security, confirmed that Bush tried to manipulate terror alerts before the 2004 election to improve his chances of victory.⁷ While many Democrats supported the same terror tactics as the Republicans, 2004 presidential candidate Senator John Kerry expressed a different view several weeks before the election. The goal of the "War on Terror" was to reduce the threat to a "nuisance," similar to gambling and prostitution: "We have to get back to the place we were, where terrorists are not the focus of our lives but they're a nuisance." As expected, Republican leaders denounced these comments. "I couldn't disagree more," Bush said. "Our goal is not to reduce terror to some acceptable level of nuisance. Our goal is to defeat terror by staying on the offensive, destroying terrorist networks and spreading freedom and liberty around the world." Cheney called Kerry's comments "naïve and dangerous, as was Senator Kerry's reluctance earlier this year to call the war on terror an actual war." He predicted a national catastrophe if Kerry won: "The terrorists will escalate their attacks, both at home and overseas, and the likelihood will increase that they will acquire weapons of mass destruction to use against us."⁸

In the large literature on the "War on Terror," few writers examine in depth the role of the FBI. Why this neglect? The details of FBI activity are difficult to piece together because of government secrecy. There is more available information about CIA torture practices, rendition, as well as the indefinite detention of Arab and Muslim immigrants ("enemy aliens"). These practices constitute serious human rights abuses by the American government, yet they largely do not involve FBI spying. The FBI has a primary, largely unexplored role in the domestic terror scare and their surveillance structure needs further explication to contextualize the criminalization of dissent in contemporary society. As we will see, the FBI worked closely with corporate America to achieve its political security goals functioning as a guardian of capitalism.

Robert Mueller, a long-time U.S. attorney, became FBI director on September 4, 2001—exactly one week before the attacks on the World Trade Center and Pentagon. Several months earlier when Louis Freeh first announced his resignation, the proposed change at the top of the Bureau prompted a media discourse about the many recent failings of the FBI with reference to Ruby Ridge, Waco, the FBI Crime Lab scandal, Richard Jewell, Wen Ho Lee, and Robert Hanssen.⁹ The Bureau had been losing public support. In a May 2001 poll, only a narrow majority (53 percent) expressed a favorable impression of the FBI, down from 82 percent in 1995.¹⁰ To appease critics, Attorney General John Ashcroft ordered an internal review aimed at reforming the Bureau.

Democratic Senator Patrick Leahy of the Judiciary Committee commented several months before 9/11, “The image of the FBI in the minds of too many Americans is that the agency has become unmanageable, unaccountable, and unreliable.”¹¹

Such critical views changed dramatically almost overnight once Al Qaeda struck. In a subdued nation awash in the “War on Terror,” congressional oversight of the FBI slackened, rather than increased.¹² On October 26, 2001, Bush signed the U.S.A. Patriot Act, a sweeping “anti-terrorism” bill to buttress FBI power. The legislation built on earlier efforts under Presidents Reagan and Clinton to link terrorism to dissent to legitimize surveillance. By passing the act, Congress supported the redefinition of terrorism to include peaceful and nonviolent political activity. What once had been a loose and broad view of terrorism embraced primarily by the executive branch now received sanction throughout the government. Section 802 specifically created the federal crime of “domestic terrorism” to cover “acts dangerous to human life that are in violation of the criminal laws of the United States or of any State.” The new terrorism construct utilized vague definitions of political activity allegedly posing a threat to the civilian population or the government. The new key words were intimidation and coercion. A terrorist act consisted of any effort “to intimidate or coerce a civilian population” or “to influence the policy of government by intimidation or coercion.” What is intimidation? What is coercion? The FBI viewed almost all street protest as suspect. Demonstrators who disobey a police officer might be viewed as engaging in terrorist activity. The government equated most peaceful civil disobedience with terrorism. Acts of disorderly conduct, once considered violations of local law, were transformed into transgressions of federal statutes. Protest in the tradition of Thoreau, Gandhi, or Martin Luther King Jr. was grouped together with Al Qaeda in an effort to silence dissent.¹³

The law made it easier for the FBI to conduct electronic surveillance, detain suspect immigrants, and obtain “roving wiretaps” on phones. Another detrimental provision denied the confidential relationship between prisoners who are suspected of terrorism and their lawyers by permitting the government to eavesdrop on their conversations. The Patriot Act sanctioned FBI searches of homes and offices without notification (“sneak and peak” break-ins). In a major loosening of restrictions on spying, the Patriot Act lowered the standard to obtain third-party records (medical, financial, educational) without a warrant. The FBI issued thousands of special National Security Letters with little oversight on the collection of information.¹⁴ To take full advantage of their new powers, several thousand FBI agents abandoned criminal investigations to focus entirely on terrorism.

Secrecy remained a premium. In a move designed to conceal misconduct, the Patriot Act's Section 215 permitted the FBI to impose "gag orders" on third parties who receive requests for information. Such gag orders made it difficult for critics to determine if the FBI abused its power. How does one document FBI misconduct if everyone denies the FBI role? Gag orders encouraged paranoia by creating a cloud of secrecy over political intelligence gathering. The layers of deception built into the law established that "no person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section." What are the "tangible" things under question? They include "books, records, papers, documents, or other items." In addition, those who secretly collaborate with the government are afforded legal protection: "A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production."

In addition to maintaining secrecy about its conduct, the FBI initially acted like an autonomous entity within the government. On November 4, 2001, the *Chicago Tribune* noted, "Despite the talk of national unity since Sept. 11, city leaders and police chiefs across the country complain that the FBI is not fully cooperating with them in the fight against terrorism, often withholding information crucial to protecting their cities."¹⁵ Similar sentiment surfaced in Florida, where the *Miami Herald* reported, "The head of Florida's top law enforcement agency says the FBI is not fully sharing information in the fight against terrorism, even in a state where several terrorists lived before the Sept. 11 attacks."¹⁶

Although official statistics on domestic spying remained classified, the Bureau let it be known that their investigations tripled within a year after 9/11 and requests to surveil suspected terrorists quadrupled. Mueller announced publicly that the Bureau was struggling to keep up with its caseload. In fiscal year 2002, the FBI worked 12,512 counterterrorism investigations.¹⁷ Among the new initiatives, "Project Lookout" is notable for creating blacklists. The FBI distributed a watch list of terrorist suspects to private companies to screen employees. The criteria for determining suspects was not made public and innocent Americans became subject to harassment and discrimination. Mistakes in government databases also made it nearly impossible for victims to clear their names.¹⁸

The FBI promoted patriotic vigilantism by urging the public to phone in terrorism "tips." About ninety-six thousand calls were made in the first week after the attacks and more than five hundred thousand terrorism tips were reported within a year. Most tips can be categorized as racist false alarms

about Arab Americans.¹⁹ Predictably, hate crimes spread. Vigilantes took their cues not only from the government but also from right-wing televangelists like Pat Robertson, who demonized Islam. In its 2002 report, Human Rights Watch referenced more than two thousand hate crime incidents related to 9/11. By the end of 2001, the FBI reported a seventeen-fold increase in anti-Muslim hate crimes nationwide. While FBI threat mongering contributed to the spread of hate crimes, the Bureau by law also was compelled to track these crimes. The criminologist Welch notes that government spying helped to define insiders and outsiders in American society: “The dynamics of ‘othering’ compounded by specific stereotypes disparaging Middle Easterners prepared the stage for intense backlash violence unleashed in the wake of September 11. . . . [T]hose hostilities are not limited to angry individuals or small groups of bullies determined to ventilate their post-9/11 frustration on relatively powerless victims. Rather, the state and various government agencies also engage in policies—part and parcel to the war on terror—driven by parallel forms of prejudice.”²⁰

Indeed, spying was coupled to intense patriotism. In New York City, home of Ground Zero, thousands of American flags flew in public and private places. The NYPD was on high alert, urging extra vigilance in the general population. The media celebrated the lost NYPD officers and NYFD firefighters as the nation’s newest heroes. Criticism of police brutality was no longer in public view, crowded out by the official heroes. In a show of patriotism, hundreds of New Yorkers wore symbols of police power on their hats. In one example, a baseball cap had New York Yankees logos blended with NYPD symbols. Many Americans wondered if they could express critical views of the government without facing negative consequences.

Public support for the FBI seemed to increase in the year after the attacks. Whether this is due to a heavy dose of state propaganda left unchallenged by an uncritical media is a matter of debate.²¹ Opinion polling on the FBI showed more than a majority of Americans generally approved of the Bureau’s performance. In a *Washington Post*/ABC News poll, 64 percent supported broad spying if it was “part of a general investigation of terrorism.” A Fox News poll reported that 66 percent approved of FBI surveillance of religious places, political rallies, and the Internet if these efforts were directed at “detecting and preventing terror.”²² However, these figures are deceptive because of the biased nature of the questioning. How a question is framed matters greatly. The same support would not be garnered for the FBI if Americans were asked if they support broad spying on nonviolent and lawful political activity. Any poll with the charged word “terrorism” is bound to register high support for police at all levels of government.

On May 30, 2002, the Ashcroft Justice Department in a historic change issued new Attorney General Guidelines for the FBI to provide a revised legal framework to expand spying. The Ashcroft Guidelines lowered the threshold to open investigations, gave field offices greater autonomy, and authorized enhanced surveillance of communications. The FBI became empowered to send agents or informers into public spaces to monitor language and ideas. The new surveillance sites included public lectures, religious meetings, college classes, or the Internet. According to the Justice Department:

Under the old guidelines, FBI field agents were inhibited from visiting public places, which are open to all other citizens. Agents avoided them not because they were barred by the Constitution, or any federal statute, but because of the lack of clear authority under administrative guidelines issued decades ago. . . . The new guidelines clarify that FBI field agents may enter any public space that is open to other citizens.²³

The Internet as an unbounded public space emerged as a top target of government monitoring. The new Guidelines strengthened the FBI's intelligence-gathering capabilities by allowing agents to engage in broad online surveillance independent of specific investigations. This new monitoring functioned as an unprecedented invasion of privacy, according to Jim Dempsey of the Center for Democracy and Technology: "It authorizes fishing expeditions, plain and simple—FBI agents spending their days searching the Web to see what turns up—or more likely, FBI agents setting robots to search the Web looking for certain terms."²⁴ Agents monitored chatrooms, bulletin boards, and websites without evidence of any criminal wrongdoing. As they troll the public space, and the Bureau finds activists or scholars making controversial or "radical" statements, however they define it, the FBI may start new investigations in an open-ended way. These changes by the Bush administration accelerated the already deteriorating relationship between people and the federal government.

Ashcroft framed a simple cover story to explain why the nation needed new FBI Guidelines. It was necessary to prevent another 9/11. Marvin J. Johnson, legislative counsel for the American Civil Liberties Union (ACLU), disagreed: "Recent revelations regarding the FBI's pre-9/11 activities suggest that its hands were not tied by the guidelines changed by Attorney General Ashcroft. Any failure appears to be the result of inadequate analysis of the information already collected rather than a failure to collect it under the Guidelines then in place."²⁵ Among other critical voices, the Electronic Privacy Information Center (EPIC) sounded an alarm about the changes: "Because the FBI has such a strong history of using its power not to enforce the law, but rather to

intimidate and disrupt political opponents, the new Guidelines represent a serious threat to civil liberties and privacy.”²⁶

The new FBI powers prompted critical commentary in both the *New York Times* and the *Washington Post*. “In reality Mr. Ashcroft, in the name of fighting terrorism, was giving FBI agents nearly unbridled power to poke into the affairs of anyone in the name of the United States, even when there is no evidence of illegal activity,” the *Times* wrote. The new laxness for the FBI was part of a post-9/11 trend: “Mr. Ashcroft and his colleagues have missed no opportunity to expand the investigative powers of the federal government and to stampede Congress into supporting the changes by suggestion that opposition is disloyal.”²⁷ The *Post* added, “It is difficult to overstate the magnitude of these changes—or their capacity for abuse.”²⁸ The *St. Petersburg Times* noted, “Today’s reality is that all of the pressure on the FBI is in one direction: gathering more information. Without clear and specific boundaries, there will be little constraint on agents who are monitoring political and religious organizations without good cause.”²⁹

By 2003, virtually all the civil liberty and human rights groups in the United States expressed deep pessimism about changes in the law. The Lawyers Committee for Human Rights, the Center for Constitutional Rights, the ACLU, the National Lawyers Guild (NLG), and Amnesty International issued special reports decrying human rights violations under the terror scare. Moreover, some scholars noted serious problems with the “war” metaphor itself. When does it end? The amorphous nature of the enemy did not lend itself to an easy resolution.³⁰ As late as 2008, Bush’s attorney general Michael B. Mukasey argued the war would continue indefinitely.³¹ If an individual becomes a high-profile subject of investigation, they could expect intensive twenty-four-hour surveillance. As conservative author Ronald Kessler, who has close ties to the Bureau, writes, “Conducting twenty-four hour physical surveillance of a suspect requires dozens of agents. They may dress as homeless people, nuns, mail carriers, or ice-cream vendors. In following suspects on a street, agents are in constant communication. They may wear stereo headsets to give the impression they are listening to rock music when instead they are receiving instructions on where to go next.”³²

By 2003, the FBI also acted against street demonstrations. In what has been referred to as the “Miami Model,” the Bureau and local police organized preemptive, suppressive tactics to curtail public expressions of political activity. When in November 2003 trade ministers from the Western Hemisphere met in Miami for the Free Trade Area of the Americas (FTAA) meetings, police in riot gear engaged in violence against groups of demonstrators by firing rubber bullets, tear gas, and pepper spray, as well as wielding batons and electronic shields. Legal observers described this “indiscriminate, excessive force” as

inhibiting the right of hundreds of people to engage in assembly and free speech. Law enforcement unlawfully detained, searched and falsely arrested protestors to curtail activism. From the police perspective, convictions were less important than clearing the streets from opposition organizing during the FTAA meetings. Notably, only 4 of 219 people arrested by the Miami police were convicted of crimes. Such heavy-handed methods of protest suppression occurred with regular frequency elsewhere. Backed by FBI intelligence, city police engaged in “non-lethal” but violent attacks against protestors who posed no threat to the public safety.³³

Denver, New York City

Brief case studies of surveillance in Denver and New York City demonstrate the close cooperation between city police and the FBI under Joint Terrorism Task Forces (JTTFs). By 2004, the Bureau established sixty-six JTTFs across the nation. Arab Americans and Muslims were not the only subjects under scrutiny despite their privileged place in the rhetoric of the terror scare. The FBI focused its attention on a broad range of critics of U.S. policy.

In Denver, the ACLU sued the city police to contest a long history of spying and uncovered First Amendment monitoring by the FBI. The JTTF gathered information on the activities of peaceful protestors who had no connection to terrorism or any other criminal activity. In 2002, the JTTF’s “active case” list included the American Friends Service Committee; Colorado Campaign for Middle East Peace; Denver Justice and Peace Committee; Rocky Mountain Independent Media Center; and the Human Bean Company. The JTTF took an active role to train the Denver police about the “criminal tactics of protest extremists.” On one occasion, the JTTF recorded the names and license plate numbers of environmental and conservationist activists at a peaceful demonstration against lumber industry threats to endangered old-growth forests. It monitored a person who distributed leaflets promoting a documentary film critical of the FBI. The JTTF intercepted email from several local organizations gathering intelligence about an upcoming protest by animal rights activists; a pro-Palestine rally; plans for a Transform Columbus Day rally; and a several-day event billed by local activists as the “Flying Circus.”³⁴

The FBI field office composed a watch list of eight types of extremists. The categories reflected local social movements.

1. Anarchists
2. Militia

3. White Supremacist
4. Black Extremist
5. Animal Rights Extremist
6. Environmental Extremist
7. Domestic Extremist
8. Radical Islamic Extremist

What criteria are used to determine an extremist? Unfortunately, declassified material does not exist to explain the basis for such a designation. Reconstructing the local history of political policing relies on bits and pieces.

In 2003, the Bureau put a Denver bookstore under surveillance and infiltrated an anti-war meeting. The FBI reported on a “radical faction” and collected information from license plate numbers: “Surveillance of the meeting place, Breakdown Books, 1409 Ogden Street, Denver, between 8:10 a.m. and 10:00 a.m., determined that at least 40 individuals appeared to be involved in the Revolutionary Anti-War Response groups.” The Bureau described protestors’ clothing: “Some of the participants wore all black clothing, including sweatshirts or jackets with hoods. Several flags and banners with the colors black and pink were also observed. The following vehicles and license plates were observed in the vicinity of 1409 Ogden Street: [text redacted].”³⁵ When a protest took place on February 15, 2003, the FBI knew about it ahead of time. As in earlier decades, civil disobedience sent the FBI into a monitoring mode.

Two websites are being used to advertise the event. . . . They are hyping the demonstration as the “biggest peace rally in the history of Colorado” and are representing the size of the rally to be 2,000 demonstrators. The organizations are organizing car pools and hiring buses to transport demonstrators to Colorado Springs. The two groups are advocating committing what they refer to as “civil disobedience,” possibly by blocking vehicular traffic.³⁶

What might be called the “civil disobedience question” deserves more attention. When protestors decide to get arrested in peaceful ways, the FBI refused to view this activity as a legitimate form of political expression. A classified FBI Intelligence Bulletin issued on October 15, 2003, advised law enforcement officers on methods to suppress protest in anticipation of large anti-war rallies in Washington, San Francisco, and other cities against the U.S. occupation of Iraq. The bulletin informed city police on the tactics and strategies of demonstrators and keeping with “police science” tried to get inside protest movements to study how they operate in order to contain them. Labeled “Law Enforcement Sensitive,” the bulletin includes the following passages:

Traditional demonstration tactics by which protestors draw attention to their causes include marches, banners, and forms of passive resistance such as sit-ins. Extremist elements may engage in more aggressive tactics that can include vandalism, physical harassment of delegates, trespassing, the formation of human chains or shields, makeshift barricades, devices used against mounted police units, and the use of weapons such as projectiles and homemade bombs. Even the more peaceful techniques can create a climate of disorder, block access to a site, draw large numbers of police to a specific location in order to weaken security at other locations, obstruct traffic, and possibly intimidate people from attending the events being protested.

During the course of a demonstration, activists often communicate with one another using cell phones or radios to coordinate activities or to update colleagues about ongoing events. Other types of media equipment (video cameras, photographic equipment, audio tape recorders, microphones, and computer and radio equipment) may be used for documenting potential cases of police brutality and for distribution of information over the internet.

The FBI noted that civil disobedience demonstrators are “prepared to defend themselves against law enforcement officials” and may wear gas masks, goggles, scarves, scuba masks, filter masks, and sunglasses to minimize the effects of tear gas and pepper spray as well as to hide one’s identity. The FBI worried that protestors may employ “shields” (trash can lids, sheets of plexiglass, truck tire inner tubes, etc.) and “body protection equipment” (layered clothing, hard hats and helmets, sporting equipment, life jackets, etc.) to protect themselves. Worst of all, the Bureau worried that “activists may also use intimidation techniques such as videotaping and the swarming of police officers to hinder the arrest of other demonstrators.” City police should report civil disobedience to the nearest JTTF.

The FBI’s weekly Intelligence Bulletin, started in 2002, covered a variety of topics which seem peculiar, if not eccentric. A bulletin dated December 2, 2003, alerted police to the alleged use of almanacs by terrorists. Those in possession of almanacs must hold dangerous politics.

Investigation has revealed that terrorist operatives may rely on almanacs to assist with target selection and pre-operational planning. . . . During the course of authorized searches, traffic stops, and other contacts, law enforcement officers should be alert to the potential terrorist use of almanacs for pre-operational activities. . . . Agencies should report any suspected use of almanacs in this manner to their nearest FBI Joint Terrorism Task Force.

So a city police officer should look for suspicious books whenever he pulls a car over for a traffic ticket? The government’s skeptical attitude toward a reading culture also is manifested in its relationship to libraries. In 2002, an

academic survey of 906 libraries around the country found that several dozen were visited by law enforcement to inquire about patron records.³⁷ What purpose did these visits serve? Tracking reading habits conflicts with every value of an intelligent and humane society. In November 2002, *Library Journal* published three articles about new FBI powers and their impact on patron privacy. Librarian Karen Coyle wrote, "The renewed awareness of privacy issues sparked by the Patriot Act creates an opportunity to take stock of policies and procedures. How effectively is your library protecting privacy? . . . Since library records are now almost exclusively in machine-readable form, the data in these systems could be used to violate the privacy of patrons, not only to learn their reading habits but to obtain personal information like addresses and phone numbers. Librarians have become the caretakers of a significant data bank of personal information."³⁸

The ACLU's Denver lawsuit also uncovered JTTF spying in 2004 against Food Not Bombs (FNB), a group described as embracing anarchist politics. These anarchists liked to ride bicycles so the FBI surveilled the Derailer Bicycle Collective, which is affiliated with some FNB members. Neither FNB nor the Derailer Collective organized street protest. FNB distributes free vegetarian food to homeless people in public parks. Is distributing free food a crime? The Derailer Collective fixed old bikes and donated them to the poor. Good works on behalf of the less fortunate generated suspicion. One young activist, Sarah Bardwell, was put under twenty-four-hour surveillance. She recalled a visit by FBI agents to her home, where she refused to answer their questions: "They did say that since we weren't giving them the information that they wanted, they were taking that as non-cooperation and they were going to have to therefore take more intrusive effort in the future to find out what they needed to know, but they wouldn't specify what they needed to know specifically or what those more intrusive efforts were." There are more than 150 loosely organized FNB chapters in the United States.³⁹

In general, a small number of individuals and groups described as anarchist were monitored closely. From 2002 to 2004, the alleged anarchist threat made it into several FBI reports. For example, in April 2002 a secret FBI unit detained a group of anti-war protestors in Washington, D.C., and interviewed them about their politics. According to protestor Nat Meysenburg, "They asked me why I had come into town that day, how I had gotten into town that day, where I was staying, who I was staying with, if I was involved in any political organizations, if I had any piercings other than the one visible on my lip, if I had any tattoos that they couldn't see, and if I did could I show it to them." Attorney Mara Verheyden-Hilliard, who represented the protestors in a civil lawsuit, added, "It's not random questioning. It's the kind of informa-

tion you collect when you're building a database, an associational database and a network database of information. And it's all purely political. It's all First Amendment-protected political activity."⁴⁰

Arab American and Muslim communities became top surveillance targets. The Bureau spied on many of their mosques, civic groups, charities and other organizations. One year after the terrorist attacks, the FBI publicly acknowledged conducting about five thousand interviews of male Arab immigrants in the United States to gather intelligence on potential threats and to recruit new informers. The *New York Times* noted, "The FBI is trying to make an open book of the lives of hundreds of mostly young, mostly Muslim men in the United States in the belief that al Qaeda-trained terrorists remain in this country, awaiting instructions to attack. Senior law enforcement officials say the surveillance campaign is being carried out by every major FBI office in the country and involves 24-hour monitoring of the suspects' telephone calls, email messages and Internet use, as well as scrutiny of their credit card charges, their travel and their visits to neighborhood gathering places, including mosques."⁴¹ In one tracking effort, the Bureau started a national tally of Muslim mosques, which Arab American leaders estimate at about two thousand. Would the new profiling initiative put many of these religious institutions under surveillance?⁴² Immigrants again became a top focus when the FBI started to track the approximately two hundred thousand foreign students studying in the United States, asking colleges and universities to provide personal information on these students.⁴³

In New York City, the JTTF devoted considerable resources to surveilling Arab Americans and their communities. The NYPD discussed the "radicalization" process that leads to homegrown terrorist activity.

Critically important to the process of radicalization are the different venues that provide the extremist fodder or fuel for radicalizing—venues, to which we refer to as "radicalization incubators." These incubators serve as radicalizing agents for those who have chosen to pursue radicalization. They become their pit stops, "hangouts," and meeting places. Generally these locations, which together comprise the radical subculture of a community, are rife with extremist rhetoric. Though the locations can be mosques, more likely incubators include cafes, cab driver hangouts, flophouses, prisons, student associations, nongovernmental organizations, hookah (water pipe) bars, butcher shops and book stores. While it is difficult to predict who will radicalize, these nodes are likely places where likeminded individuals will congregate as they move through the radicalization process.⁴⁴

The FBI monitored some of these "hangouts" with informers. Many aspects of immigrant community life were under watch beyond the mosque, which in the FBI's view could have a moderating effect on radical Islam. Yet

the mosque got its share of infiltrators. For example, several undercover informers working for the NYPD attended prayer services at the Islamic Society of Bay Ridge in Brooklyn. During the court trial of Shahawar Matin Siraj, an informer admitted attending 575 prayer services at the Society, as well as at a mosque in Staten Island, over a thirteen-month period beginning in 2003. He reported on a daily basis to his police handler, who prepared more than 350 reports. The informer, Osama Eldawoody, made a record of license plate numbers of cars in the mosque parking lot and reported on the religious services which he attended four or five times a day and was known to cry. A nearby Islamic bookstore also was under surveillance. These efforts were part of the NYPD Terrorist Interdiction Unit devoted to using informers as “listening posts” in Muslim communities. As many as two dozen mosques were under investigation and Palestinian, Syrian, and Egyptian immigrants were on the lookout to discern the spies in their midst.⁴⁵

The FBI and the NYPD spied on a broad range of non-Arab groups in the year before the Republican Party Convention. The public first learned about the surveillance two weeks before the Convention from a *New York Times* front-page article, “F.B.I. Goes Knocking for Political Troublemakers.”⁴⁶ What is a troublemaker? People who march in the streets? An affinity group member who engages in civil disobedience? Does troublemaker mean terrorist?

The FBI expected violence at the GOP Convention. Federal investigators infiltrated organizations and monitored plans for protests on the Internet. Once again, the media reported in advance that small groups of “anarchists” might create chaos. The FBI targeted anarchists as part of a nationwide surveillance program, which included visiting protestors at their homes. The NYPD identified fifty-six people as “primary anarchists,” who were followed 24/7 with one supervisor and six police officers assigned to each subject. NYPD intelligence files discuss three small anarchist groups: the Anarchist Black Cross Federation; Anarchist People of Color (APOC); and Anarchist-NYC.⁴⁷ While the government dealt with a small group of people in terms of mass social movements, the FBI planned to disrupt political activity in order to prevent the Left from growing. Attack a movement while it is small to frustrate its development.

Overall, the FBI interviewed more than eighty protestors before the convention and surveilled hundreds of others. While the Bureau insisted the interviews did not infringe on the First Amendment because they were conducted to prevent acts of violence, Donna Lieberman, head of the ACLU in New York City, disagreed: “There was an enormous amount of surveillance leading up to the conventions. . . . From the point of view of people engaged in political protest, they may not know who’s in the unmarked car outside

someone's home in New Jersey and following them back to New York, but they certainly are intimidated and feel threatened by the fact that law enforcement is following them. The chill on free speech was unavoidable."⁴⁸

Kit Gage, in the August 2004 monthly newsletter of the National Committee Against Repressive Legislation (NCARL), commented on the FBI interviews of activists: "[S]ome people are being asked very broad questions—like what do you think about the U.S. invasion of Iraq and do you know of any troubling activity among your community, networks or contacts. Others are being asked more specific questions reflecting some particular information or concerns. The history of blanket interviews post 9/11 then being used to initiate deportation proceedings, or to intimidate people, gives these communities pause and concern today, particularly with open-ended questioning." Gage repeats a common view on the civil liberties Left: "You need not and are not required to talk to the FBI if they want to question you (and may be at risk if you do); Don't ever lie to the FBI; if you choose to talk to the FBI, talk to your lawyer first and bring them with you to the interview."

Gage noted past efforts to limit protest at party conventions: "Every four years there's a fight by demonstrators and their advocates seeking permits and city process for marching and assembling. Every time the cities and the police seek to limit, corral, and distance people from the limelight, from the delegates, from the public and from television." But the urgency in 2004—the first post-9/11 presidential election—seemed different. The battle over free speech in public places became a major issue during the terror scare. Big cities like Boston or New York developed prison-like free speech ghettos, restricting rallies and demonstrations to certain highly regulated spaces. Timothy Zick calls these official demonstration zones "militarized places" and courts upheld their imposition in the name of "security."⁴⁹

Limiting the spaces for street protest is coupled to surveillance and infiltration. In New York City, an official "RNC Intelligence Squad" monitored small and large political groups. Overall more than 190 groups were named in more than six hundred pages of police intelligence documents. At the top of the list were the A31 Action Coalition/Outreach Working Group; the ANSWER Coalition; Billionaires for Bush; Black Bloc; Campaign to Demilitarize the Police; Code Pink; Crimeethnic Black Hat Hacker's Bloc; DNC to RNC; Green Dragon; Independent Media Center/Indymedia (NYC); International Action Center; Poor People's Economic Human Rights Campaign; No RNC Clearinghouse; Not in Our Name; RNC Not Welcome; Sierra Club; St. Mark's Church; Still We Rise; Theaters Against War; Times Up; and United for Peace and Justice.⁵⁰ From the police perspective, the danger posed by small groups outweighed the danger posed by large groups. (A small group may consist of less than fifty members.) Police already infiltrated the large groups and knew

what to expect from them. But many small groups were beyond their comprehension and the FBI and NYPD sought intelligence about all organized political activity that might occur in the street. What type of “terrorism” did the NYPD expect to find? Police deputy commissioner Paul Browne claimed, “[T]here were groups, out of state, that were conducting courses on how to disable buses with the aim of disabling the delegate buses on the way to the convention. There were groups that were planning to go in and prevent delegates from leaving their hotels, physically preventing them. There were others that were talking about smashing the windows of Starbucks and McDonald’s. There were some using tactics, ball bearings and slingshots and others to use against the horse mounted police. All of that is legitimate concern to the police department and we investigated that.”⁵¹

Why was a Republican convention held in a Democratic city, where four-fifths of the electorate are registered Democrats? Remember Ground Zero: Bush wanted to evoke patriotic feelings associated with 9/11 using Manhattan as sacred ground to whip up popular support for his programs. As the Republicans gathered in Manhattan, a series of week-long street protests resulted in about 1,800 arrests, the most ever at a political convention in U.S. history.

“October Plan”

The FBI hoped the terror scare would shape the presidential election. Six weeks before the election, the FBI announced an “October Plan” including “aggressive—even obvious—surveillance” to fight potential terrorism before Election Day. Is “aggressive” surveillance harassment? I filed a Freedom of Information Act request for FBI information on the plan, which the Bureau ignored. To contest this “mute response” to my records request, I filed an administrative appeal with the Justice Department. The FBI then falsely claimed there were “no records.” As a result, what we know about the October Plan is limited to a variety of media reports. According to the *Washington Post*, a special FBI “04 Threat Task Force” issued an advisory indicating no advance intelligence on the timing, status or targets of any plot. Instead, the FBI noted only an increased threat through the January 20 inauguration.⁵² CNN added additional details: “The FBI is putting together an aggressive plan that includes rousting people suspected of supporting violent extremists. Federal lawmen may jail some who have committed minor crimes or immigration violations and question or tail others if only to let them know the government can find them.”⁵³ *USA Today* noted the broad cooperation between federal law enforcement agencies to monitor dissent: “Ashcroft quietly has issued a sweeping directive that authorizes the FBI to use hundreds of law enforcement agents from other

federal agencies to help investigate any terrorist plots that target the Nov. 2 elections. . . . Agents have begun surveillance on an undisclosed number of people whom the FBI views as potential terrorism suspects.”⁵⁴ CBS News reported that family members of subjects may be monitored. What the FBI calls “persons of interest” is a broad category based largely on political beliefs: “The [FBI] plan calls for ‘aggressive—even obvious—surveillance’ techniques to be used on a short list of people suspected of being terrorist sympathizers, but who have not committed a crime. Other ‘persons of interest,’ including their family members, may also be brought in for questioning.”⁵⁵

Ten days before the election, the *Washington Post* debunked the intelligence behind the formulation of the October Plan. Reports of political violence were based on discredited sources. No plots were discovered and “hundreds of interviews” were conducted.⁵⁶ The October Plan continued into November as an unlikely Bush victory emboldened the FBI and the government. On November 4, the president held his first press conference after winning reelection and he began a prepared statement by saying, “We are fighting a continuing war on terrorism.” The war at home seemed to intensify during Bush’s second term. On November 18, 2004, Bush issued three separate presidential directives giving even greater power to the CIA and the FBI. For the CIA, the new directive called “to increase by 50 percent the number of intelligence analysts and officers in the clandestine unit, which recruits foreign spies and conducts covert operations overseas.” FBI power would increase with the goal to “strengthen further the FBI’s ability to prevent, preempt, and disrupt terrorist threats to and attacks against the United States.” At last, we have the new key words for the FBI role in the terror scare: “prevent, preempt and disrupt.” In a Bush memorandum to the attorney general on November 23, 2004 (“Further Strengthening Federal Bureau of Investigation Capabilities”), the phrase “prevent, preempt and disrupt” again is used.⁵⁷ What more can be said about the October Plan? Very little is known about it beyond these brief media reports. If the FBI’s FOIA office had responded in good faith to my records request, we would gain vital information about the pressure groups and politics driving this major surveillance project.

After Bush won reelection, the ACLU began a national campaign to expose FBI spying. In December 2004, they began filing more than 150 FOIA requests on political groups—national and local advocates for the environment, animal rights, labor, religion, Native American rights, fair trade, grassroots politics, peace, social justice, nuclear disarmament, human rights, and civil liberties. Specifically, the ACLU wanted two kinds of information: FBI files on groups and individuals targeted for speaking out or practicing their faith; and information about the practices and funding structure of JTTFs. Ann Beeson, ACLU associate legal director, drew a distinction between investigations of

criminal and political activity: “We aren’t trying to say that they can’t and don’t need to investigate people who happen to be members of political or religious groups when they have concrete evidence of criminality.” Beeson believes the Bureau “shouldn’t be wasting their time or money infiltrating peace groups or collecting files on the Quakers or the Catholic Peace Ministries.”⁵⁸ As they obtained records over the next several years, the ACLU publicized cases of spying, hoping to build an anti-spying social movement. They found records on groups such as the Thomas Merton Center, Greenpeace USA, People for the Ethical Treatment of Animals, Code Pink, the American-Arab Anti-Discrimination Committee, the anti-war United for Peace and Justice, and the Raging Grannies. Does the ACLU have an FBI file? In keeping with my argument that political policing monitors its critics, the FBI gathered more than 1,100 pages on the ACLU after 9/11.⁵⁹

Violations, Watch Lists, and Databases

There are different ways to evaluate attacks on dissent under the terror scare. Researchers have tried to assemble statistics on the total number of investigations, but the FBI refuses to declassify this material. The secret Foreign Intelligence Surveillance Court typically rubberstamps FBI requests for wiretaps and break-ins. Since its establishment in 1978, the court turned down only a handful of warrant applications. However, in 2002 the court broke with tradition and publicly rebuffed the FBI for supplying erroneous information in more than seventy-five cases, referring to “the troubling number of inaccurate FBI affidavits in so many FISA applications.” In short, the FBI falsified legal documents to gain permission to monitor dissent.⁶⁰ Violations of legal procedures are certain to occur when the FBI tracks lawful groups for terrorism. Within the Justice Department, the Office of Inspector General (OIG) periodically investigates FBI conduct and a 2006 report found “significant noncompliance with Guidelines governing the operation of confidential informers. . . . We found one or more Guideline violations in 87 percent of the confidential informant files we examined.” The problems with informers included “suitability”—individuals were recruited who should not be working for the government. Notably, violations involved illegal activity by informers and the FBI tried to cover up this misconduct. DOJ pointed to improper “notification requirements associated with a confidential informant’s commission of ‘unauthorized illegal activity.’” What type of illegal activity is authorized?⁶¹

In addition, the FBI’s use of National Security Letters (NSLs) to gain information from third parties was marked by significant false reporting

and “serious misuses” of authority. From 2003 to 2008, almost 240,000 NSLs were issued for records. According to Michael Woods, a national security lawyer at the FBI, the momentum of their use was done with little consideration for constitutional questions: “If you are telling the FBI people over and over you need to be preemptive, you need to get out there before something happens, you’re pushing people toward a fishing expedition. We heard over and over again, connect the dots, and we’re pushing the envelope and doing things that, in the old days [before 9/11], would have seemed beyond the pale.”⁶² Overall, about 6 percent of NSLs were not reported to Congress and 22 percent of the investigative files contained one or more unreported violations. The FBI also abused its power by issuing hundreds of emergency or “exigent letters” to telecom companies circumventing statutory requirements to collect intelligence.⁶³ Such falsification was especially troubling because of the lack of accountability: NSLs were issued without judicial oversight.

Peaceful protestors were placed on official terror watch lists. In 2007, a master list covering all suspects related to international terrorism, known as the Terrorist Identities Datasmart Environment (TIDE), contained more than five hundred thousand names.⁶⁴ The FBI refuses to state publicly how many people are included on the domestic “no-fly list,” which blocks travelers from boarding commercial airlines, but estimates in 2007 placed the number at about forty-four thousand.⁶⁵

The secret ties between the FBI and private industry expanded after 9/11. By 2008, about 350 of Fortune 500 companies had a representative in the InfraGard program and more than twenty-three thousand representatives of private industry worked with the FBI in dozens of local chapters. Mueller, in a speech before an InfraGard convention on August 9, 2005, urged members to contact the FBI if they “note suspicious activity or an unusual event.” Will the captains of industry encourage the FBI to investigate disgruntled employees or trade union activists?⁶⁶ As the corporate business class becomes further integrated into the domestic surveillance machinery, it raises the specter of past abuses, such as the FBI’s Plant Informant Program (1940–1966), when thousands of people were recruited to watch radicals in private industry. The anti-union bias is worrisome: Are unions defined as a “threat” to business? More broadly, what type of private communications between corporate managers and the FBI are circulating under the banner of “Partnerships for Protection”? The ACLU reported that InfraGard members received lists from the FBI of websites allegedly frequented by terrorists. These companies should determine if any employees visited these pages. In a report on the “surveillance-industrial complex,” the civil liberties group lamented the “long and unfortunate history of cooperation between government security agencies

and powerful corporations to deprive individuals of their privacy and other civil liberties.”⁶⁷

The Bush administration also spread the terror scare by recruiting private companies into “Watch” programs to locate and report vaguely defined suspicious activity. The privatization of surveillance included commercial boat fisherman called on to function as its “eyes on the water” and report “unusual behavior when you see it.” Truck drivers were recruited as part of “Highway Watch” efforts to serve as a “potential army of eyes and ears to monitor for security threats.” Police urged the formation of “neighborhood block watches” to “act as the eyes and ears for law enforcement and report any suspicious activity.” In some cities, the police train real estate agents and residential building doormen to report to the authorities. In Florida, police trained emergency personnel and cable and utility workers to report anything out of the ordinary as they visit private homes. Members of the U.S. Air Force, in the “Eagle Eyes” program, were enlisted to report to police if they notice “people who don’t seem to belong in the workplace, neighborhood, business establishment or anywhere else. . . . If a person just doesn’t seem like he or she belongs, there’s probably a reason for that.”⁶⁸

What is “suspicious” activity? How does the government determine “people who don’t seem to belong”? Instead of helping one’s neighbor, the government urged people to spy on them.

The idea of “one big database” is within reach of the government. A huge new FBI database contains hundreds of millions of entries recording personal information on Americans. Called the Investigative Data Warehouse (IDW), it collected information such as photographs, biographical data, physical location information, and financial records for use in anti-terrorism investigations—“all data that can be legally stored together,” according to the Bureau. In 2006, the FBI said over 560 million items were accessible to about 12,000 law enforcement agents.⁶⁹ A related database involves “biometrics.” The FBI already holds fifty-five million sets of fingerprints on file but in coming years they want to collect palm prints, scars and tattoos, iris eye patterns, and facial shapes to identify potential suspects. In 2008, the FBI awarded Lockheed Martin a \$1 billion contract to develop the computer system over the next ten years. Should we trust the FBI when they maintain that the collection of data on physical characteristics will be used only to identify criminals and terrorists? Civil liberties advocates worry the government may expand its definition of suspects to include a much larger segment of the domestic population.⁷⁰

Law enforcement databases relied on vast pools of information gathered by the private sector. The establishment of “fusion centers” run by states across the nation heightens the threat to privacy. A good deal of secrecy remains about these centers. In Rhode Island, the deputy superintendent of the state

police echoed a popular view within police circles: “There is never enough information when it comes to terrorism. That’s what post-9/11 is about.” We do know that private data brokers were working with the police. For example, the Maryland firm Entersect, which claims to hold 12 billion records on 98 percent of Americans, called itself a “silent partner” to law enforcement. The FBI relies on ChoicePoint, Seisint, Acxiom, and LexisNexis to search public records to generate profiles on suspects. Robert O’Harrow reports that right after 9/11 Seisint used their vast data—they hold some 20 billion records on Americans—to tag certain people as having a “High Terrorist Factor.” Seisint gave the FBI a list of 120,000 names it believed posed a risk to public safety.⁷¹ The ACLU described the complex interactions of private sector databases and how the FBI used and misused them.

Commercial data mining has become a big business. Any time you write a check, use a credit card, buy something on credit, make department store purchases, surf the Web, use an e-z pass to buy gasoline or pay a toll, you leave a record. Commercial companies take this information and build profiles, such as who reads *Gun Week* magazine, or who buys books online about terrorism. . . . Under the Ashcroft Guidelines, once again, the FBI will be able to engage in a fishing expedition using these resources. With no evidence that any crime is even contemplated, the FBI can purchase detailed profiles compiled by data miners. Furthermore, some data mining services profile people by race and religion. Allowing the FBI to use this type of information will continue the unacceptable practice of racial profiling. For example, the FBI may use this data to find consumers who are of Middle Eastern descent to round up and question.⁷²

Moreover, in the hunt for terrorist enemies the government placed extra scrutiny on financial activity by private individuals, looking at records on bank transfers, the use of automated teller machines, and ties among customers. “The Patriot Act is imposing a citizen-soldier burden on the [private] gatekeepers of the financial institutions,” noted the former general counsel at the Treasury Department. Financial institutions were compelled to report any suspicious activity to the special Treasury agency named FinCen. By 2003, about three hundred thousand “suspicious activity reports” were shared with the FBI, which literally “interrogated the data.” In 2008, FinCen shared more than 1.2 million reports with the Bureau.⁷³

Taking its cue from private companies, the FBI deployed analytical computer software or artificial intelligence to comb large amounts of digital information to discover patterns and relationships that allegedly suggest criminal or suspicious activity. Combined with data from private databases, the FBI is now able to track the lives of ordinary Americans in ways not possible under COINTELPRO. When police use artificial intelligence in monitoring

programs, they are able to “know you so well they will be able to predict your choices even before you make them,” noted Charles J. Sykes in *The End of Privacy*. By sorting through vast amounts of disparate data to detect relationships and patterns, they drew inferences to predict behavior. For example, FinCen linked together hundreds of government databases as it watched for suspicious patterns and transactions. The FBI used similar systems “to link relationships, phone usage, and associates of suspects in terrorism, drug, and organized crime investigations.”⁷⁴ If IBM can program a computer to play world-class chess, it is not far-fetched for police to program computers for social control of “dangerous” populations. Simon Garfinkel also sees the threat: “The ultimate threat to privacy will be intelligent computers—machines that can use human-like reasoning powers, combined with blinding calculating speed, to assemble coherent data portraits, interpret and anticipate our mental states, and betray us with false relationships.”⁷⁵

Some new technologies of electronic surveillance were not well known to the general public. The cell phone can become a tool of law enforcement via its connection to a Ground Positioning System (GPS) serving as a location tracking device. Even more invasive is its capability to act as an eavesdropping tool. The “BBC News” reported on this capability in 2004. The U.S. media detailed its use in 2006 when the technique was unearthed in a criminal court case involving FBI surveillance of the Genovese crime family. U.S. District Judge Lewis Kaplan ruled that this “roving bug” was legal under federal wire-tapping law. How does it work? The cell phone can be remotely activated to listen to conversations whether the phone was powered on or off.⁷⁶

In another new development, the FBI wiretapped voice conversations over the Internet. Skype calls become subject to eavesdropping through a “Trojan horse” virus that infects computers by hooking into parts of the Windows operating system that covers audio processing.⁷⁷ The FBI always seemed to keep up with technological inventions, managing to conduct surveillance on most new forms of communication. Certainly the FBI can snoop on social networking sites such as Facebook or MySpace.

The National Security Agency spy scandal constitutes another dimension of the revival of warrantless surveillance. The spying was not approved by the FISA court. Bush authorized the surveillance shortly after 9/11 but kept it secret until press disclosures several years later. Known officially as the “Terrorist Surveillance Program,” it inspected hundreds of thousands of emails, faxes, and phone calls in and out of the nation with computers utilizing artificial intelligence looking for suspicious key words. The NSA worked with AT&T, Verizon, and BellSouth to assemble a database to analyze “calling patterns” to uncover alleged terrorist activity.⁷⁸ Once Congress learned that Bush had evaded the law, they did not act in meaningful ways to curb

the spying. Initially, both the Senate and House oversight committees under Republican control refused to start formal investigations, rejecting calls for an independent special prosecutor. Congress then changed the FISA law to make legal the prior behavior. In short, the law evolved to protect the intelligence community from public scrutiny. When the Democrats retook control of the Congress in 2006, they also passed legislation allowing for warrantless wiretaps. But the NSA even exceeded this new law by “overcollecting” phone and email communications.⁷⁹ Grassroots opposition led to more than forty civil lawsuits against the telecom companies. The Democratic Congress again capitulated and passed legislation giving immunity to the companies, eliminating all legal challenges. Don’t litigants deserve their day in court? The government, as in the past, sanctioned broad spying and wanted to curtail legal action to conceal the details of the surveillance program.

Paranoia spread in the general population. In a 2006 poll, 21 percent of Americans said the NSA was spying on their phone conversations. In 2008, about a quarter of adults said the federal government monitored their telephone calls or opened their mail.⁸⁰ Congress also was kept in the dark. Senator Leahy, elevated to chair of the Judiciary Committee, said, “This Committee remains in the dark about almost every aspect of this program. . . . I have never seen anything like this, ever. . . . They continue to stonewall.” A resolution to censure Bush for illegal spying gained only three supporters in the Senate (Russell Feingold, Barbara Boxer, and Tom Harkin). A bill to consider Impeachment had only thirty-three co-sponsors in the House of Representatives.

A key indicator of the illegitimacy of the “War on Terror” is the low level of criminal convictions for terrorist activity. In the five years after 9/11, the government indicted 417 people as a result of terror investigations. About three-quarters were charged only with non-terror crimes such as immigration violations. So in the vast majority of cases, the FBI failed to find any links to terrorism. In 2005, the FBI acknowledged it failed to identify a single Al Qaeda sleeper cell within the United States. Therefore, these investigations were a failure from a law enforcement perspective. But they were a success from a political policing perspective: The hype created by these cases helped construct the perception that the terrorist threat is menacing and not a product of government propaganda. In the few cases in which terror convictions were reached, the largest number resulted from “supporting terrorism”—a broad category which can include nonviolent actions like financial contributions to suspect organizations. In other cases, where the defendants were linked directly to speech supporting violence, the issue of entrapment remains a problem. As in the past, police informers infiltrated groups and acted as extremists encouraging fanatical talk of violence. The informers secretly taped these conversations, which were used as legal evidence.⁸¹ From July 2004 to

November 2007, the FBI investigated almost 108,000 potential terrorism-related threats as well as “reports of suspicious incidents.”⁸²

Before Bush left office, he instructed the Justice Department to issue yet another set of FBI Guidelines expanding its power. The new guidelines went into effect on December 1, 2008, and authorized spying if there is a hypothetical “threat,” rather than a “factual predication” indicating a possible violation of law. Civil liberty advocates worried the lower standard might lead to extensive profiling based on race, religion or ethnic background. Moreover, agents in local field offices can conduct physical surveillance, recruit informers, and interview friends of subjects without the approval of a Bureau supervisor. The FBI also may investigate people simply to determine if they would make effective informants. In another change, when informants secretly wear recording devices to tape subjects, they do not need the permission of an assistant U.S. attorney unless they record government officials. The effect of such changes is unclear. If the FBI wants to return to broad monitoring of the population, as was common under Hoover, they now have the legal basis to do so. According to Valerie Caproni, FBI general counsel, the new guidelines “are the culmination of prior efforts to revise the FBI’s operating rules in the wake of the September 11 terrorist attacks.” The FBI will “proactively look for threats within the country. . . . The guidelines are the latest step in moving beyond a reactive model (where agents must wait to receive leads before acting) to a model that emphasizes the early detection, intervention and prevention of terrorist attacks, intelligence threats and criminal activities.”⁸³ To give the political police such wide latitude is potentially dangerous to democratic society.

Conclusion

Drawing upon the conclusions of the bipartisan 9/11 Commission Report, Bush repeatedly claimed that to “connect the dots,” and prevent another 9/11, he needed a permanent Patriot Act and government spying both inside and outside existing laws. The government used unchecked powers to “connect the dots.” Assertions of authoritarian presidential power occurred under a banner of “protection” to fight the “cold-blooded killers who will stop at nothing to attack our nation.” Elevating the threat was integral to Bush’s scare politics.

Let me hijack this discussion by connecting the dots according to revisionist views. The 9/11 Commission Report asked the wrong questions, and stands as a reactionary document with its affirmation of extensive government spying. The Commission gave the Bush administration a “B” grade on

preserving civil liberties since 9/11, ignoring the assault on human rights: racial profiling, torture, secret prisons, citizens held indefinitely as enemy combatants on trumped-up charges, warrantless spying, and aggressive surveillance by the Bureau.

After 9/11, the president touted “cooperation” between entities in the intelligence community supervised by the new Department of Homeland Security. Instead of infighting and competition between the CIA and the FBI, as allegedly occurred in the past, open lines of communication and increased information flow characterized their relationship. Within the FBI itself, the so-called wall between criminal and intelligence matters was demolished by the Patriot Act. The FBI’s tentacles spread further by reviving a Cold War practice whereby city police work anew with the FBI to collect political intelligence and designate threats on the local level, both in the new JTTFs and also independently of them. What are the implications for civil liberties? In the past, competition within the intelligence community may have had a positive impact on civil liberties by restraining government behavior. Overall, the new trend toward cooperation within the intelligence community may serve to increase the effectiveness of political policing. Future historians will judge if the nationalization or centralization of political policing is a significant result of the “terror scare.” Indeed, the “connect the dots” mentality leads us closer to a police state. Vast data-mining adds to electronic and human surveillance. The government’s extensive program for social control challenges the very existence of a rights-based democratic society.

Notes

1. John Mueller, *Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats, and Why We Believe Them* (New York: Free Press, 2006), 1.
2. Michael Welch, *Scapegoats of September 11: Hate Crimes and State Crimes in the War on Terror* (New Brunswick: Rutgers University Press, 2006), 14.
3. Bush Justice Department official Jack Goldsmith writes, “It is hard to overstate the impact that the incessant waves of threat reports have on the judgment of people inside the executive branch who are responsible for protecting American lives. . . . Every morning the President sees a ‘threat matrix’ that, as FBI Director Robert Mueller describes it, lists ‘every threat directed at the United State in the past 24 hours.’ The matrix can be many dozens pages long. It includes warnings extracted from the tens of billions of foreign phone calls and email messages that fly around the world each day, from scores of human informants, from satellite photographs and from other sources.” Jack Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* (New York: W.W. Norton, 2007), 71–72. See also George Tenet, *At the Center of the Storm: My Years at the CIA* (New York: HarperCollins, 2007), 99, 232.

4. Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of its Enemies Since 9/11* (New York: Simon and Schuster, 2006).

5. "President Bush's Acceptance Speech to Convention Delegates in New York," *New York Times*, Sept. 3, 2004.

6. "Will Terror Alert Level Show Its True Colors?" *Washington Post*, Oct. 13, 2004. On the waning of public support for the War on Terrorism, see Darren W. Davis, *Negative Liberty: Public Opinion and the Terrorist Attacks on America* (New York: Russell Sage Foundation, 2007).

7. "Bush Official, in Book, Tells of Pressure on '04 Vote," *New York Times*, Aug. 21, 2009.

8. "Bush Slams Kerry for Anti-Terror Comments," *New York Times*, Oct. 11, 2004; "Cheney Calls Kerry 'Naïve' on Terrorism," Associated Press, Oct. 11, 2004.

9. How does Freeh want to be remembered? In one of his last statements before a congressional committee, Freeh discussed his legacy: "My main emphasis, at least over the last eight years, has been our core values, which are to me the most important part of what we do. Core values of telling the truth, being honest, respecting people's rights, being fair, compassion, making sure we are reminded of our humanity but also the power that we wield. . . . One of the little footnotes I hope to my tenure, I require each of our new agent classes to come up and spend a day at the Holocaust Museum in Washington." Louis Freeh, statement before the U.S. House Committee on Appropriations, Subcommittee on Commerce, Justice, State and Judiciary, May 16, 2001.

10. "FBI's Ratings Suffer in Light of Blunders," *Washington Post*, May 22, 2001.

11. "Ashcroft Orders Review of FBI," *Washington Post*, June 21, 2001.

12. Daniel Baldino, *Democratic Oversight of Intelligence Services* (Annandale: Federation Press, 2010), 67–75.

13. Jules Boykoff, *Beyond Bullets: The Suppression of Dissent in the United States* (Oakland: AK Press, 2007), 293–95; Nancy Chang, *Silencing Political Dissent* (New York: Seven Stories Press, 2002), 112.

14. "Law Creates Intelligence Bemouth," *Washington Post*, Nov. 4, 2001.

15. "Cities Criticize FBI Secrecy," *Chicago Tribune*, Nov. 4, 2001.

16. "State Writes FBI: Share Terror Data," *Miami Herald*, Nov. 16, 2001.

17. "Officials Question FBI Terror Readiness," *Washington Post*, Nov. 12, 2002; Congressional Research Service, "The FBI: Past, Present, and Future," Oct. 2, 2003, 23–24.

18. "It's Not Too Late to Defend Freedom," *San Francisco Chronicle*, Nov. 21, 2002.

19. Eric Lichtblau, *Bush's Law: The Remaking of American Justice* (New York: Pantheon Books, 2008), 44; Welch, *Scapegoats of September 11*.

20. Welch, *Scapegoats of September 11*, 65–67, 74–75. Susan Faludi analyzes the revival of traditional gender stereotypes and their adverse impact on women in *The Terror Dream: Fear and Fantasy in Post-9/11 America* (New York: Metropolitan Books, 2007).

21. For the critical view, see Anthony R. DiMaggio, *Mass Media, Mass Propaganda: Examining American News in the "War on Terror"* (Lanham, Md.: Lexington Books, 2008).

22. "2002 Polling on the FBI," Nationaljournal.com.
23. "Government Will Ease Limits on Domestic Spying by FBI," *New York Times*, May 30, 2002; U.S. Department of Justice, "Attorney General's Guidelines: Detecting and Preventing Terrorist Attacks," Sept. 21, 2002.
24. Jim Dempsey, "CDT's Analysis of New FBI Guidelines," May 30, 2002, 2 (no longer available online).
25. Marvin J. Johnson, "Analysis of Changes to Attorney General Guidelines," June 5, 2002, 1, www.aclu.org/national-security/interested-persons-memo-analysis-changes-attorney-general-guidelines.
26. Electronic Privacy Information Center, "The Attorney General's Guidelines," 2002, 1.
27. "An Erosion of Civil Liberties," *New York Times*, May 31, 2002.
28. "The New FBI," *Washington Post*, May 31, 2002.
29. "New Guidelines Limit Privacy," *St. Petersburg Times*, June 8, 2002.
30. See, for example, Philip B. Heymann, *Terrorism, Freedom, and Security: Winning Without War* (Cambridge: MIT Press, 2003); Richard Falk, "Human Rights: A Descending Spiral," in *Human Rights in the "War on Terror"*, ed. Richard Ashby Wilson (New York: Cambridge University Press, 2005), 225–29; Jules Lobel, "The War on Terrorism and Civil Liberties" in *At War with Civil Rights and Civil Liberties*, eds. Thomas E. Baker and John F. Stack (Lanham, Md.: Rowman and Littlefield, 2005), 25–48.
31. "We are confronted not with a hostile foreign state whose fighters wear uniforms and abide by the laws of war themselves, but rather with a dispersed group of non-state terrorists who wear no uniforms and abide by neither laws nor the norms of civilization. And although wars traditionally have come to an end that is easy to identify, no one can predict when this one will end or even how we'll know it's over. It is, after all, rather hard to imagine Al Qaeda and its allies laying down their arms and signing articles of surrender on the deck of an American warship. But those differences do not make it any less important, or any less fair, for us to detain those who take up arms against us." Attorney General Michael B. Mukasey before the American Enterprise Institute for Public Policy Research, Washington, D.C., July 21, 2008.
32. Ronald Kessler, *The Terrorist Watch: Inside the Desperate Race to Stop the Next Attack* (New York: Crown Forum, 2007), 94.
33. Boykoff, *Beyond Bullets*, 262–66.
34. ACLU of Colorado, "The Denver Police Spy Files: FBI's Joint Terrorism Task Force"; FBI, "War on Terrorism: Partnerships," 2004, www.FBI.gov (Dec. 4, 2004); Nancy Chang, *Silencing Political Dissent*, 120–23.
35. ACLU, "FBI Spied on Denver Bookstore and Anti-War Protestors, New Documents Reveal," March 28, 2006.
36. Denver FBI memo, Feb. 11, 2003.
37. "Librarians Split on Sharing Info," *Wired News*, Jan. 16, 2003; "Librarians Under Siege," *Nation*, Aug. 5, 2002, 42–43.
38. Karen Coyle, "Make Sure You Are Privacy Literate," *Library Journal*, Nov. 1, 2002.

39. ACLU of Colorado, “Denver Spy Files,” May 18, 2005, www.aclu-co.org (March 7, 2007); “The Return of COINTELPRO: FBI Launches Nationwide Surveillance of Activists Ahead of GOP Convention,” *Democracy Now!*, August 19, 2004.

40. “Secret FBI Unit Detained War Protestors in 2002,” *Democracy Now!*, April, 5, 2007; “Police Log Confirms FBI Role in Arrests,” *Washington Post*, April 3, 2007.

41. *San Francisco Chronicle*, “FBI Tracks Hundreds in Its Hunt for al Qaeda Sleeper Cells,” Oct. 6, 2002.

42. “FBI Tells Officers to Count Local Muslims and Mosques,” *New York Times*, Jan 28, 2003; ACLU, “ACLU Calls FBI Mosque-Counting Scheme Blatant Ethnic and Religious Profiling,” Jan. 27, 2003.

43. “FBI Seeks Data on Foreign Students,” *Washington Post*, Dec. 25, 2002; “FBI Taps Campus Police in Anti-Terror Operations,” *Washington Post*, Jan. 25, 2003.

44. New York City Police Department, “Radicalization in the West: The Home-grown Threat,” 2007, 20.

45. “Window Opens on City Tactics Among Muslims,” *New York Times*, May 28, 2006; “Undercover Work Deepens Police-Muslim Tensions,” *New York Times*, May 27, 2006; “The Informer: Behind the Scenes, or Setting the Stage,” *Washington Post*, May 29, 2007. See also Thomas Cincota, “From Movements to Mosques, Informers Endanger Democracy,” *Public Eye* 24 (Summer 2009): 1–13.

46. “F.B.I. Goes Knocking for Political Troublemakers,” *New York Times*, Aug. 16, 2004.

47. “The Return of COINTELPRO,” *Democracy Now!*; New York Civil Liberties Union, “Index of Groups Named in NYPD RNC Intelligence Documents,” May 16, 2007; “Anarchists Emerge as the Convention’s Wild Card,” *New York Times*, Aug. 20, 2004.

48. “No F.B.I. Intimidation Found at Conventions,” *New York Times*, April 30, 2006.

49. Timothy Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Spaces* (Cambridge: Cambridge University Press, 2008), 220–58.

50. ACLU, “Index of Groups Named in NYPD RNC Intelligence Documents.”

51. “NYPD Debates Civil Liberties Attorney Over Police Spying of Protestors,” *Democracy Now!*, March 26, 2007.

52. “Election Heightens Terrorism Offensive,” *Washington Post*, Sept. 27, 2004. Just before this book went to press, the FBI FOIA office sent me 264 pages on the October Plan.

53. “FBI Pursues a Tough New Anti-Terror Strategy in the Runup to November,” www.CNN.com, Sept. 27, 2004.

54. “FBI to Get Help on Election Day Plots,” *USA Today*, Oct. 7, 2004.

55. “FBI’s Anti-Terror ‘October Plan,’” www.CBSNEWS.com, Sept. 17, 2004.

56. “No Direct Evidence of Plot to Attack Around Elections,” *Washington Post*, October 23, 2004.

57. White House, “Memorandum for Attorney General,” Nov. 23, 2004, www.fas.org/irp/news/2004/11/wh112304ag.htm (Aug. 16, 2005).

58. ACLU, “ACLU Launches Nationwide Effort to Expose Illegal FBI Spying on Political and Religious Groups,” Dec. 2, 2004; “Coalition Seeks FBI’s Files on Protest

Groups,” *Washington Post*, Dec. 3, 2004; “ACLU Seeks FBI Files on Activist Probes,” *Associated Press*, Dec. 2, 2004. The ACLU of Chicago filed FOIA requests on American Friends Service Committee; the Community Renewal Society; the Council of American Islamic Relations of Chicago; the Council of Islamic Organizations of Greater Chicago; the Fellowship of Reconciliation; the Muslim Bar Association; the Muslim Civil Rights Center; and the Oak Park Coalition for Peace and Justice. “ACLU Wants to Know Who’s in FBI ‘Spy Files,’” *Chicago Sun-Times*, Dec. 2, 2004.

59. ACLU, “FBI Is Keeping Documents on ACLU and Other Peaceful Groups,” July 18, 2005.

60. “Secret Court Rebuffs Ashcroft,” *Washington Post*, Aug. 23, 2002.

61. Glenn A. Fine, Office of Inspector General, U.S. Department of Justice, “Report to Congress on Implementation of Section 1001 of the USA Patriot Act,” March 8, 2006, 16.

62. Lichtblau, *Bush’s War*, 94; ACLU, “ACLU Asks Appeals Court to Affirm Decision Striking Down Patriot Act’s ‘National Security Letter’ Provision,” Aug. 27, 2008, www.aclu.org/safefree/nationalsecurityletters/36567/prs2008.827 (Sept. 3, 2008); Ronald Weich to Senator Patrick J. Leahy, FISA Report 2008, May 14, 2009, www.fas.org/irp/agency/fisa/2008_rept.pdf (May 18, 2009).

63. Office of Inspector General, U.S. Department of Justice, “A Review of Federal Bureau of Investigation’s Use of National Security Letters,” March 2007, xvi–xlvi.

64. Privacy and Civil Liberties Oversight Board, “Second Annual Report to Congress,” Jan. 30, 2008, 21–22.

65. “Faulty ‘No-Fly’ System Detailed,” *Washington Post*, Oct. 9, 2004; “Unlikely Terrorists on No-Fly List,” CBS, *60 Minutes*, Oct. 8, 2006.

66. Mathew Rothschild, “The FBI Deputizes Business,” *Progressive*, Feb. 7, 2008.

67. ACLU, “The Surveillance-Industrial Complex: How the American Government Is Conscripting Businesses and Individuals in the Construction of a Surveillance Society,” August 2004, 12.

68. ACLU, “The Surveillance-Industrial Complex,” 4–6.

69. Electronic Frontier Foundation, “EFF Sues for Information on Huge FBI Database of Personal Information,” Oct. 6, 2006.

70. “FBI Prepares Vast Database of Biometrics,” *Washington Post*, Dec. 22, 2007; “Lockheed Secures Contract to Expand Biometric Database,” *Washington Post*, Feb. 13, 2008.

71. Whitaker, *The End of Privacy*, 37; “Bio-Code Systems Promise New Age of Security,” *APBnews*, Oct. 10, 1999, 3; “Firm to Provide FBI with Online Public Records,” *Federal Computer Week*, Jan. 19, 2000; “Centers Tap into Personal Data,” *Washington Post*, April 2, 2008; Robert O’Harrow Jr., *No Place to Hide* (New York: The Free Press, 2005), 98–102, 260, 262, 266. See also Martin Kuhn, *Federal Dataveillance: Implications for Privacy Protection* (New York: LFB Scholarly Publishing, 2007).

72. Johnson, “Analysis of Changes to Attorney General Guidelines,” 6.

73. O’Harrow, *No Place to Hide*, 98–102, 260, 262, 266; ACLU, “Reclaiming Patriotism: A Call to Reconsider the Patriot Act,” March 2009, 13.

74. Charles J. Sykes, *The End of Privacy: Personal Rights in the Surveillance Society* (New York: St. Martin’s Press, 1999), 66.

75. Simon Garfinkel, *Database Nation: The Death of Privacy in the 21st Century* (Cambridge: O'Reilly, 2001), 12.

76. Declan McCullagh, "FBI Taps Cell Phone Mic as Eavesdropping Tool," CNET News.com, Dec. 1, 2006; "This Goes No Further . . .," *BBC News*, March 2, 2004.

77. "Wiretapping Skype Calls," *Washington Post*, Sept. 2, 2009.

78. "Feds Create Massive Database of Phone Calls," *USA Today*, May 11, 2006. For an in-depth study, see James Bamford, *The Shadow Factory: The Ultra-Secret NSA from 9/11 to the Eavesdropping on America* (New York: Doubleday, 2008).

79. "Officials Say U.S. Wiretaps Exceeded Law," *New York Times*, April 16, 2009.

80. "Poll: Fifth of Americans Think Calls Have Been Monitored," www.CNN.com, Feb. 14, 2006; "Poll: More Americans See Government as Secretive," *Washington Post*, March 16, 2008.

81. Dina Temple-Raston, *The Jihad Next Door: The Lackawanna Six and Rough Justice in the Age of Terror* (New York: Public Affairs, 2007), 243; David Cole and Jules Lobel, *Less Safe, Less Free: Why America Is Losing the War on Terror* (New York: The New Press, 2007), 10–11; "U.S. Campaign Produces Few Convictions on Terrorism Charges," *Washington Post*, June 12, 2005; "Few Clear Wins in U.S. Anti-Terror Cases," *Washington Post*, April 21, 2008.

82. U.S. Department of Justice, Office of Inspector General, "Report to Congress on Implementation of Section 1001 of the USA Patriot Act," Feb. 2009, 9–10.

83. Valerie Caproni, statement before the U.S. Senate Select Committee on Intelligence, Sept. 23, 2008, 1–2; "Terror Plan Would Give F.B.I. More Power," *New York Times*, Sept. 13, 2008; "Justice Dept. Completes Revision of F.B.I. Guidelines for Terrorism Investigations," *New York Times*, Oct. 4, 2008; "Rule Changes Would Give FBI Agents Extensive New Powers," *Washington Post*, Sept. 12, 2008.

6

Information Flow and Political Policing

IT IS DIFFICULT FOR CITIZENS TO FIGHT FBI POWER. To date, there is no Civilian Complaint Review Board to monitor or discipline the Bureau, as there is for city police in many parts of the nation. However, the Freedom of Information Act (FOIA), which Congress passed in 1966, provides the means to wage “openness” battles about the disclosure of classified FBI files. As a result of this legislation, scholars and activists gained access to long-buried political intelligence on Americans, liberating information from a recalcitrant government. Obtaining FBI files is vital to writing the history of the past from new perspectives and advancing public knowledge about government efforts to suppress dissent. But the project of informing the public about the conduct of the secret police is fraught with problems. Information is integral to power and the Bureau erects numerous obstacles in the declassification process to conceal their conduct. After all, maintaining secrecy is the signature of political policing. It prevents democratic accountability and facilitates the abuse of basic constitutional rights. As Athan G. Theoharis, the only scholar to write in depth about researching FBI files, recently concluded, the Bureau “employed secrecy to further a specific policy agenda (whether conservative or criminal) and to subvert an informed public understanding of their abuse of power.”¹

Moreover, while claiming victory in the Cold War, the United States lags behind many of the former Communist nations in opening police records for public inspection. Coming to terms with crimes committed by state actors is a high priority across Eastern and Central Europe.² George Soros’s Open Society Institute noted in a major study the process of integrating newly independent nations into the European Union (EU) “galvanized political leaders, government

officials, and NGO activists to make access to information a priority.”³ Although some of the Communist regimes (in Poland, Czechoslovakia, East Germany, Lithuania, and Romania) are known to have destroyed portions of these files before leaving power,⁴ millions of pages subsequently were opened for viewing through special access laws. Germany made the greatest progress toward disclosure: More than two million individuals asked to review the files of the Stasi, East Germany’s security service.⁵ The success of information access in different nations is reliant on a cultural shift in government that places importance on openness, in contrast to secrecy. As policy activist David Banisar notes, “Officials must learn to change their mindset to recognize that the information that they hold is owned by the public and that citizens have a right to obtain information.”⁶

The American government still has a long way to go to fulfill the promise of the FOIA.⁷ As we will see, the declassification process is designed to conceal as much as to disclose frustrating researchers who want to write a full history of state behavior from the bottom up. This intransigence has meant that only about 6 million pages of FBI investigatory files were declassified even by 2005 out of about 4.5 billion pages of total documents. Breaking down the Blue Wall of Silence for federal law enforcement has met intense resistance despite oversight by Congress and the courts. In the interest of promoting transparency, it is critical to shine light on the FBI’s complex relationship to the implementation of the FOIA.

This chapter looks at public efforts to pry open FBI files by critically assessing three aspects of FOIA history: a) the scope of the FOIA regarding FBI records and the problems with the destruction, denial and redacting of government documents; b) the social history of lawsuits against the Bureau under the FOIA; and c) FOIA court opinions focusing on two main areas—the censorship of the identities of confidential informers and the “legitimacy” of investigations which transgress constitutional or legal protections. My examination of these materials gives context, specificity, and pattern to the interactive processes shaping information flow and clarifies many of the potential dangers when transparency is not framed from the bottom up. The questions raised here and in an emerging literature illuminate the need for further investigations of the long-secret unconstitutional actions by the federal government in the name of national security and their significance for the past, present, and future.

FBI Power and the FOIA

Arguments for openness in government date at least to James Madison’s exhortation, “A popular Government without popular information or the

means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors must arm themselves with the power that knowledge gives.”⁸ Although the FOIA attempted to reverse a history of government nondisclosure and President Lyndon B. Johnson invoked democratic traditions at the signing on July 4, 1966, he also added a cautionary note which allowed extraordinary latitude for executive action: “This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the nation permits.”⁹ The “security” argument has been used over time to suppress information. It was not until 1974 that Congress, responding to abuse of government power during Watergate, first amended the act to allow public access to the files of federal law enforcement agencies. Congress overrode President Gerald Ford’s veto to enact these FOIA amendments. The president, in stating his reason for the veto, said, “First, I remain concerned that our military or intelligence services and diplomatic relations could be adversely affected by this bill. . . . Second, I believe that confidentiality would not be maintained if many millions of pages of FBI and other investigatory law enforcement files would be subject to compulsory disclosure at the behest of any person.”¹⁰

Records requests to the FBI skyrocketed as soon as the 1974 amendments took affect: 10,285 requests were made in 1975, compared to only 561 requests for the entire period 1967 through 1974.¹¹ But the public’s “right to know” continued to be consistently undermined by a major loophole in the amendments to the FOIA: The authority to interpret nine “exemptions” allowed the Bureau extraordinarily broad powers of oversight and enforcement. The FBI can shield its files if, in its view, disclosure interferes with ongoing investigations or enforcement proceedings; threatens the right of an individual to a fair trial; serves as an unwarranted invasion of privacy; discloses the identity of confidential sources or undercover informers; discloses the techniques or procedures of investigations; endangers the safety of any individual; or in some way jeopardizes “national security.” Moreover, the FBI—rather than an outside agency—is empowered to determine what they want to exempt. This process of limiting disclosure has served as a form of government censorship.

In 1986, Congress again amended the act at President Ronald Reagan’s urging and further restricted its scope. Cold War conservatives long argued the Communist enemy would benefit from the liberal release of government information. Reagan adhered to their “information mosaic” theory of information flow: Hostile enemies gather lots of small, harmless details of government information from disparate sources and then assemble together all the small details in a manner that endangers national security. Reagan’s “reforms” of the FOIA allowed the FBI to treat the classified records that

pertain to “foreign intelligence, counterintelligence or international terrorism” as outside the requirements of the act.¹² In effect, this doubled the deception. The Bureau staff knew they possessed a file, but could say they did not. Congress sanctioned this process as *only* applicable to the FBI. Denying the existence of files, as opposed to redacting them for legitimate purposes, is part of a suppression mindset to conceal secret policing which may trample on constitutional rights.

The Reagan amendments further reduced openness by allowing the FBI to engage in investigations without telling FOIA requestors that such activity is ongoing. Ongoing investigations are excluded from all FOIA searches if the investigation involves “a possible violation of criminal law” and if the FBI believes the subject is unaware of the investigation and acknowledging the existence of records might tip them off. According to the Justice Department’s Office of Information Policy, “Agencies are not obligated to accept any bald assertions by investigative subjects that they ‘know’ of ongoing investigations against them; such assertions might well constitute no more than sheer speculation. Because such a ploy, if accepted, could defeat the exclusion’s clear statutory purpose, agencies should rely upon their own objective indicia of subject awareness and consequent harm.”¹³ Hence, the FOIA became a marginal means to hold the FBI accountable on contemporaneous matters and its usefulness applied primarily once an investigation closed. In addition, if an investigation utilized illegal methods or harassment, the FBI could conceal such conduct through the use of exemptions. The 1986 revision fails a critical constitutional test: There is no requirement that information that documents abuse of power must be disclosed. It is an obvious problem that the task of disclosing improper conduct is left to the agency that has committed the misconduct.

Another FBI method to foil the FOIA was to destroy files. Initially, the mid-1970s application of the FOIA to FBI records accelerated a file destruction policy. After the 1975 Church Committee investigations unearthed widespread FBI misconduct, the Bureau engaged in a “massive” purging of old files.¹⁴ An FBI memo dated August 2, 1976, stated, “Because of social-political factors, files relating to World War II activities could be considered for destruction. Files relating to internal security-extremist matters without foreign involvement such as Klan, Minuteman, Nation of Islam, Black Panther Party, and antiriot and bombing matters should be considered for destruction after they are ten years old.”¹⁵ Another 1976 memo, which I obtained under the FOIA, noted that the identity of informers would be destroyed, posing a challenge to researchers. According to FBI official A. J. Decker Jr., representatives from the National Archives and Records Service (NARS) reviewed the FBI procedures on maintaining files.

They [NARS] noted that informant data is frequently mentioned in files by a code symbol and that if informant files were destroyed because of the general age criteria, there would be no way to identify the informant for those files that maintained for historical purposes. They were told that was precisely the Bureau's intention since informant data was given in confidence and it should remain that way. This would be one piece of the puzzle that historians would never know and that the Bureau had no intention of every [sic] providing Archives with such data.¹⁶

The FBI's file destruction practice finally stopped in 1980 under the order of a federal judge in *American Friends Service Committee et al. v. Webster*, a suit brought by more than forty individuals and groups. How many files were destroyed prior to this ruling? According to a 1981 memo in the FBI file on the National Archives, the Bureau destroyed a large amount of material—143,361 separate Headquarters files under the domestic security classification.¹⁷ In fact, the whole FBI record keeping system was maintained for decades without outside supervision, unlike nearly every other federal government agency. Normally, the Archivist of the United States oversees the maintenance and disposal of federal government records in accordance with a series of laws. Not so when it came to the FBI. As federal judge Harold H. Greene wrote, "Between 1946 and 1976, a period of thirty years, when the FBI was experiencing an unparalleled growth in personnel and importance, it was operating its records retention and disposal programs without the archival supervision and guidance required by the law." Why the exception for the FBI? Director J. Edgar Hoover acted as if the Bureau was above the law. Judge Greene wrote, "The FBI, in accordance with the policies established by then-director J. Edgar Hoover, was not in the habit of granting to anyone outside the FBI access to its files; that the employees of the Archives were well aware of this policy; and that in view of what they regarded as the futility of making access demands they did not even attempt to conduct personal inspections of the FBI's records."¹⁸

What did they miss? In 1953, Hoover ordered the periodic destruction of all senior officials' "confidential" files. Some of these files survived through intended or inadvertent exceptions to the order. Hoover also ordered the periodic destruction of all records on illegal break-ins. Again, some of this material survived because a New York special agent failed to comply with the director's orders. Hoover also kept two large sets of sensitive secret files in his Washington office for his personal use, one of which was destroyed immediately upon his death. Other files destroyed include records on the internment of Japanese Americans during World War II; the American Protective League; the American Legion (1950–1954); the government's emergency detention plans for subversives; and surveillance of Alger Hiss, as well as some records on the surveillance of the Weather Underground. In 1977, the FBI destroyed

about three hundred thousand pages of its Sex Deviates program, which Hoover established in 1951 to investigate homosexuals in government.¹⁹

When Judge Greene established the first official Records Retention Plan for the Bureau in 1986, he set a relatively high threshold for saving records for historical value. In the following decade, the FBI destroyed a large number of its files despite the new Retention Plan. Newly declassified records indicate that between 1986 and 1995, FBI Headquarters destroyed 32,018 linear feet of files and records related to domestic security, while local field offices destroyed 84,068 linear feet. All told, this is equivalent to almost one quarter of a billion pages of lost records and there is no accounting of which specific files were sent to the shredder. Leading FOIA researcher Michael Ravnitzky notes file destruction remains a problem. In 2006, he wrote, “The FBI claims they send files to the National Archives for permanent retention, but neither the Bureau nor the Archives is able to provide any list of files that have actually been transferred during the past two years to the Archives. . . . During the last five years, citizens asking for records have seen large increases in the quantity of responses indicating that files have been destroyed under the FBI records scheduling program.”²⁰

In many cases the Bureau determined there are “no records.” The number of such denials increased over the last decade. (See table 6.1.) Whereas in 1998 about 37 percent of requests were listed as “no records,” by 2007 the figure had reached a very high 71 percent. Several researchers question the veracity of the FBI response. For example, David H. Price filed more than five hundred FOIA requests while writing *Threatening Anthropology*, a study of McCarthy-era FBI investigations of activist anthropologists. In 2004, he

TABLE 6.1
“No Records” Response by FBI to FOIA Requests

<i>Fiscal Year</i>	<i>Requests Processed at the FBI</i>	<i>No Records Responses from the FBI</i>	<i>No Records (%)</i>
2007	12,309	8,799	71.48
2006	15,403	11,310	73.43
2005	11,155	7,210	64.63
2004	10,736	5,956	55.48
2003	11,854	6,400	53.99
2002	14,869	6,983	46.96
2001	22,255	11,302	50.78
2000	27,519	13,313	48.38
1999	24,207	9,741	40.24
1998	20,344	7,516	36.94

Source: U.S. Department of Justice Annual FOIA Reports (www.justice.gov/oip/04_6.html).

reported a troubling pattern about the denial of records: “In some cases, when I appealed such FBI denials, hundreds of pages of files directly relevant to my request were released. It is impossible to know if the FBI’s frequent initial denials are simply part of the FBI’s sloppy standard of professionalism, or if they are part of an intentional plan.”²¹ Other prominent researchers question the legitimacy of the Bureau’s procedures. Ernie Lazar filed more than nine thousand FOIA requests since 1981, the vast majority concerning right-wing groups. He received more than two hundred thousand pages of FBI records, but often only after making many appeals: “I constantly get ‘no records’ replies which are bogus. . . . I normally appeal just about everything that comes back initially as ‘no records.’ About 30–40 percent of those appeals subsequently produce records.”²²

The false denial of records is dangerous to democratic government. Scott A. Hodes, who headed the FBI’s FOIA litigation unit between 1998 and 2002, offers a candid insider’s view which questions the integrity of the declassification process: “Many times, agencies simply deny initial requests because they know that requesters won’t take the time to file an administrative appeal even if the agency is aware that its initial decision is incorrect.” Delay becomes an institutional strategy: “Other times agencies will deny records initially because they know that by the time the appeal is adjudicated, the material sought will not be important to the agency or the requester and this stall tactic may keep the agency out of the media spotlight for the time being.”²³

In addition, the standard by which the FBI redacts information may be inconsistent and seemingly arbitrary with “variances in the processing of the same report included in different files—having information withheld in one case but not in another.”²⁴ Lazar deliberately sent duplicate requests to the Bureau in different years on the same subject: “The first request usually specified the name of the person or organization but on the second request (years later) I used the file number for that person or organization. Very frequently, when I compare the documents released, the excisions on the second releases are different from the excisions on the earlier first release.”²⁵

Is it an abuse of power when the FBI blacks out whole pages even after an investigation is closed? Commonly, lesser deletions are made where names and key incidents are stricken. Mike Forrest Keen, for his study *Stalking the Sociological Imagination*, found the redacting of virtually all names other than the ones he requested: “The problem is that without the names of others, it is hard to track the network of relations or social historical contexts.”²⁶ In particular, the censorship of informant identities poses a major obstacle to researchers. When the FBI plants informers in the network of relations of a subject, it impacts social interactions and changes the course of its development. The reason that someone becomes an informer, and what role they

played around a subject, is critical to understanding government surveillance, repression, and the evolution of social movements. According to Price, “If informants’ names were known it might be possible to attribute ulterior motivations for the statements and information given to FBI agents. . . . More often than not, they simply gathered as much gossip as they could about an individual of interest and then typed up reports uncritically, repeating the tales as they were told.”²⁷

Theoharis is pessimistic that a comprehensive history of the FBI will ever be written due to the Bureau’s reluctance to open its records.²⁸ Harry Hammitt, the long-time editor of the FOIA journal *Access Reports*, wrote in 1997, “The FBI is probably the most troubled FOIA operation in government.”²⁹ Some journalists and scholars have given up on using the FOIA because of the costs (copying fees, at 10 cents per page, can be prohibitive for large files)³⁰; the delay in processing requests, which may take two years; and the fact that disclosed files are heavily redacted to reduce their usefulness. According to Paul McMasters, a former head of the Society of Professional Journalists, “I know all the arguments about why journalists don’t use the FOIA, among them that it takes too long, but that’s a reason for improving it, not ignoring it.”³¹ Rebecca Daugherty, director of the Freedom of Information Service Center for the Reporters Committee for Freedom of the Press, confirmed, “People don’t use the FOIA as often as they should because they believe it is too cumbersome and time-consuming.”³² If requestors accept this perception about using the act, the FBI has won part of the battle to keep records secret.

Since 1975, the public has made about three hundred thousand records requests to the FBI, which is a small number compared overall to FOIA requests to other parts of the government such as the Social Security Administration or the Department of Veteran Affairs. From the late 1970s to the mid-1990s, the number of requests fell in a range of approximately six thousand to ten thousand per year. (See table 6.2.) But as the millennium approached, the number of requests to the FBI dramatically increased, peaking in the year 2000 with nearly twenty-four thousand—a 140 percent increase over 1990. It appears a generalized millennial anxiety in America helps explain the increased FOIA use. A nervous people distrusted the government and sought accountability through the declassification process. Requesting FBI files is a dramatic act—very controversial and political for most people. Challenging the conduct of the FBI, when it functioned as a political police, is not done lightly. FOIA requests are one indicator of bottom-up ferment. Using the FOIA is a public exercise of power, helping to define a critical relationship to the state. The increase also is due in part to the efforts of Ravnitzky, who supervised a FOIA project at *APBnews*, a now defunct online news organization. In 1999 and 2000, Ravnitzky and his

TABLE 6.2
FOIA Requests to the FBI

<i>FOIA Requests to the FBI</i>	
1975: 10,285	1993: 10,136
1976: 2,677	1994: 9,712
1977: 4,641	1995: 7,468
1978: 5,129	1996: 8,581
1979: 6,244	1997: 6,394
1980: 8,729	1998: 15,780
1981: 6,688	1999: 20,754
1982: 8,490	2000: 23,889
1983: 6,037	2001: 21,009
1984: 6,018	2002: 15,024
1985: 6,739	2003: 11,089
1986: 8,607	2004: 10,875
1987: 9,029	2005: 10,934
1988: 11,496	2006: 15,349
1989: 10,419	2007: 12,509
1990: 10,988	2008: 17,241
1991: 9,592	2009: 15,664
1992: 11,505	

Source: U.S. Department of Justice Annual FOIA Reports (www.justice.gov/oip/04_6.html).

colleagues filed about four thousand requests to the FBI, the single largest effort to declassify FBI records in FOIA history.³³ Another striking pattern about requests is the large overall decline after 2001, which may be due to fear, a political chill: Fewer people after 9/11 feel comfortable asking for FBI files when dissent is under attack during the “War on Terror.” This speculation suggests that while the coming of the millennium increased bottom-up challenges to government authority, the top-down “terror scare” served to clamp down on such sentiment.³⁴

Early FOIA Lawsuits

The original 1966 law stipulated that requestors may initiate legal action to obtain fuller disclosure, forcing a federal judge to consider the case. Yet less than 1 percent of requestors actually file lawsuits. Suing is difficult because of two factors: Litigation can take years to resolve, as the government has an interest in prolonging the process;³⁵ and the cost of litigation can be substantial, deterring the average requestor. The government must pay lawyer’s fees

only if the litigant “substantially prevails” by getting new material released. But this determination is not decided until the outcome of the litigation, and is by no means a guarantee, so requestors often are reluctant to risk the financial costs. A few public interest groups—the American Civil Liberties Union, Public Citizen, the National Security Archives, the Center for Constitutional Rights—conduct pro bono FOIA litigation, but their efforts cannot possibly cover the thousands of denials.

Despite these obstacles, hundreds of FOIA lawsuits established a body of law around disclosure. By the 1990s, several dozen cases against the FBI were settled each year and these lawsuits became one means for any person to challenge government power.³⁶ But compelling people to sue demonstrates bad faith by the government. As Attorney General Janet Reno asked in 1996 before the American Society of Newspaper Editors, “Should we give some thought to the burden we are placing on the system with complex litigation demands? At a time when the FBI is 5.6 million pages behind in processing FOIA requests, do we really want 29 percent of the FBI’s FOIA time devoted to responding to what we call the ‘Vaughn Index’ demands, which are detailed explanations we have to give the courts when you sue us for withholding something?”³⁷ Other government agencies do not pose as many obstacles. The Vaughn Index, named after a 1973 case (*Vaughn v. Rosen*), requires the FBI to list specific exemptions when they redact material, allowing requestors to contest withholdings based on specified standards. Yet triggering the creation of an index during litigation has not stopped the FBI from withholding material; it merely forces them to give an explanation, which often lacks context and requires a leap of faith that they are censoring material fairly. Judges usually work under the presumption that FBI actions are correct.

In the history of these lawsuits, a key early case focused on COINTELPRO documents. In 1972, NBC-TV correspondent Carl Stern, in a routine visit to the headquarters of the U.S. Senate Judiciary Committee, noticed a document on the desk of a staff member titled “COINTELPRO-New Left.” Stern had not heard of COINTELPRO before and decided to file a FOIA request. After the Bureau denied three separate requests based on a national security exemption, he decided to sue. In December 1973, the court ruled in his favor, forcing the FBI to turn over a small portion of the requested material. Stern then filed a broader records request to cover other COINTELPRO programs. On appeal the attorney general directed the FBI in March 1974 to release another small batch of documents. But that was all the material the FBI planned to release. In November 1974, the FBI’s top brass met to discuss the Bureau’s policy toward future COINTELPRO disclosures. According to Director Clarence M. Kelley, “Our management team unanimously felt that there should be no additional release of COINTELPRO documents and papers under the Freedom

of Information Act. . . . We would deny future requests for COINTELPRO documents under the Freedom of Information Act—and let the courts decide the issue. . . . We believed that the courts would rule in our favor.” After the Church Committee hearings, the FBI released a more complete COINTELPRO official file of more than fifty thousand pages.³⁸

In another early case, three liberal New York Congressmen—Edward I. Koch, Benjamin S. Rosenthal and Jonathan B. Bingham—contested the FBI’s practice of keeping files on members of Congress. In 1973, they sued after Director Kelley refused to voluntarily release their files.³⁹ The records on the assassination of Martin Luther King Jr. were contested by writer Harold Weisberg, who first sought the files in 1969. The FBI withheld the records until the 1974 FOIA amendments became law. About the King records, the FBI said there would be substantial delays because of the “virtual deluge of requests since the effective date of the FOIA amendments.” Weisberg decided to sue and the FBI voluntarily released about forty-five thousand pages before the court issued a ruling. After Weisberg continued to assert that the FBI failed to conduct a thorough search, another fifteen thousand pages were declassified. Subsequent requestors uncovered more than 120,000 additional pages.⁴⁰ In 1975, historian Allen Weinstein, with the help of the American Civil Liberties Union, succeeded in getting the FBI to turn over about thirty thousand pages of classified files on accused spy Alger Hiss. Weinstein used the records in *Perjury*, a study of the Hiss-Chambers case, and a file on Weinstein was opened in the late 1960s because of his research.⁴¹ A lawyer for the children of Julius and Ethel Rosenberg filed a suit in 1975 to gain information from the FBI and other government agencies that might prove the Rosenbergs’ innocence. They obtained about two hundred thousand pages of documents, although another seventy thousand pages were withheld.⁴²

Political activists and groups began to use the FOIA to find out if they had been targeted by the Bureau. Litigating prodded the FBI toward fuller disclosure in a number of notable cases. In this regard, liberal and Left groups have been much more active than right-wing groups in requesting their files. While the FBI spied on and infiltrated right-wing groups such as the KKK, neo-Nazi and Aryan Nations, and the John Birch Society, these groups rarely practiced activist or “cause lawyering,” reluctant to use the legal system to get records. Few FOIA lawsuits involving right-wing groups have yet to reach the courts. One exception concerns anti-abortion protestors, who sued in 1999 with the help of the conservative legal group Judicial Watch.⁴³ By contrast, a broad segment of liberal Left groups initiated litigation to expose government spying. In 1978, the Republic of New Afrika (RNA), a small black liberation group investigated under COINTELPRO, filed a lawsuit after the FBI released only a small portion (8,300 pages) of its large fifty-three-thousand-page file. Initiating litigation

prompted the FBI to release an additional thirty-two thousand pages, but the FBI still withheld about thirteen thousand pages sanctioned by the court.⁴⁴ The process here is illustrative of the rough road requesters face: The government released 16 percent of the file upon request; an additional 60 percent during litigation; and withheld 24 percent forever.

The case of the writer and civil liberties activist Corliss Lamont, who was subjected to thirty years of surveillance (1942–1972), further underscores this point. Lamont obtained a mere 274 pages of his 2,739-page file before he sued.⁴⁵ China expert William Hinton initiated litigation in 1981 because the FBI failed to process his request. He discovered that his FBI file totaled 10,462 pages, covering surveillance for the years 1947 to 1977.⁴⁶ The Committee in Solidarity with the People of El Salvador (CISPES) sued for their file in 1987, securing the release of nearly ten thousand pages of surveillance records, which is only a small portion of its total file.⁴⁷

In 1990, the United Electrical workers union (UE) started litigation to uncover its intensive surveillance, including the bugging of its national headquarters. In 1942, Hoover directed all FBI field offices to contact companies and manufacturing plants within their geographical areas to ascertain whether there were any UE locals and to investigate Communist activities by both union leaders and members. Those investigations lasted until 1972 and generated more than forty-eight thousand FBI documents. The initial declassification of the UE file was weighed toward secrecy rather than openness. With unusual candor, the judge indicated how hard it is for courts to check up on the FBI's standard for redactions:

It is impossible to review the validity of the claimed exemption because the Court is not provided with any information upon which to premise that review. While the [FBI's] declaration describes in general the necessity of protecting confidential sources and the privacy of persons named in the documents, it is impossible to ascertain how the person who deleted the material made the determination that the exemption applied. . . . The FBI never provides the context of the expurgation so that by looking at the document, the Court can understand the expurgator's reasoning.⁴⁸

In a lawsuit involving Pete Seeger, the Almanac Singers, and the Weavers, the FBI censor also applied very broad cutting. "Such a cavalier attitude by the government has marked all of its behavior in this litigation," the judge wrote. "Virtually all of the information is of the most mundane character, information which has no apparent relationship to the security of this nation today, if it ever had." This case was decided in 1981—still an early date for FOIA litigation—and the judge made a prescient observation about FBI strategies of delay: "The government may well feel that by making these FOIA proceedings as lengthy

and costly as possible, it will discourage others from pursuing their rights under the Act, even in those cases where the plaintiff ultimately prevails in whole or part. Not only is this a dangerous litigation strategy, but one which is inappropriate to a coordinate branch of the federal government, whose interest will be served by the equitable and fair enforcement of the laws.”⁴⁹

In a well-publicized case, Jonathan Weiner sued in 1983 for the full release of musician John Lennon’s three-hundred-page file. After fourteen years of litigation, the FBI finally negotiated a settlement releasing most of the censored material, which Weiner edited into the book *Gimme Some Truth*. Ten documents remained in contention until 2006, when the FBI released the last of the materials. The official justification for the delay: Release of the documents might result in war. Perhaps the Bureau stalled in the Lennon case because they were embarrassed by their surveillance. The FBI tracked Lennon in 1971 and 1972, while he spoke against the Vietnam War and donated a small amount of money to political groups. They used undercover informers, one of whom got close enough to report on conversations in his home. One FBI memo originally withheld notes that Lennon’s pet parrot was trained to chirp “‘Right On’ whenever a political conversation gets rousing.” According to an ACLU attorney who handled Weiner’s case, “These documents show the FBI investigation was conducted in the manner of the shabbiest tabloid journalist imaginable and they show that the FBI had nothing better to do than record the utterances of a parrot and indulge in gossip and innuendo about rock musicians who happened to take political stances.” Indeed, we recently have learned through FOIA requests that other 1960s rock groups, such as the Grateful Dead, Jefferson Airplane, Jimi Hendrix, and the Doors, were subject to FBI investigations. Undercover operatives routinely attended their concerts to monitor behavior and to try to make friendships in order to infiltrate the counterculture. Hendrix, who played benefit concerts for progressive groups, was placed on the Security Index.⁵⁰

Other scholars have turned to the courts to force disclosure. Alexander Charns studied FBI investigations of the U.S. Supreme Court in *Cloak and Gavel*. As a result of litigation, tens of thousands of records were released.⁵¹ Taylor Branch litigated for material on Stanley Levison, an advisor to Martin Luther King Jr., while he was writing his Pulitzer Prize-winning study, *Parting the Waters*.⁵² Jack Greenberg, head of the NAACP Legal Defense and Education Fund, sued the Bureau for files on the civil rights group while writing a history, *Crusaders in the Courts*.⁵³ Sigmund Diamond sued for materials he used in *Compromised Campus* about Harvard and Yale’s cooperation with the FBI during the late 1940s and 1950s. James Baldwin’s biographer finally obtained the release of most of the writer’s 1,750-page file after ten years of litigation.⁵⁴ Larry Sloman, who collected oral histories about Abbie Hoffman

in *Steal this Dream*, sued the Bureau to get the full disclosure of Hoffman's file, which consists of more than twenty-nine thousand pages.⁵⁵

In addition to activists and scholars, public interest groups utilized the FOIA to contest surveillance practices. Typically, the FBI was compelled to release new documents, which contributed to public debate, but despite such disclosures the FBI usually went forward with its spying. One of the first of these challenges concerned FBI wiretapping. In 1992, the Bureau tried to set new standards for the computer and telecommunications industry to enhance surveillance, proposals adopted into law under the Communications Assistance Law Enforcement Act (CALEA) in 1994. CALEA mandates that every communication system have a built-in "remote monitoring" capability to facilitate government wiretapping. The Computer Professionals for Social Responsibility (CPSR) initially filed a FOIA request for documents on the FBI's wiretapping capability. When the Bureau denied that such documents existed, CPSR initiated litigation. A federal judge forced the FBI to turn over 186 pages of material. Why did the Bureau deny they had these documents? The declassified record contradicted public lobbying with reports from FBI field offices indicating no deficits in wiretapping.⁵⁶ CALEA prompted other FOIA lawsuits. Before Congress passed the legislation, the Electronic Privacy Information Center (EPIC) sued to obtain two surveys cited by Director Freeh in support of the act. The FBI responded to the EPIC suit by saying it wanted a five-year delay in processing the documents, but a federal judge forced the Bureau to release the documents immediately, scolding the government's lawyer: "Call Director Freeh and tell him I said this matter can be taken care of in an hour and a half."⁵⁷

In 1993, the Electronic Frontier Foundation (EFF) asked for FBI documents about the Clipper Chip, which the Justice Department refused to declassify. The Clipper Chip acted as an anti-encryption device the government wanted to install in computers to enable it to decode users' messages. As a result of the lawsuit, the Justice Department agreed to release the material, but this did not come easily. As John Gilmore, an EFF leader and privacy advocate, critically noted, "The government has used every procedural trick in the book to delay the progress of the lawsuits, so that they can defer becoming accountable to the public as long as possible."⁵⁸ The government eventually abandoned the Clipper Chip initiative. The same cannot be said for warrantless FBI surveillance of computer chatrooms and bulletin boards on the Internet, which prompted a lawsuit by CPSR to obtain background material on the spying. The Bureau claimed there is no expectation of privacy in these forums, so their surveillance does not require a warrant. The lawsuit by itself did not stop the surveillance, but CPSR hoped the release of documents might provide a basis for a broader challenge in the Congress or the courts, a development that never occurred.⁵⁹

The Carnivore spying system on the Internet led to a lawsuit. After its existence was disclosed in 2000, EPIC and the ACLU filed a suit to get all FBI records on Carnivore, including the computer source code. The Bureau declassified 565 pages but, as EPIC reported, “nearly 200 pages were withheld in full and another 400 pages were redacted, many completely except for page numbers. The source code to the Carnivore system was withheld.”⁶⁰ A minor public controversy ensued when it became known that Carnivore captures *all* subscriber email stored in Internet company records. Congress held hearings. What was the end result? The FBI agreed to allow an outside university team to inspect the software, a rubberstamp process that provided legitimacy for the technology. The FBI then decided to change the name of the system from Carnivore to DCS1000, a cynical public relations maneuver. An FBI spokesman said, “Had it not been called Carnivore, it probably wouldn’t have stirred as much controversy.” It was not the name that worried civil libertarians but rather the way the system worked. The ACLU’s Barry Steinhardt said, “If it prowls like a wolf, howls like a wolf and has the voracious appetite of a wolf, it’s still a carnivore.”⁶¹ Despite a brief public debate, the FBI went ahead and deployed some version of this computer snooping system.

After 9/11, the ACLU turned to the FOIA to challenge a variety of law enforcement practices. When the Justice Department secretly detained about 1,200 immigrants for prolonged periods on unspecified charges, the ACLU unsuccessfully sued the Justice Department to find out about the status of the detained, including their names.⁶² Another loss focused on statistical information on the number of FBI investigations carried out under the USA Patriot Act. Prying the statistics out of the FBI contributed to the public debate on freedom versus national security. In *American Civil Liberties Union v. United States Department of Justice* (2003), the court supported FBI behavior, maintaining that “disclosure of aggregate, statistical information on the number of times the Justice Department has used the surveillance and investigatory tools authorized by the USA PATRIOT Act would reveal intelligence activities, sources, methods and could be expected to damage national security.”⁶³ In 2004, the ACLU tried another means to uncover FBI spying. The national office and local chapters filed more than 150 FOIA requests on political groups. In Northern California, the ACLU sued to get “expedited processing” of their request on Muslims and Arab Americans, hoping to avoid the standard one-to-two year process of declassification. This effort failed: The court ruled the ACLU did not meet either of the two legal standards necessary to compel expedited declassification—“urgency to inform” or “exceptional media interest.”⁶⁴ Meanwhile, EPIC in 2006 tried to ascertain FBI abuse of power under the Patriot Act by obtaining in a lawsuit nearly two dozen internal Bureau reports documenting misconduct in intelligence investigations, including improper

eavesdropping, email collecting, and break-ins. After the release of the reports, the Inspector General at the Justice Department started an inquiry of potential abuse under the act, although Congress did not try to reign in the Bureau.⁶⁵

Police Legitimacy

Are all FBI investigations *legitimate* in the mind of the court? A finding of legitimacy is written into the law—that is, it serves as the basis for a series of law enforcement exemptions (7A-F). The FBI may protect the identity of its sources only if they are part of a “legitimate law enforcement investigation.” The Supreme Court in *FBI v. Abramson* (1982) interpreted Exemption 7 as follows: “Once it is established that information was compiled pursuant to a legitimate law enforcement investigation and that disclosure of such information would lead to one of the listed harms, the information is exempt.”⁶⁶ Plaintiffs in several lawsuits forced the court to decide if FBI activity met that standard of legitimacy in instances when the investigations—as during COINTELPRO—included illegal practices constituting official repression. In most of these cases, the court acknowledged that the FBI engaged in constitutional abridgements, but decided the overall investigation still was legitimate conduct. As a result, they refused to force the declassification of third-party sources.

This finding is substantiated in several lawsuits involving COINTELPRO records on the black power movement. In a lawsuit by Harlell B. Jones, who was targeted in the 1960s and early 1970s, the court wrote, “There may be cases in which an investigation is so far beyond the authority of the agency or so Gestapo-like in its methods that we should say that it does not meet the test for law enforcement exception. Here, however, the FBI is the archetypical federal law enforcement agency and its methods were not so far out of bounds that the overall investigation is outside the law enforcement exemption.” If COINTELPRO records are found to be legitimate documents then there are few ways to challenge FBI conduct. The judge added, “To the extent that the agency violates the constitutional rights of citizens, there are remedies such as *Bivens* actions. . . . FOIA was intended as a sunshine measure to bring agency operations to public knowledge within specified limits, not as the primary vehicle for prosecuting agency behavior.” But the court’s actions, by limiting information flow, serves two negative interests: It shields public knowledge of political repression and by doing so it makes it harder to hold government accountable through civil litigation. In this lawsuit, which lasted seventeen years, the FBI released 485 pages in their entirety, 9,157 pages with portions redacted, and withheld 845 pages.⁶⁷

In a Black Panther Party case, the judge sanctioned FBI conduct despite the fact that “records were compiled in the course of an unwise, meritless or even illegal investigation.” The Bureau conducted surveillance of the Coalition for the Defense of the Panthers between 1969 and 1972, a group based in New Haven, Connecticut, which raised money and publicized the defense of local Panthers in a pending criminal trial. The FBI put the Coalition under surveillance from its inception, although it found nothing illegal. The court upheld the FBI’s redactions in a 281-page file because “disclosure of such information under the FOIA will, we believe, substantially impair federal law enforcement.”⁶⁸

Is there legitimacy in the Geronimo ji Jaga Pratt investigation? The FBI’s efforts against the Los Angeles Panther leader met the standard even though “certain documents evince illegal FBI practice.” Pratt received about 8,300 pages of his file, but the court noted “the FBI deleted portions of many of these documents” and refused to overturn those deletions. In this case as well the court deferred accountability for the FBI to civil litigation, refusing to force the FBI into full disclosure for the records they keep, records which may be necessary to sue for compensation. Although denying many of Pratt’s FOIA claims, the court noted, “While a suit under the Freedom of Information Act is an important mechanism for discovering the malfeasance of government agencies, it can do no more than reveal those actions. FOIA is thus a useful supplement to, but not a substitute for, private damage actions by concerned citizens and their representatives.”⁶⁹ In fact, Pratt initiated civil action against the FBI after finding evidence of misconduct in his false murder conviction for which he served twenty-seven years. His FOIA use proved critical in demonstrating his innocence, establishing that a key court witness who committed perjury served as an FBI informer.⁷⁰

As in the black power cases, courts upheld the legitimacy of the anti-Communist witch hunt during the early Cold War. They sanctioned the broad use of law enforcement exemptions to conceal records despite illegal conduct interfering with First Amendment activity. In a lawsuit involving civil rights attorney Carol King, who was under surveillance from 1941 until her death in 1952, the request for records included, in the court’s words, a “broader attack on the propriety of the FBI’s investigation, intimating that the inquiry was calculated to impair Carol King’s efficacy in defending clients whose deportations the Government sought. Surveillance of Carol King, appellant speculates, may have been calculated to secure informational advantage in the litigation of individual cases, and to harass and intimidate Carol King in her work as defense counsel generally.” King’s clients included West Coast labor leader Harry Bridges and Earl Browder, a former CPUSA Secretary. In a 1982 memo the FBI wrote, “As a result of litigation, certain information

has recently been declassified which reveals the FBI's electronic surveillance and surreptitious entry activities against Carol King's law offices. With the exception of the identities of certain individuals, this material is not exempt and must be released . . . release of information which could result in possible adverse publicity." The appellant, a family member of King, described the type of harassment King faced. The surveillance included tapping King's home and office telephones, being followed by FBI agents, and breaking into her office to photograph correspondence. Did the latter incident—a "black bag job"—undermine a finding of police legitimacy? Moreover, the electronic wiretaps almost certainly were done illegally, but the facts of warrantless surveillance did not sway the court. It criticized the FBI on only one point. The censor of the King file was too broad in their cutting. The FBI released 1,500 pages of a 1,665-page file, but deleted "names and frequently substantial passages. . . . We are left with no contextual description for documents or substantial portions of documents withheld in the entirety." Yet even here the court would not budge from the conservative view that passage of time does not bolster disclosure, in effect protecting the secrecy of the witch hunt rather than exposing it.⁷¹

First Amendment activist Frank Wilkinson, who headed the National Committee Against Repressive Legislation (NCARL), amassed a 132,000-page FBI file and a court limited disclosure by upholding redactions based on legitimacy for anti-Communist investigations. The FBI suspected Wilkinson of Communist membership and closely tracked him for thirty-eight years, deploying warrantless wiretaps and break-ins. About twenty-one thousand pages of his file were redacted on the basis of informant confidentiality. Wilkinson argued that such redactions should not stand because of the investigation's illegitimate purposes. The judge disagreed: "The Court finds this to be a close question, especially in light of the paucity of hard documentary evidence on the issue of the purpose of the investigation. . . . [H]owever courts have held that an agency like the FBI 'need only to be held to a minimal showing that the activity which generated the documents was related to the agency's function.'" ⁷² In another case, the court rubberstamped the Red Scare's guilt by association model, ruling that since the subject had a prior history of pacifist activities, it was not "irrational or implausible for [FBI]—operating in the climate existing during the early 1950s—[to conduct] what appears to have been a brief criminal investigation into the possibility that the plaintiff harbored Communist affiliations."⁷³ Regarding author James Baldwin, the court, too, ruled conservatively that investigating his ties to "subversives" was appropriate since the era of the 1960s witnessed radical challenges to the status quo and Baldwin became an advocate for social change.⁷⁴

A federal appeals court twice defended FBI spying after a lower court ruled exemptions could not apply. In 1976, Peter Irons requested a copy of his FBI file. A former student activist, civil rights organizer, and draft resister, Irons argued that the FBI's investigation involved illegal methods and harassment. The initial court ruling in his favor seemed to break new ground: "The files represent unfocused domestic monitoring for purposes deemed generally prophylactic and were not generated for 'law enforcement purposes.'" But the appeals court subsequently covered for the Bureau with arguments in favor of secrecy. Despite "questionable practices by the FBI," disclosure "would harm innocent individuals who had no way to test the legality of an FBI investigation" when they cooperated with the FBI. Moreover, the court uncritically supported the government's proposition that future recruiting by the Bureau would be negatively impacted: "The loss of Exemption 7 due to unwarranted FBI activity would cost the society the cooperation of those who give the FBI information under an express assurance of confidentiality."⁷⁵

In the second case, an appeals court overturned a ruling that supported black radical Herman Ferguson, a leader in Malcolm X's Organization of Afro-American Unity (OAAU) as well as the Revolutionary Action Movement (RAM) in New York City. According to a 1965 FBI memo, the Bureau started to monitor Ferguson because "the subject has some official position in the Organization of Afro-American Unity (OAAU). Since the subject does hold a position with the NYC Board of Education, Bureau permission is requested to continue the investigation in view of Ferguson's official affiliation with the OAAU." The first court agreed with the plaintiff that the FBI's reason for investigating the OAAU was ill-defined under the law, and so exemptions should not apply. Moreover, the FBI later investigated Ferguson for his association with RAM and the court again found that the law enforcement justification was not presented adequately. So for the first time an American court proved unwilling to rubberstamp the view that COINTELPRO's black group investigations were legitimate investigations. However, this critical view did not survive the appeals court, which upheld redactions in Ferguson's file.⁷⁶

In FOIA case law, only one case established that political surveillance did not qualify as a legitimate inquiry. In *Rosenfeld v. Department of Justice*, journalist Seth Rosenfeld requested records on the surveillance of student groups in the San Francisco Bay area, especially those involved in the Free Speech Movement (FSM) in Berkeley. In typical Red Scare fashion, the FBI opened an investigation of the FSM in 1964 "out of concern that its leaders were members of communist or subversive organizations" and the court found that the first phase of the investigation in 1964 met the legitimacy standard. However, FBI surveillance after 1964 did not qualify as a legitimate law enforcement purpose: "What may have begun as a good faith effort to determine

the extent of participation and influence in the FSM by subversive organizations appears to have become a case of routine monitoring of the FSM for intelligence purposes. Such routine monitoring, surveillance and information gathering is not a permissible law enforcement purpose under Exemption 7.”⁷⁷ This finding in 1991 startled the Department of Justice and after a federal judge turned down an emergency stay, the solicitor general under the first Bush administration filed an application with the Supreme Court as a last resort to block disclosure. The Supreme Court by unanimous decision granted the delay, ordering another ruling; four years later the court again ruled for Rosenfeld. In a rare rebuff to the FBI, the court said plainly, “It certainly serves FOIA’s purpose to disclose publicly records that document whether the FBI abused its law enforcement mandate by overzealously investigating a political protest movement.” The Justice Department remained critical of this ruling, noting the “decision conflicts with the law of nearly every other circuit” and “essentially denied protection outright for numerous sources and third parties mentioned in the file.” The Justice Department again took the case to the Supreme Court hoping to get a reversal, but the highest court declined to rule whatsoever in the matter.⁷⁸

In June 2002, Rosenfeld published a series of prize-winning articles in the *San Francisco Chronicle* based on the declassified records. He uncovered secret ties between California Governor Ronald Reagan and the FBI and their efforts to get liberal UC Berkeley president Clark Kerr fired, as well as intensive surveillance of student leaders and groups. Rosenfeld obtained previously redacted FBI memos showing the “FBI’s attempts to cover up unlawful intelligence activities.”⁷⁹

Concealing the Identities of Confidential Informers

For the reasons indicated above, the fight over the identity of undercover informers forms a major conflict in FOIA case law. In brief, the FBI is adamant that it maintain the secrecy of all of its “human assets” and it does not matter if a file is decades-old, the informer is dead, or if the informer participated in illegal activities. The Bureau rigidly maintains that to disclose their identities in declassified files jeopardizes the ability to recruit new informers. As a result, the FBI not only redacts the names of informers, but any contextual material that might suggest their true identity. Most judges interpret the law to protect the FBI’s extensive informer system.

As late as 1980, Director William Webster argued against the application of the FOIA to all Bureau records on the grounds that it would scare away potential recruits.⁸⁰ Much of Webster’s thinking on this issue had its origins in a classified

204-page FBI study, “The Impact of the Freedom of Information Act/Privacy Act on Law Enforcement Activities” (1978–1984).⁸¹ On August 16, 1977, FBI Headquarters sent directives to field offices asking them to assess the impact of open government legislation. Almost all the offices reported a negative impact based on highly selective, anecdotal data. In these memos, the level of official candor about repression is shocking. The anecdotal evidence described cases in which the public may be reluctant to work with the FBI, fearful of disclosure due to the FOIA, and cases in which informers inside political groups withdrew their participation. But, overall, each field office offers only a few examples of a negative impact, so the evidence still is weak inasmuch as there are hundreds or thousands of informers active in a city depending on its size.

Universities are the focus of several FBI memos. On June 20, 1978, the field office in Phoenix, Arizona, reports on changing relations with Arizona State University. College “officials have adopted an official policy of non-cooperation with our investigators since the Freedom of Information–Privacy Act. This policy is carried out [at] all levels of the University’s administration. Prior to the Freedom of Information–Privacy Act, the University was most cooperative.” On July 11, 1978, the FBI office in Sacramento, California, also noted an adverse change with at least one higher education institution. The FBI report states, “Source at a local Sacramento university advised that his legal department has counseled him against furnishing information from school records to federal investigators because of the FOIPA.”⁸²

In several cities, the FBI reported reduced access to business and bank records. A Newark, New Jersey, FBI memo indicated: “Prior to the FOIPA, a rapport existed with substantially all the banks in the State of New Jersey, whereby information concerning transactions in depositor’s accounts and other information concerning depositors was made available to the FBI without the use of a subpoena.” The passage of FOIA altered this arrangement: “Increased demand for subpoenas by banks is obviously attributable to the FOIPA inasmuch as the bank fears that their cooperation, if divulged, would be represented to the public as an unethical business practice and this counterproductive to their image and their business.”

The Newark office concluded in a five-page memo “that there is no doubt FOIPA has hurt the FBI’s ability to investigate.” The FOIA and Privacy Act “has had a chilling effect on the use of one of the most powerful adjuncts of the investigative profession, the informer, by stifling the fear of exposure [in] those who would come forward with information.”⁸³

In New York City, the secret ties between the FBI office and financial institutions also changed. On February 14, 1979, the New York FBI repeated a similar argument: “Subsequent to enactment of FOIPA legislation, the financial institutions have become increasingly concerned that any public disclosure of the

forementioned confidential relationship with the FBI could cause them loss of confidence and business in the international community.” They concluded, “While it is impossible to document the total impact of these laws have had on overall investigative effectiveness, there has been a recent noticeable reluctance by the banks to furnish financial information in FBI investigations.” Legal departments of several New York banks studied their disclosure procedures and “it is the opinion of the NYO that financial information will become increasingly difficult, if not impossible to obtain.”⁸⁴ This analysis overlooked the passage of the Right to Financial Privacy Act (1978), which required law enforcement for the first time to get subpoenas for customer financial records.

Although in San Antonio the FBI reported “no decline in the number of current informants due to the disclosure provisions of the FOIAPA,” they worried that one person in particular might cease to cooperate. His name is redacted in the declassified file: “He expressed concern for his career if his activities on behalf of the FBI become a matter of public knowledge. It is questionable if he would have assisted the FBI had he known that there existed the possibility of his ultimate identification as an informant.” Other undercover operatives also reassessed their collaboration. In Chicago, the FBI once again reported no concrete examples of losing informers in intelligence cases. But one operative inside the Communist Party worried about his safety. This is a recurrent theme, informants worrying about revenge attacks by radicals.

Since the advent of the FOIPA, numerous documents containing information furnished by this asset has been released under provisions of these laws. The asset has had access to these released documents which fact has had a deleterious effect upon his relationship with the FBI. There has been a noticeable decrease in the volume of information furnished by the asset, and the asset has been frank to state that he no longer has his former confidence that the FBI can continue to maintain the confidentiality of this relationship. On numerous occasions the asset has expressed reluctance to furnish information because he fears the ultimate release of such information under the FOIA may result in physical jeopardy or in leaving him open to civil suit by individuals who have been the subject of his reporting. This asset has not terminated his relationship with the FBI, but the relationship is now a very tenuous one. Should this relationship be terminated, it would result in the loss of extremely valuable information and severe damage to the national security interests of the United States.

Significantly, the FBI did not document any cases of violence against informers, despite the concerns raised by several operatives.⁸⁵

In FOIA litigation, the Bureau argued the age of files was irrelevant in censoring decisions fighting full disclosure of material fifty years or older. In their view, the passage of time did not diminish the need for secrecy. In

1992, Eric Davin sued to obtain more than ten thousand pages of records compiled during the 1930s and 1940s on David Lasser and the Workers Alliance of America (WAA), a Leftist group that fought for the unemployed during the Great Depression. Davin's initial request yielded only 263 pages, but after litigation commenced the FBI released an additional 2,947 pages. The lawsuit centered on the withheld material—about 7,400 pages. The Bureau reiterated the claim that “to reveal the names in the context of these records could reasonably be expected, due to the type of investigation, to put the lives of individuals in danger, cause embarrassment and humiliation, and would therefore, be an unwarranted invasion of privacy.”⁸⁶ In another case involving 1930s labor records, the FBI insisted on protecting the confidentiality of its undercover sources even though most were deceased. Eric B. Halpern sued for FBI files on the unionization of the meatpacking industry by the Committee for Industrial Organizations (CIO). In the view of the FBI, it does not matter that the Cold War is over and the issue of Communism—the pretext for the original FBI surveillance—was no longer a significant public policy or law enforcement concern. As the court narrowly wrote in 1999 after five years of litigation, “First, the passage of many years is an insufficient reason to require the release of documents. . . . It makes no difference in our analysis whether now, in hindsight, the objective need for confidentiality has diminished; what counts is whether then, at the time the source communicated with the FBI, the source understood that confidentiality would attach.”⁸⁷

In a second lawsuit, Peter Irons unsuccessfully sought records on FBI informants who testified against Communist Party leaders during the Smith Act court trials of the 1940s. Disclosure hinged on the fact that the informants already testified openly so their identities were no longer secret. Irons argued the FBI should not be able to censor their names or censor the information they provided to the Bureau. A conservative court rejected this claim hoping to build a wall against disclosure of informant activity under any circumstance. Rather than narrowly applying exemptions, the court acted to protect the secrecy of undercover operations. In 1989, a rare dissenting court opinion stated this point: “What this case primarily concerns is not the protection of witnesses but protecting a government agency from public embarrassment. The record of what happened during the witch-hunts of the 1950s should be made available to historians. That is one of the purposes of the Freedom of Information Act. Under the rubric of ‘security’ and ‘protecting government sources,’ the Act is slowly being strangled to death.”⁸⁸

In a better known dispute over Cold War records, the court stated in *Schrecker v. U.S. Department of Justice* that the Bureau could protect its intelligence sources “regardless of whether they are active or inactive, alive or dead.” The case established a “100-year rule,” which is problematic for sev-

eral reasons. In brief, informer identities will be released only if it is clear in FBI files that a person was born at least one hundred years ago. But for the vast majority of people life expectancy is less than one hundred years old, especially for those born early in the twentieth century. The U.S. Census, for example, releases detailed personal information after seventy-two years. Most importantly, the FBI is not forced to determine the age of the people in their files unless the age or social security number already is indicated or the person appears in *Who Was Who*, a book of famous individuals. The court noted that 113 names were mentioned in the records requested by Schrecker, and the burden on the FBI to determine their ages was unreasonable. Incredibly, not one person out of the 113 officially were determined to be deceased according to the government's very limited search methods. However, by suing the plaintiff secured new material—the government released about 15,400 pages of a 24,000-page file after the start of litigation, compared to just 1,500 pages before litigation commenced.⁸⁹

The Privacy Act

The Privacy Act (1974) places some curbs on the dissemination of classified information. First, the act forbids the disclosure of confidential or secret information collected by the government to unauthorized third parties. Congress hoped to prohibit the Hoover-era practice of distributing information—and gossip—from investigatory files to journalists, Congressmen, employers, and right-wing groups to undermine subjects. As Theoharis notes, Hoover's FBI treated its intelligence information as a weapon to use willfully against Americans it did not like. Hoover showed a "willingness to use derogatory personal information to discredit those whom he considered subversive. In the case of radical activists, no holds were barred—in part because the leaking of derogatory personal information about radical activists carried minimal political risk, given their pariah status during the cold war. Just as important, conservative reporters and editors were more than willing to honor Hoover's condition for using this information—that they not disclose the FBI's covert assistance."⁹⁰

The Privacy Act states that disclosure of the content of an FBI file to a third party may not occur in any form. Improper disclosure is not only illegal but also subject to civil compensation to the victim if the discloser shows a willful intention and causes damages. However, there are loopholes in the law undermining its effectiveness. The question of what constitutes a "record" is not clearly defined. Another loophole concerns the "routine use" provision. A government agency can release its information on an individual if disclosure

of the record is for routine use by the government. Two law professors write, "As currently applied, the routine use exemption undercuts the Privacy Act's attempt to create a statutory definition of obligations regarding personal information. . . . Federal agencies have cited this exemption to justify virtually any disclosure of information without the individual's permission." The federal courts have ruled on a number of Privacy Act cases but never narrowed the government's routine use abuse.⁹¹

There are only three prominent cases where the FBI was held accountable for wrongful information disclosures. FBI chemist Frederic Whitehurst, who blew the whistle on serious misconduct at the FBI Crime Lab, sued the Bureau for divulging derogatory, incomplete and incorrect information about him to third persons without his consent for the purpose of discrediting and intimidating him.⁹² Wen Ho Lee, the accused nuclear physicist at Los Alamos National Laboratory, also sued the government and claimed the FBI leaked personal information about him to the media and his work colleagues to damage him. In 2006, he received more than \$1.6 million from the federal government and five media organizations.⁹³ The largest Privacy Act settlement went to Steven J. Hatfill, a former army biodefense researcher falsely investigated by the FBI in the deadly anthrax letters case of 2001. Hatfill won \$4.6 million in 2008, ending a five-year legal battle, claiming the FBI leaked derogatory material about him to the media to smear his reputation. In one incident, an FBI surveillance vehicle ran over his foot when Hatfill approached the car to take a picture of the driver.⁹⁴

The Privacy Act also allows an individual or group to amend their government file if it contains errors or inaccuracies. However, FBI records largely are excluded from this provision, and there are few cases of such amending. In a few select cases courts have ruled that FBI investigatory records should be sealed or taken out of the hands of the FBI and sent to the National Archives. In these cases, which we discuss in the next chapter, stopping the flow of information resulted from successful civil lawsuits against spying. However, in most cases FBI files become permanent records, which will be reviewed in connection with many kinds of federal employment applications and can be shared with state and local governments as well as agencies of foreign governments.

The question of amending FBI records is not a minor matter. FBI files often are riddled with exaggerations, distortions, and outright errors. Reports by informers, who are not trained law enforcement personnel, commonly are inflated and inaccurate. These errors then become a permanent government record that lives without any modification. They constitute a type of database slander that can be used against an individual or group in the future. How often do FBI files contain errors? It is hard to know precisely, but a few cases

offer examples. *Village Voice* writer Nat Hentoff requested his file under the FOIA. The two-hundred-plus-page file says Hentoff once visited Cuba to meet with pro-Castro activists. Hentoff never had been to Cuba. “The file was like a vacuum cleaner,” he said. “They picked up whatever they thought had some kind of relevance to their pre-set hypothesis—you were a communist sympathizer or party member.”⁹⁵ Carol Brightman authored several books, including one on the Grateful Dead, and she found that the FBI classified her as “armed and dangerous” in her 480-page dossier. “It’s hilarious in a way,” she said. “I never even owned a gun.” It took four years for Brightman to receive her file.⁹⁶ “They got all sorts of things wrong,” says James Baldwin’s biographer: “They thought he was married, when of course he was at the time a notorious homosexual. They got titles of his books wrong; they got his birthplace and date of birth wrong.”⁹⁷ In Price’s extensive research on anthropologists, he found that “FBI files are frequently full of mistakes and misinformation . . . the FBI are also known to invent fictional informants to suit their purposes, so the non-identification of ‘confidential sources’ presents a very real problem for scholars.”⁹⁸

A final provision of the Privacy Act maintains that all government agencies must publicly disclose the existence of all record systems. The FBI can no longer keep a “Do Not File” system that no one else in the government knows about and is beyond the scope of open government laws.⁹⁹ In fact, for decades the Bureau was known to be very territorial about the information they gathered, reluctant to share their files with others in government unless it served a specific goal. They leaked information strategically to members of Congress, for example, to advance political policing but they would refuse to open their files to any outsiders. To a degree, the FBI cooperated with the House Un-American Activities Committee (HUAC), supplying them information on radicals, because they shared common goals to suppress protest movements. But Hoover kept most files closed. There was limited information flow even between local field offices and communications about dirty tricks had to be directed first through Hoover, the master of the system.¹⁰⁰

In recent years, the U.S. Government Accounting Office (GAO) repeatedly complained about lack of access to FBI files. In a 1990 report on closed international terrorism cases, the GAO wrote, “We were not able to determine if the FBI abused individuals’ First Amendment rights when monitoring these activities or if the FBI had a reasonable basis to monitor such activities. . . . We could not make such determinations because the FBI did not give us complete access to the information in closed cases.” The GAO acts as the investigative arm of Congress. If it is unable to view FBI files—even in closed cases—who can?¹⁰¹ In 1994, the director outlined the Bureau’s uncooperative attitude toward GAO inspections of its records.

Despite instructions from FBIHQ, GAO often will ask for documentation and more information than they are authorized to receive. For example, there have been a number of requests from GAO for information relating to pending investigations. As a matter of longstanding policy, FBIHQ will continue to deny GAO access to any information that will identify pending cases. GAO is not to be given direct and unlimited access to our files, nor are they to be given the identities of informants or sources of information.¹⁰²

Several months before 9/11, the same criticism was leveled in a critical report describing how GAO staff was stymied in dealing with the FBI: “While over time we have experienced access-to-records problems at different federal agencies, our experience at the FBI is by far our most contentious among law enforcement agencies. The FBI’s reluctance to consistently honor our statutory rights of access has forced us to expend significant energy and resources. The FBI has limited our ability to respond to our clients—congressional committees and individual members of Congress—in a timely and efficient way.”¹⁰³

After 9/11, city police complained the FBI limited the flow of information to them despite the stated urgency to break down the wall between criminal and intelligence cases. However, the Bureau, responding to congressional requests, undertook a special effort to save from routine destruction all its files relevant to the 9/11 attacks. The Senate and House Intelligence committees asked the attorney general to order the FBI to “take immediate steps to preserve any and all hardware, software, electronic media, or communications including e-mail, documents, agency records and/or materials of any type, including communications of any type to or from other Government agencies, that may relate to the attacks of September 11, 2001.” Such a request was highly unusual and the FBI complied by sending a directive to all field offices despite the fact that the congressional inquiry might place blame on the Bureau. The request included all handwritten notes by agents “even if they do not otherwise qualify as ‘records’ under the Federal Records Act.” A few field offices responded that some material already had been destroyed.¹⁰⁴ The FBI Office of the General Counsel (OGC) also was guilty of destruction of records. In the FBI file on the National Archives, I found a memo dated April 4, 2002, which says:

Some OGC personnel participated in the “watch list” project. This entailed reviewing files to determine or assist in determining which individuals should be placed on or removed from the list of persons of investigative interest to the FBI, or to pass the name onto another agency. Handwritten notes taken by individual personnel participating in this aspect of the project were placed in several spiral

notebooks. These notes were destroyed by participating personnel at the conclusion of the project.¹⁰⁵

Conclusion

In 1966, the FOIA became one of the first open government records laws worldwide and its passage encouraged other nations to adopt sunshine measures. Today, the U.S. government's approach is considered regressive. Unlike the United States, over eighty nations have adopted written constitutional provisions granting citizens a right to access government information. About half of these nations also passed FOI laws to strengthen disclosure.¹⁰⁶ The multiple problems with the FBI's relationship to the FOIA have not been resolved. To a considerable extent, political policing depends on the maintenance of secrecy, requiring the censoring of records. This censorship conflicts with the intent of the law. It is hard to break through the Blue Wall of Silence. The "silence" almost always facilitates the cover-up of information. For example, we still do not know how often the FBI redacts files to conceal illegal conduct. In the process of declassification, the false denial of records and the destruction of documents also greatly reduces information flow. The misuse of FOIA exemptions to redact material becomes an abuse of power, which the courts usually legitimate. Not only is there no public accounting of the scope and content of FBI records, it is impossible to estimate how much material is situated beyond disclosure. If litigants have so much trouble prying out information, what about the vast majority of people who accept the FBI's censoring without suing? How much material is hidden from view?

Lawsuits against the government are an important but small part of the declassification process. During the last forty years, few judges proved willing to rule that the records of FBI investigations, when conducted as political policing, should be opened with few restrictions. Instead, they sanctioned the surveillance by ruling that these investigations met the standard of a legitimate law enforcement inquiry. As a result, the identities of collaborating third parties, especially informers, remain secret. Notably, the court's protection of the informer system in black power and anti-Communist investigations hinders historical understanding. The possibilities for scholarship are great if third-party identities are declassified. As advocates of open government ask: Who ultimately owns the information in FBI files? While the FOIA established the public's "right to know," the government's continued resistance to opening police records poses a problem to those studying state behavior from below. Liberating information from secret files is critical to constructing a full knowledge of efforts to suppress dissent and provides context for the

framing of the so-called “security” argument long used to limit disclosure. Moreover, as Alasdair Roberts argues, greater openness actually can bolster the ability of societies to maintain security. Better policy decisions may result when government information is made available for the public to scrutinize and examine: “Oversight by nongovernmental organizations—made possible by access to information held by security agencies—can compensate for inadequate supervision within the political process.”¹⁰⁷ More than ever before the public has a compelling historical interest to hasten the flow of information about the secret activities of the FBI. The investigation of information flows contextualized by a historical framing of the “right to know” can contribute to a better understanding of how democracies function to protect the public interest.

Notes

1. Athan G. Theoharis, “Secrecy and Power: Unanticipated Problems in Researching FBI Files,” *Political Science Quarterly* 119 (2004): 290. See also Theoharis, “‘In-House Cover-up’: Researching FBI Files,” in *Beyond the Hiss Case: The FBI, Congress, and the Cold War* ed. Theoharis (Philadelphia: Temple University Press, 1982), 35–55; Theoharis, ed., *A Culture of Secrecy: The Government Versus the People’s Right to Know* (Lawrence: University of Kansas Press, 1998); William C. Pratt, “Using FBI Records in Writing Regional Labor History,” *Labor History* 33 (Fall 1992): 470–82; and John A. Noakes, “Using FBI Files for Historical Sociology,” *Qualitative Sociology* 18 (1995): 271–90.

2. Several works address the trend toward global transparency in government. David Banisar, *Freedom of Information Around the World: A Global Survey of Access to Government Information Laws* (London: Privacy International, 2006), www.privacyinternational.org/foi/foisurvey2006 (May 4, 2008); Thomas Blanton, “The World’s Right to Know,” *Foreign Policy* 131 (July–Aug. 2002): 50–58; Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (New York: Cambridge University Press, 2004); Tina Rosenberg, *The Haunted Land: Facing Europe’s Ghosts after Communism* (New York: Vintage Books, 1995); Open Society Justice Initiative, *Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries* (New York: Open Society Institute, 2006), 43, 73–78, www.soros.org/initiatives/osji/articles_publications/publications/transparency_20060928 (May 5, 2008); Ann Florini, ed., *The Right to Know: Transparency for an Open World* (New York: Columbia University Press, 2007), 116–42; Bruce E. Cain, Patrick Egan and Sergio Fabbrini, “Towards More Open Democracies: The Expansion of Freedom of Information Laws,” in *Democracy Transformed? Expanding Political Opportunities in Advanced Industrial Democracies*, ed. Cain, Russell J. Dalton, and Susan E. Scarrow (Oxford: Oxford University Press, 2003); Henry H. Perritt Jr., and Zachary Rustard, “Freedom of Information Spreads to Europe,” *Government Information Quarterly* 17 (4th Quarter 2000): 408–12; Kieran

Williams and Dennis Deletant, *Security Intelligence Services in New Democracies* (New York: Palgrave, 2000); and Timothy Garton Ash, *The File: A Personal History* (New York: Vintage Books, 1997).

3. Open Society Justice Initiative, *Transparency and Silence*, 43, 73–78. See also Ivan Szekely, “Central and Eastern Europe: Starting from Scratch,” in Florini, *The Right to Know*, 116–42; and Cain, Egan and Fabbri, “Towards More Open Democracies,” 120–23.

4. Maria Los and Andrzej Zybortowicz, *Privatizing the Police State: The Case of Poland* (New York: Macmillan, 2000), 156–58; Williams and Deletant, *Security Intelligence Services in New Democracies*, 56, 232–35, 242; Tomas Skucas, “Lithuania: A Problem of Disclosure,” *Demokratizatsiya* (Summer 2004): 5.

5. Banisar, *Freedom of Information Around the World*, 31; John Miller, “Settling Accounts with a Secret Police: The German Law on the Stasi Records,” *Europe-Asia Studies* 50 (March 1998): 305–30; Ash, *The File*; “Piecing Together the Dark Legacy of East Germany’s Secret Police,” *Wired Magazine*, Jan. 18, 2008, www.wired.com/print/politics/security/magazine/16-02/ff_stasi (May 5, 2008).

6. David Banisar, “Freedom of Information International Trends and National Security,” (paper presented at the Workshop on “Democratic and Parliamentary Oversight of Intelligence Services,” Geneva, Switzerland, Oct. 3, 2002), 7; Open Society Justice Initiative, *Transparency and Silence*, 43, 73, 129; Banisar, *Freedom of Information Around the World*, 19–22, 27, 63, 70–71, 91–92, 115–16, 140; Tony Mendel, *Freedom of Information: A Comparative Legal Survey* (Paris: Unesco, 2008), 101–5, http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/[freedom_information_en.pdf](http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf) (May 5, 2008).

7. Despite the poor track record in responding to disclosure law, the United States remains better than many long-established European democracies in declassifying domestic intelligence records. For example, West Germany never enacted a FOI law. England’s Parliament finally passed one in 2000 after several decades of debate but completely excluded the operations of security and intelligence services, such as the MI5 and MI6. Ironically, even current ministers in the government and Parliament members cannot obtain their own police files if they were student protestors during the 1970s. By contrast, the nations of Northern Europe have strong FOI practices and were early leaders in the openness movement. Sweden enacted the earliest FOI law, dating to 1766, providing that every citizen have free access to official documents. Finland passed a law in 1951 and later included a rare provision: Requests for information can be made anonymously to prevent retaliation by government. FOI laws passed in Denmark (1964, 1970) and Norway (1970) also rank high for efficiency: In Norway, requests must be responded to in three days, unlike the twenty-day time frame in the U.S. For a comparison between the United States and other nations in releasing information in the “security sector” of government, see Alasdair Roberts, “Transparency in the Security Sector,” in Florini, *The Right to Know*, 309–36.

8. James Madison to W. T. Barry, Aug. 4, 1822, in *The Writings of James Madison*, vol. 9, ed. G. P. Hunt (New York: G. P. Putnam’s Sons, 1910), 103.

9. President’s message, “Availability of Government Records and Information,” *Weekly Compilation of Presidential Documents* 895 (July 11, 1966).

10. Quoted in Suzanne J. Piotrowski, *Governmental Transparency in the Path of Administrative Reform* (Albany: State University of New York Press, 2007), 24.

11. William H. Webster, "An FBI Viewpoint Regarding the Freedom of Information Act," *Journal of Legislation* 7 (1980): 8.

12. In addition, Reagan's 1982 Executive Order 12356 empowered federal agencies to withhold information for national security reasons, a restatement of previous administration practices. The Order remained in effect until President Bill Clinton revised it in 1995, allowing for greater declassification of records that are twenty-five years old. Herbert N. Forestel, *Freedom of Information and the Right to Know: The Origins and Applications of the Freedom of Information Act* (Westport, Conn.: Greenwood Press, 1999), 54–56; Angus Mackenzie, *Secrets: The CIA's War at Home* (Berkeley: University of California Press, 1997), 150–53; Grant H. Kester, "Access Denied: Information Policy and the Limits of Liberalism," in *Ethics, Information and Technology*, ed. Richard N. Stichler and Robert Hauptman (Jefferson: McFarland, 1997), 218.

13. Office of Information Policy, U.S. Department of Justice, "FOIA Guide: Exclusions," 1999, 2. In 1990, the FBI said that it invoked the "exclusion" of records in eighty-eight cases. Alexander Charns, *Cloak and Gavel: FBI Wiretaps, Bugs, Informers, and the Supreme Court* (Urbana: University of Illinois Press, 1992), 138.

14. Theoharis, "Secrecy and Power," 283; David Garrow, *The FBI and Martin Luther King, Jr.: From "Solo" to Memphis* (New York: W.W. Norton, 1981), 231.

15. "Judge Blocks FBI From Destroying 30 Years of Documents in Archives," *Washington Post*, Jan 11, 1980; Ann Mari Buitrago and Leon Andrew Immerman, *Are You Now or Have You Ever Been in the FBI Files?* (New York: Grove Press, 1981), 35–41; Theoharis, "In-House Cover-up," 35–55.

16. A. J. Decker Jr. to J. W. Awe, "Destruction of Records," Nov. 19, 1976, Destruction of Records FBI File.

17. Mr. Finzel to R.W. Scherrer, "Destruction of Records, National Archives and Records Service, Appraisal of FBIHQ and Field Records," March 5, 1981, National Archives FBI File.

18. *American Friends Service Committee et al. v. Webster*, 485 F. Supp. 222, 229–30 (1980).

19. Theoharis and John Stuart Cox, *The Boss: J. Edgar Hoover and the Great American Inquisition* (Philadelphia: Temple University Press, 1988), 330; Theoharis, *J. Edgar Hoover, Sex, and Crime* (Chicago: Ivan R. Dee, 1995), 104.

20. J. V. DeSarno to Mr. Baugh, "Destruction of Field Office Files and Records," Sept. 13, 1995, Destruction of Records FBI File; Michael Ravnitzky, "FBI Plans to Destroy Nearly Five Million Pages of Records," IRE-L Internet posting, Sept. 17, 2006.

21. David H. Price, *Threatening Anthropology: McCarthyism and the FBI's Surveillance of Activist Anthropologists* (Durham: Duke University Press, 2004), 396, 398.

22. Ernie Lazar to Ivan Greenberg, email, Oct. 23, 2006. Lazar noted FBI efforts to limit his activism. "At one time, the FBI told me I was their single largest requester (i.e., 5 percent of all requests received). Normally, every August or September (just before the fiscal year ends) the Bureau calls me and asks that I stop sending requests because the volume of my requests skews their annual statistical reports in terms of percentage processed to conclusion."

23. Scott A. Hodes, "FOIA Appeals, the Unspoken Problem," Oct. 15, 2005, <http://www.LLRX.com> (Oct. 20, 2005).

24. Theoharis noted, "For example, when processing my request for FBI Director Hoover's Official and Confidential File, FBI personnel at first released only 6,000 heavily redacted pages of this 17,700-page file. Having been granted five appeals over twenty years, I have by now had released to me approximately 17,000 unredacted pages." Athan G. Theoharis, *The FBI and American Democracy: A Brief Critical History* (Lawrence: University of Kansas Press, 2004), 180. See also Ward Churchill and Jim Vander Wall, *The COINTELPRO Papers: Documents from the FBI's Secret War Against Dissent in the United States* (Boston: South End Press, 1990), 31–32.

25. Lazar to Greenberg, email, Oct. 23, 2006.

26. Mike Forrest Keen to Ivan Greenberg, email, April 24, 2000. See his *Stalking the Sociological Imagination: J. Edgar Hoover's FBI Surveillance of American Sociology* (Westport, Conn.: Greenwood Press, 1999).

27. Price, *Threatening Anthropology*, 360.

28. Theoharis, *The FBI and American Democracy*, 180.

29. Quoted in Forestel, *Freedom of Information and the Right to Know*, 106. In the era of paper records, a standard process governed how the FBI censored files for release, but kept the whole record intact in its files. In 1985, the Department of Justice wrote, "A work copy must first be made from the original records, whether they are hard file or on microfilm. The actual processing and review is then conducted utilizing the work copy. Information exempt from disclosure is redacted by lining through it with a soft-felt pen. Since you can see through the lines these pens make . . . the analyst's supervisor can review his or her work. Also, this see-through version is the copy we retain in our files for appeal or litigation purposes. When the see-through or work copy of the records is fed through copy machines with specially equipped filters, the redacted information will be blacked out and illegible. This is the copy that is sent to the requestor." U.S. Department of Justice, "The Mechanics of FOIA Processing," *FOIA Update* 6 (Fall 1985).

30. By 2007, the FBI began releasing select files in electronic form on CD-ROM, substantially reducing the cost to researchers.

31. Paul McMasters, email posting, May 30, 2000, in response to an article by Michael Doyle ("Missed Information: The Reporting Tool that Reporters Don't Use," *Washington Monthly*, May 2000).

32. Quoted in Richard A. Bumstead, "The Right to Know," U.S. Information Agency, 1994.

33. Michael Ravnitzky, "FOIA Request List from APBnews," n.d. www.thememoryhole.org/foia/apbnews-list (Oct. 4, 2006); Ravnitzky to Ivan Greenberg, email, Oct. 4, 2006.

34. President George W. Bush's chill on openness in government during his first term also was directed to FOIA, as his attorney general issued FOIA guidelines for federal agencies to discourage the release of information whenever there is a "sound legal basis" for doing so. This policy revised Clinton-era guidelines that encouraged the release of information unless release would be harmful. Piotrowski, *Governmental Transparency in the Path of Administrative Reform*, 11, 94–107. See also Alasdair Rob-

erts, *Blacked Out: Government Secrecy in the Information Age* (New York: Cambridge University Press, 2006); Robert M. Pallitto and William G. Weaver, *Presidential Secrecy and the Law* (Baltimore: John Hopkins University Press, 2007); and U.S. Government Reform Committee Minority Office report, *Secrecy in the Bush Administration*, Sept. 14, 2004.

35. The FBI's Hodes wrote in 2006, "There is really no one reason that can be pinpointed as why FOIA litigation takes years to reach a resolution. However, the system is set up in such a way that there is absolutely no reason for the government to move any quicker in pushing the litigation to a final decision. That is because the longer the government can keep the litigation pending, the longer it will not even have the possibility of releasing the requested material." Scott A. Hodes, "The Slow Road: FOIA Litigation," Sept. 17, 2006, www.LLRX.com (Oct. 1, 2006).

36. The Department of Justice, in its *Freedom of Information Act Annual Report*, lists all FOIA suits decided involving the federal government in any given year. For example, 383 suits were decided in 1998 and 80 suits decided in 1997. Some of these suits directly name the FBI as the defendant, but others who sue the FBI name the Department of Justice. In 1998, 82 suits named either the FBI or Justice Department; in 1997, 18 suits named the FBI or Justice Department. See also "New FOIA Lawsuits Remain at High Level," *FOIA Update* 6 (Summer 1985).

37. "Attorney General Gives Openness Speech," *FOIA Update* 17 (Summer 1996).

38. Clarence M. Kelley with James Kirkpatrick Davis, *Kelley: The Story of an FBI Director* (Kansas City: Andrews, McMeel, and Parker, 1987), 175–83; Davis, *Assault on the Left: The FBI and the Sixties Antiwar Movement* (Westport, Conn.: Greenwood Press, 1997), 14–18.

39. Forestel, *The Freedom of Information Act and the Right to Know*, 135.

40. *Weisberg v. U.S. Department of Justice*, 745 F.2d 1476 (1984). In 2002, the FBI sent approximately 189,000 pages on the King Assassination to the National Archives.

41. Allen Weinstein, *Perjury: The Hiss-Chambers Case* (New York: Random House, 1978), xvii. In an interview in 1999, Weinstein said, "I read a paper at the American Historical Association meeting here in Washington and said that there were many questions about the [Hiss] case which could only be resolved if the FBI files were released. The following day, as I discovered when I received my FBI files years later, Mr. Hoover scrolled in the margin of a *Washington Post* story about the paper, 'What do we know about Weinstein?' They proceeded to open an old file on me and they did not find out very much. There wasn't much to find out." Allen Weinstein interview, "Booknotes," *C-Span TV*, March 14, 1999, www.booknotes.org/transcripts (April 2, 2003).

42. Marshall Purlin, statement before U.S. Subcommittee on Criminal Justice, House Committee on the Judiciary, Dec. 16, 1982, 2.

43. Lowell Ponte, "Clinton's Other Domestic Spying Program," *FrontPageMagazine.com*, Feb. 22, 2006, www.frontpagemag.com/Articles/Read.aspx?GUID=112C46BB-EA83-4B57-AC4D-F67A85B0BB18 (May 8, 2008); Civil Rights Division, U.S. Department of Justice, "National Task Force on Violence Against Health Care Providers," July 25, 2008, www.usdoj.gov/crt/crim/tfreppub.php (May 8, 2005). On activist lawyers, see Stuart A. Scheingold and Austin Sarat, *Something to Believe In: Politics, Pro-*

fessionalism, and Cause Lawyering (Stanford: Stanford University Press, 2004); David J. Langum, *William M. Kunstler: The Most Hated Lawyer in America* (New York: New York University Press, 1999); Arthur Kinoy, *Rights on Trial: The Odyssey of a People's Lawyer* (Cambridge, Mass.: Harvard University Press, 1983); David Kairys, ed., *The Politics of Law: A Progressive Critique* (New York: Basic Books, 1998); Martha F. Davis, *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973* (New Haven, Conn.: Yale University Press, 1995).

44. *Republic of New Afrika v. FBI*, 645 F. Supp. 117, 118–20 (1986).

45. *Lamont v. U.S. Department of Justice*, 475 F. Supp. 761 (1979).

46. *Hinton v. U.S. Department of Justice*, 844 F.2d 126 (1986).

47. Philip B. Heymann, *Terrorism and America: A Commonsense Strategy for a Democratic Society* (Cambridge: MIT Press, 2000), 148.

48. The court noted further: “The expurgator never indicates that material had been deleted because the report, for example, discusses attendance at a local Communist Party meeting based on information on who was a confidential source or why providing the information about the meeting will necessarily disclose his identity and violate the personal privacy of other attendees. Instead, the expurgator has obliterated a paragraph of text and said that they did so because the FBI considers doing so justified by its interpretation of one or more FOIA exemptions. . . . With all due respect to the Department of Justice, it is fatuous to say a judge is performing the *de novo* review FOIA requires when the judge is staring at a blank piece of paper. The attached form, denoting code numbers, which is cross-referenced to a declaration that merely explains the FBI’s understanding of a particular FOIA exemption whenever it invokes it, is no help at all when the judge is provided with no contextual explanation of why that exemption applies to the missing page.” *Samuel Gruber Education Project v. Department of Justice*, 24 F. Supp.2d. 9 (1998).

49. *Dunaway v. Webster*, 519 F. Supp. 1059 (1981).

50. Jonathan Weiner, “Give Peace a Chance,” *Nation*, Oct. 20, 1997; ACLU, “FBI Releases John Lennon Files,” Sept. 25, 1997; “Did They Spike FBI Agents’ Drinks With LSD?” *APBnews*, Oct. 18, 1999; Evan D. Hendricks, ed., *Former Secrets: Government Records Made Public Through the Freedom of Information Act* (Washington: Campaign for Political Rights, 1982), 157; “FBI to Release Last of Its John Lennon Files,” *Los Angeles Times*, Dec. 20, 2006.

51. Charns, *Cloak and Gavel*, xvi.

52. David J. Garrow, “The Man Who Was King,” *New York Review of Books*, April 13, 2000, 42.

53. Public Citizen, “25 Years of Obtaining Access to Government Records,” n.d., 3.

54. James Campbell, “James Baldwin and the FBI,” *The Threepenny Review* 77 (Spring 1999): 10–11; Michael Ravnitzky, “News Analysis: Nobody Knows My Name (Except the FBI),” *APBnews*, Jan 7, 1999.

55. “FBI Files Often Contain Untruths,” Associated Press, Dec. 12, 1998; *Sloman v. U.S. Department of Justice* 832 F.Supp. 63 (1993).

56. For example, an FBI memo from Newark, New Jersey, dated Dec. 3, 1992, reported: “The Newark Office of the Drug Enforcement Administration ‘advised that as of this date, the DEA has not had any technical problems with advanced telephone tech-

nology.’ The New Jersey Attorney General’s Office ‘has not experienced any problems with the telephone company since the last contact.’ An agent from the Newark office of the Internal Revenue Service ‘advised that since the last time he was contacted, his unit has not had any problems with advanced telephony matters.’ An official of the New Jersey State Police ‘advised that as of this date he has had no problems with the present technology hindering his investigations.’” Computer Professionals for Social Responsibility, “CPSR Sues FBI for Information About Wiretap Proposal,” Sept. 17, 1992; “FBI’s Operation ‘Root Canal’ Documents Disclosed,” *CPSR Alert*, Nov. 12, 1993.

57. Electronic Privacy Information Center, “Judge Rejects Delay on FBI Wiretap Data,” Oct. 3, 1994.

58. “EFFector Online,” May 6, 1994, 9, <http://w2.eef.org/effector/html/effect07.08.html> (Jan 30, 2003).

59. “CPSR Review of FBI Net Surveillance,” *Risk Digest*, June 4, 1991, 7–8.

60. David Banisar, “FBI Releases Carnivore Documents to EPIC,” Oct. 2, 2000.

61. “Change Made as Carnivore Name Eats Up FBI Goodwill,” *Chicago Tribune*, Feb. 19, 2001.

62. Gregory T. Nojeim, “Threats to Civil Liberties Post-September 11: Secrecy, Erosion of Privacy, Danger of Unchecked Government,” Dec. 14, 2001, 2, www.aclu.org/national-security/threats-civil-liberties-post-september-11-secrecy-erosion-privacy-danger-unchecked.

63. “New FOIA Decisions,” *FOIA Post*, April–June 2003, 3–4.

64. “New FOIA Decisions,” *FOIA Post*, Jan.–March 2005, 3.

65. EPIC, “FOIA Gallery 2006,” 2, www.epic.org/open_gov/foiagallery (June 16, 2007).

66. *FBI v. Abramson*, 456 U.S. at 632, 102 S. Ct. at 2065.

67. *Jones v. FBI*, 41 F.3d 238 (1994).

68. *Williams v. FBI*, 730 F.2d 885 (1984).

69. *Pratt v. Webster*, 673 F.2d 424 (1982).

70. Jack Olson, *Last Man Standing: The Tragedy and Triumph of Geronimo Pratt* (New York: Doubleday, 2000).

71. J. K. Hall, “FOIA Request of Cynthia King Regarding Carol King,” Jan. 26, 1982, FOIPA High Visibility Memoranda 1974–1985 FBI File; *King v. U.S. Department of Justice*, 830 F.2d 210 (1987). See also Ann Fagan Ginger, *Carol Weiss King, Human Rights Lawyer, 1895–1952* (Niwot: University Press of Colorado, 1993).

72. *Wilkinson v. FBI*, 633 F.Supp. 336 (C.D. Cal. 1986); *Wilkinson v. FBI*, 922 F. 2d 555 (1991). See also Robert Sherrill, *First Amendment Felon: The Story of Frank Wilkinson, His 132,000 Page FBI File, and His Epic Fight for Civil Rights and Liberties* (New York: Nation Books, 2005); Dale E. Treleven, “Interviewing a Close Friend, First Amendment Activist Frank Wilkinson,” *The Journal of American History* 85 (September 1998): 516; Frank Wilkinson, “Why I Won My Case Against the FBI: A Personal Story of Twenty Years of Invisible Persecution,” *Human Rights* 15 (Summer 1988): 38–55; Wilkinson, “Revisiting the ‘McCarthy Era’: Looking at *Wilkinson v. United States* in Light of *Wilkinson v. Federal Bureau of Investigation*,” *Loyola of Los Angeles Law Review* 33 (January 2000): 681–698.

73. *Simon v. Department of Justice*, 752 F. Supp. 14, 18 (1990).

74. The case, *Campbell v. Department of Justice* No. 89-3016 (2001), is summarized in *FOIA Post*, Sept. 4, 2002.

75. *Irons v. Bell*, 596 F.2d 468 (1979).

76. *Ferguson v. FBI*, 762 F. Supp. 1082 (1991); *Ferguson v. FBI*, 957 F.2d 1068 (1992).

77. *Rosenfeld v. U.S. Department of Justice*, 761 F.Supp. 1440 (1991).

78. “The Supreme Court Stays FBI Disclosures,” *FOIA Update* 12 (Summer 1991); *Rosenfeld v. U.S. Department of Justice*, 57 F.3d 803 (1995); “Rosenfeld Decision Issued by Ninth Circuit,” *FOIA Update* 16 (Spring/Summer 1995).

79. Seth Rosenfeld, “The 17-Year Legal Battle to Get the Campus Files,” *San Francisco Chronicle*, June 9, 2002.

80. Webster, “An FBI Viewpoint Regarding the Freedom of Information Act,” 8.

81. I obtained a redacted copy of this report, first declassified in 2003, under the FOIA.

82. FBI field office, Phoenix, Arizona, “General Accounting Office (GAO) Study to Evaluate the Impact of the Freedom of Information (FOIA) and Privacy Act (PA) are Having on Law Enforcement Activities,” June 20, 1983.

83. FBI field office, Newark, New Jersey, “General Accounting Office Study to Evaluate the Impact of the Freedom of Information Act (FOIA) and Privacy Act (PA) Are Having on Law Enforcement Activities,” May 19, 1978.

84. FBI field office, New York, New York, “General Accounting Office (GAO) Study to Evaluate the Impact the Freedom of Information Act/Privacy Act are Having on Law Enforcement Activities,” Feb. 14, 1979.

85. I want to further quote the FBI file (“Impact of the Freedom of Information/Privacy Act on Law Enforcement Activities”) because its recounting of informer behavior is illuminating. When American Communists requested FBI files under the FOIA, they received special attention in this report. For example, in the nation’s capitol the FBI field office is active to protect the elite, concerned with espionage to a greater extent than other field offices. So it is not surprising that investigations of local Communists is privileged, inasmuch as the Other may break the law in untold ways. On March 1, 1979, the FBI writes, “On February 22, 1979, a confidential source, of known high reliability, advised that at a state-wide meeting of a state organization of the Communist Party USA (CPUSA), held during the fall-winter of 1978–1979, an announcement was made by a long-term established Communist Party (CP) leader, encouraging all CP members to request their files from the FBI. This leader further stated that the request for their files by CP members was creating a real problem for the FBI and that all members should make this request if possible. Another member announced to the group that he had recently made such a request for his file from the FBI. Other members of this group have also made requests for their files from the FBI. The prime motivating force within this CP state organization to have the membership make requests for their files is a party member and a local practicing attorney.”

86. *Davin v. U.S. Department of Justice*, 60 F.3d 1043 (1995); ACLU, “Appeals Court Rejects Government’s Attempt to Conceal Historical FBI Spy Documents,” Aug. 9, 1995.

87. *Halpern v. FBI*, 181 F.3d 279 (1999).

88. *Irons v. FBI*, 880 F.2d 1446 (1989); *FOIA Update* 10 (Summer 1988) and *FOIA Update* 11 (Summer 1989).

89. *Schrecker v. U. S. Department of Justice*, 14 F. Supp. 2d 111 (1998); *Schrecker v. U.S. Department of Justice*, 74 F. Supp. 2d 26 (1999); *Schrecker v. U.S. Department of Justice*, 349 F.3d 657 (2003). Ellen Schrecker's lawsuit focused on FBI files on Gerhart Eisler, a German Communist who lived in the United States during the 1940s, and union leader Clinton Jencks of the Mine, Mill and Smelter Workers.

90. Theoharis, *J. Edgar Hoover, Sex, and Crime*, 98–99.

91. Paul Schwartz and Joel R. Reidenberg, *Data Privacy Law: A Study of United States Data Protection* (Charlottesville, Va.: Michie Law Publishers, 1996), 95–96. See also David Flaherty, *Protecting Privacy in Surveillance Societies* (Westport, Conn.: Greenwood Press, 1989), 323.

92. National Whistleblower Center, "FBI Whistleblower Gets Record Settlement," March 11, 1998.

93. "U.S., Media Settle with Wen Ho Lee," *Washington Post*, June 3, 2006.

94. "Scientist Is Paid Millions by U.S. in Anthrax Suit," *New York Times*, June 28, 2008.

95. "FBI Files Often Contain Untruths."

96. "The Man Who Keeps the FBI's Secrets," 2.

97. Ravnitzky, "News Analysis," 4.

98. Price, *Threatening Anthropology*, 360.

99. The "Do Not File" records system tracked the FBI's illegal activity, such as warrantless searches or wiretaps, which were hidden from the regular file system of the FBI. In this way, the records of illegal activity remained beyond the reach of outside government inspectors. To conceal the existence of illegal wiretaps or bugs, the FBI also said in their reports that information gathered from these sources came from an "anonymous" or "confidential" persons. Macro, in *Beyond the Hiss Case*, 97; Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (Boston: Little Brown, 1998), 226.

100. Cunningham, *There's Something Happening Here*, 269–70.

101. "Report Cites F.B.I.'s Following of Terrorist Suspects," *New York Times*, Oct. 9, 1990.

102. Director to all SACs, "Liaison with the General Accounting Office (GAO)," Aug. 12, 1994, National Archives FBI File.

103. U.S. General Accounting Office, "GAO's Work at the FBI: Access to Data, Documents, and Personnel," June 2001, 6.

104. See the following FBI memos in the National Archives FBI File: Office of the General Counsel to All Divisions, "Preservation of Records Pertaining to Attacks of 9/11/2001," March 4, 2002; Office of the General Counsel to All Divisions, "Preservation of Records Pertaining to Attacks on 9/11/2001," March 12, 2002; Los Angeles Field Office to Director, "Preservation of Records Pertaining to Attacks of 9/11/2001," March 14, 2002; Washington Field Office to William Hooton, "Preservation of Records Pertaining to Attacks of 9/11/2001," March 15, 2002.

105. Deputy General Counsel, Office of the General Counsel, to Records Management, "Preservation of Records Pertaining to Attacks of 9/11/2001," April 10, 2002, National Archives FBI File.

106. Daniel J. Metcalfe, "Implementing FOIA—Does the Bush Administration Executive Order Improve Processing?" Hearing by the Subcommittee on Government Management, Finance, and Accountability, Committee on Government Reform, U.S. House of Representatives, July 26, 2006, 8; Banisar, *Freedom of Information Around the World*, 6–7, 30–31, 160.

107. Alasdair Roberts, "Transparency in the Security Sector," in *The Right to Know*, 324.

7

Suing the FBI for Spying

HOLDING THE SECRET POLICE ACCOUNTABLE for crimes is not an easy task even in a constitutional democracy. Yet there is a buried history of people challenging the power of the FBI through civil rights lawsuits against spying. This bottom-up legal practice dates from 1969 and is part of a growing movement to use the courts to advance social justice issues. I identify forty-seven civil lawsuits. In a majority of cases, plaintiffs won by proving violations of the First or Fourth Amendments. Achieving victory against political policing meant ending spying and in some cases winning financial compensation or reparations.¹ Plaintiffs contested FBI conduct during the COINTELPRO period, and in recent years they also achieved large settlements with the government. Reconstructing the story of these victories—as well as some of the defeats—casts new light on popular resistance to unjust state power. The heroic efforts of these legal pioneers deserve our attention. “Victims” of repression exhibited agency and helped to expand the scope of democratic society.

Although the FBI targeted thousands of Americans, the bold decision to contest political policing in a court of law was slow to take hold. This offensive legal strategy did not seem possible during the Red Scare of the 1950s, when progressive lawyers were largely on the defensive representing radicals who faced criminal charges brought by the House Un-American Activities Committee (HUAC); radicals dismissed by the government or the army for subversive activities; leaders charged with Smith Act violations; and immigrants deported under the McCarran Act.² In 1969, attorneys representing the defendants in the Chicago Conspiracy case initiated the first civil lawsuit against FBI spying. The defendants had been arrested for protests outside

the Democratic Party Convention and they decided to challenge the Justice Department over a pattern of warrantless eavesdropping on their activity. Although *Dellinger v. Mitchell* resulted in defeat for the plaintiffs, it nonetheless broke new ground by even imagining the presumption that it is possible to challenge the federal government for FBI rights violations. Led by attorneys William Kunstler and Arthur Kinoy, the case tried to establish a broad class action challenge on behalf of “all American citizens who have, do, or intend to advocate ideas, policies, and political positions which are unpopular, controversial, or who otherwise dissent from the ideas, policies, and political positions predominant in American society.”³ As Kinoy explained, radical attorneys long suspected that the FBI engaged in secret, illegal wiretaps but when they tried to raise the issue before judges, they always lost. *Dellinger* pushed the issue to the forefront by trying a “creative” way to challenge official repression, using litigation to achieve social justice goals.⁴

In 1971, the U.S. Supreme Court decided the case of *Bivens v. Six Unknown Named Agents*, bringing an important change in the law. *Bivens* provided a constitutional means to hold the Bureau accountable. Authored by Justice William Brennan, the Court ruled for the first time that federal law enforcement agencies can be held liable for civil rights violations. Yet lawsuits under *Bivens* proved difficult to initiate because the next year the Supreme Court decided in *Laird v. Tatum* (1972) that the plaintiff has to show more than a “chilling effect” on First Amendment rights to have standing in an anti-spying case. One has to show “specific present objective harm or a threat of specified future harm.” Only under such narrower circumstances can the court tell the FBI to end their surveillance or award money.⁵ Moreover, documenting that the FBI used illegal surveillance methods did not guarantee the ability to sue. Illegal surveillance did not meet the *Tatum* standard unless the overall FBI activity qualified as harassment. No clearly defined legal standard for FBI harassment existed, although such activity included intimidation, death threats, slander or libel, job loss or other economic sanctions, and efforts to actively undermine and disrupt political activity.

Several lawsuits were initiated after a single incident of rights violation, while others contested decades of intrusive surveillance. The deception and dirty tricks common in FBI investigations often did not change when a case entered the stage of a legal proceeding. The FBI consistently stonewalled and delayed and it often took at least a decade to litigate these cases. In some instances, the Bureau withheld evidence and informers or agents committed perjury. In a few known cases, the FBI infiltrated the lawyers who brought these lawsuits or tapped their phones. Yet the initiation of litigation prompted the government to change its behavior: The Bureau often closed their investigations when the lawsuits commenced. When plaintiffs won, the government usually agreed to

seal their records. The sealing of records functions as a type of bottom-up gag order on the Bureau. Yet a contrary view holds that sealing records serves government interests by hiding the details of FBI misconduct from researchers and historians. Secrecy should never be an answer to repression.

In nineteen cases, plaintiffs won monetary compensation. For the COINTELPRO era, radicals associated with the Black Panther Party (BPP) negotiated the largest victories. For example, the Chicago police shooting of BPP leaders Fred Hampton and Mark Clark resulted in a \$1.8 million settlement. In New York City, Panther leader Dhoruba Bin Wahad (Richard Moore) had been imprisoned falsely, so his award also was high—\$890,000. Geronimo ji Jaga Pratt also served a long prison term based on FBI perjury and received more than \$4 million to settle his civil action. Meanwhile, the Socialist Workers Party (SWP) won \$264,000 based on First Amendment claims. In a class action lawsuit in Chicago, the government in 1982 agreed to award thirty payments totaling \$490,000, including compensation to the Rev. Jesse Jackson. Regarding the New York Communist Party leader William Albertson, the FBI agreed to pay \$170,000 in a 1989 settlement.

Six lawsuits began in 1977—the most for any single year in this period. Inspired by the Church Committee hearings, plaintiffs requested their FBI files under the Freedom of Information Act (FOIA) and obtained evidence of misconduct which became the basis for litigation. Indeed, the new legal activism worried the Carter Justice Department, which endorsed a conservative congressional proposal to grant immunity to all federal law enforcement agents to forestall the growing tide of suits. Even though President Carter voiced public criticism about past FBI abuses, his Attorney General Griffin Bell lobbied for the repressive response. Why? The administration claimed that immunity was necessary to improve the morale of federal agents who for the first time in American history were held accountable for their actions. As FBI Director Clarence M. Kelley told a meeting of reporters, “I think there has been some slowing down of the aggressive attitude that is necessary in law enforcement. . . . You need an aggressive attitude. Not in the sense of pushing people around, of course. . . . But in this present-day atmosphere there is some fear. . . . An agent may ask ‘Why should I break my neck to pursue this case when I could be sued?’”⁶ The Carter proposal would not only have protected the FBI (and the CIA) from future litigation, but was retroactive to shield agents from all current challenges to rights violations. Nine civil liberty and attorney groups wrote the government to protest, including the American Bar Association.⁷

By the early 1980s, the practice of suing under *Bivens* had become a legitimate legal recourse. For example, federal judges in several FOIA lawsuits referred to a “*Bivens* action” to compensate victims of COINTELPRO.⁸ In another indication

that suing the FBI had become an accepted legal procedure, a separate provision referring to “litigation matters” was included in the first official Records Retention Plan established for the FBI in 1986. A declassified memo from the FBI director, which I obtained under the FOIA, described the provision: “No field office may engage in file destruction until all litigation matters have been searched through the office indices and relevant files identified and marked for retention pending the resolution of the litigation.”⁹

In turning to the body of lawsuits against spying, it is useful to group the litigants by their background and politics. In certain respects, the FBI’s treatment of the Old Left, African Americans, and the New Left under COINTELPRO shared several characteristics: All the subjects were demonized as enemy subversives and the FBI deployed human and electronic surveillance to track thousands of people thought to be undermining the nation. Both leaders and rank-and-file members of groups were monitored, generating tens of millions of pages of investigatory records. But plaintiffs could point to particular experiences due to length of investigation and the degree of infiltration and dirty tricks. For example, the grievances of Old Left plaintiffs, particularly those associated with the Communist Party and the SWP, preceded the COINTELPRO period and in each instance they proved to the court that the Bureau violated their constitutional rights over a period of several decades. Meanwhile, the lawsuits initiated by black activists and groups won the greatest monetary reparations because the level of disruption exceeded most others under investigation. Overall, New Left plaintiffs won smaller victories. COINTELPRO targeted them for a shorter time period (1968 to 1971) and their *Bivens* claims proved more limited.

Old Left Plaintiffs

Plaintiffs in three legal cases—the National Lawyers Guild (NLG), the SWP, and Frank Wilkinson and the National Committee to Abolish HUAC (NCA-HUAC)—identified massive surveillance and the government finally agreed to end the monitoring and seal their records. The FBI investigation of the NLG started in 1940 just four years after the group’s founding. The legal justification for investigation changed over four decades, including Front for the Communist Party, Fomenting Prison Rebellion, Front for the Weather Underground, and Violation of the Foreign Agents Registration Act. The categories changed with the times reflecting the government’s intense efforts to pin a subversive label on progressive attorneys who represented controversial political clients. (The Bureau also monitored and infiltrated the American Civil Liberties Union in this period.¹⁰) As early as 1941, the Guild called for

Hoover's removal as FBI director. Thereafter, the Guild's role as a persistent critic of FBI "political policing" aroused Hoover's wrath. In addition to electronic and physical surveillance, the Bureau deployed more than one thousand informers, who sat on the policy bodies of Guild chapters and of the national organization. FBI agents conducted break-ins of Guild national offices and into the private law offices of leading Guild members. The FBI directed efforts to defeat Guild members' political and judicial candidacies. They secretly released derogatory information to judges, the media, and the public.¹¹

In the mid-1970s, a FOIA request by the Guild yielded thousands of pages of FBI documents. Through the process of legal discovery the Guild received more documents: Its FBI file exceeds three hundred thousand pages. Michael Krinsky, the lead attorney, recalled that the decision to file a FOIA request was made after the group's "inadvertent discovery" that the FBI had approached an Atlanta hotel clerk for information about a Guild meeting: "[T]he Guild launched its case in the wake of Watergate and, more particularly, the revelations of the Senate's Select Committee. . . . The Guild hoped to move beyond momentary apologies for illegality and to consolidate in law at least some of the lessons the public had been willing to draw from the Church Committee Report."¹² In the lawsuit, the court at first allowed broad discovery of FBI conduct based on "comparatively few hard facts," Krinsky noted. Under the Carter administration, "the government was apologetic, defensive, although not obliging." That attitude hardened under the Reagan administration, which unsuccessfully tried to dismiss the case. In a 1989 settlement, the government agreed to seal the Guild files until 2025 when they would be transferred to the National Archives. The FBI also ceased its spying in 1977 when the Guild initiated the lawsuit. Future surveillance could renew litigation. However, the FBI stonewalled on a critical issue by refusing to issue any type of official apology or conceding their surveillance was illegal.¹³

The FBI file on the SWP reportedly consists of more than eight million documents with material dating from the 1940s. The small Trotskyite group began their lawsuit in 1973 represented by lawyer Leonard B. Boudin. According to Boudin, "While the [FBI] files did not reveal a single instance of lawbreaking by the SWP, they contained evidence of thousands of unlawful acts committed by the FBI and its informers." Federal judge Thomas Griesa agreed: "There can be no doubt that these disruptive operations [by the FBI] were patently unconstitutional and violated the SWP's First Amendment rights of free speech and assembly. Moreover, there was no statutory or regulatory authority for the FBI to disrupt the SWP's lawful political activities." The Bureau conducted several hundred break-ins of offices and homes of members, stealing or photocopying almost ten thousand Party documents. Between 1960 and 1976, the FBI deployed about 1,300 informers against the

Party—about three hundred were enrolled as members. In any given year, the FBI used up to eighty member informants, an unusually large number because SWP membership rarely peaked over one thousand. Many of these informers became Party leaders. Judge Griesa summarized the government's ambitions.

It was the FBI's strategy that the member informants should not be "quietly sitting back as observers," but should enter into discussions and engage in normal organizational activity. The member informants in the SWP and the YSA [Young Socialist Alliance] were also encouraged to cultivate relationships in attaining leadership positions. In the view of the FBI the value of informants increased with their advancement to higher levels in the organizations being investigated.

Informants rose to positions of responsibility in local branches: secretary, treasurer, director of fundraising, organizer, and member of the executive committee or executive board. An estimated fifty-five informants held posts in the SWP and YSA between 1960 and 1976. Three informants ran for political office as SWP candidates. In short, the FBI helped run the organization and influenced its direction, affecting the content of speech within the group. The government gained complete access to the inner workings of the Party.¹⁴

When Frank Wilkinson decided to sue the FBI in 1980, he was a long-time veteran of Cold War battles. Accused of being a Communist during HUAC hearings, he refused to testify and was sentenced in 1961 to a nine-month prison term. After release from prison, Wilkinson made it his life's mission to speak out on behalf of the First Amendment. His lobbying efforts against HUAC certainly were controversial: By directly confronting the Red Scare machinery, emphasizing constitutional protections for dissent, his group put itself in the center of the storm. Hoover, who worked closely with HUAC, did not tolerate public criticism of any kind and was known to investigate anyone who criticized the Bureau in writing or speech.¹⁵ During a period of thirty-eight years, the Bureau conducted numerous warrantless wiretaps and break-ins against Wilkinson, closely monitoring his movements around the country. A 1962 Hoover memoranda instructed FBI agents to "give careful consideration to possible counterintelligence plans to disrupting efforts of Wilkinson to carry out [his] speaking engagements." Wilkinson recalled that he was averaging at least 150 field trips a year: "Every one of them was covered by the FBI. They had my plane schedule, my flight number, at whose house I would be staying, where I'd be speaking, who my contacts were."¹⁶ In a 1987 settlement, the FBI agreed to transfer his file (approximately 132,000 pages) to the National Archives, cease its surveillance, and pay monetary damages if they engaged in further violations of his group's First Amendment activities.

Among the material unearthed in the file, a 1964 memo discussed an assassination attempt on Wilkinson's life. It is unclear if the FBI plotted the murder, or if they merely found out about one, but in either case they never notified Wilkinson.¹⁷

Surprisingly, few leaders of the American Communist Party sued the FBI for harassment, although Communists used the courts to challenge other infringements on their liberties: their right to travel abroad, practice law, have ballot access for their candidates, and retain employment in the public or private sector.¹⁸ The case of William Albertson is a notable exception. Albertson joined the Party in 1927 while a student at the University of Pittsburgh, becoming a leading figure in the Party in New York State and serving on the Party's national committee for many years. His wife, Lillie, who joined the Party in 1948, recalled, "Because we had chosen to join a left-wing movement committed to socialism, our family and friends were constantly harassed, persecuted and prosecuted. . . . Our telephones were tapped for years. Bill and I were followed. FBI agents would approach us, our co-workers and bosses, telling them that they had 'Reds working for them.' Not surprisingly, we would be let go with no explanation."

The FBI targeted William Albertson for prosecution under the Smith Act in 1953 and he was convicted initially on charges of conspiring to teach and advocate the violent overthrow of the government. The Supreme Court later reversed the conviction when the government admitted a key informer witness lied under oath. In 1964, the FBI approved a COINTELPRO "snitch-jacket" action in which they forged a letter under Albertson's name to discredit him among his Communist peers. The FBI tried to convince the Party that Albertson acted as an undercover informer. A real FBI informer inside the Party had planted the phony letter and the Party believed the scam. William and Lillie Albertson were expelled, whereupon the FBI offered Albertson money to become an informer. He refused. William Albertson died in 1972.

In 1975, Frank Donner of the ACLU showed Lillie declassified FBI records demonstrating the FBI was responsible for forging documents that led to their expulsion from the Party. An FBI memo dated January 6, 1965, reported, "The most active and effective functionary of the New York District, Communist Party USA and leading national officer of the party, through our counter-intelligence efforts has been expelled from the party." Though censored to block out Albertson's name in one instance, it also included one direct reference to Albertson.¹⁹ The priority of the Albertson case is evident in an internal memo about guarding the Bureau's records.

It is requested that file 65-38100, subject William Albertson, be maintained in the Special Mail Room of the Files and Communications Division, Room

1315, Identification Building. This file contains recent information relating to an extremely sensitive counterintelligence technique which has been applied against Communist Party National Committee member and New York State Communist Party official William Albertson. . . . In view of the delicacy of the operation involving Albertson and the necessity of maintaining utmost security, all requests to review the file of Albertson are to be referred to Supervisor [text redacted] Extension 710.²⁰

The material in the Mail Room was isolated from the rest of the FBI's files with close supervision at all times.

Lillie initiated a lawsuit, which lasted fourteen years, and she eventually received thirty thousand pages of FBI documents about her family. These included "verbatim conversations of phone calls . . . copies of private medical records, bank records, pictures and more." The FBI recorded the smallest of details. As Lillie remarked, "Was it really a national security issue that Bill thought Willie Mays was a better center fielder than Mickey Mantle?" In 1989, the Justice Department offered to settle the case for \$170,000, which Lillie accepted: "The FBI admitted no wrong. To this day they refuse to acknowledge what their own files so clearly state: That they framed my husband and disrupted our lives, simply because we exercised our lawful right to engage in political activity and association."²¹

An important pattern is discernable in these early lawsuits: The Justice Department and the FBI created obstacles to a quick resolution. It often took ten to fifteen years to litigate. The longer the better, according to the government, to discourage others from initiating civil rights challenges. Duration is a factor in any decision to litigate against the government. In general, it takes a brave litigant and lawyer to go through this process. The mainstream legal community seemed unwilling to take on such cases, leaving the task to progressives and civil liberty groups, most prominently the ACLU. If we try to summarize the government's approach to anti-spying litigation in this period, we might say: Win at any cost. Maintain as much secrecy as possible. Tell the truth as a last resort, if at all. For example, during the SWP case, the judge held the attorney general in contempt for failing to turn over eighteen FBI informer reports. The government also lied for three years about black bag jobs, denying several hundred break-ins.²²

We know police agents infiltrated the plaintiff's legal team and destroyed surveillance records in a prominent case in Chicago. In 1974, the Alliance to End Repression filed a class action lawsuit to halt city police and FBI spying against a wide range of political groups. The police infiltration occurred before the lawsuit was filed and continued for two years once litigation commenced. The police informants abetted obstruction of justice. As attorney Richard Gutman noted, "In September 1973, undercover Subversive Unit

agents reported that litigation was imminent, causing the Chicago Police Department to begin a mass purging of its political surveillance files.” Documents pertaining to 1,300 organizations and 105,000 persons were destroyed. The police and FBI also initiated a separate investigation, code named “Watch Dog,” with the purpose of “neutralizing” the legal task force bringing the lawsuit. When Gutman found out that his legal team was compromised after obtaining police documents in discovery, the court stopped the infiltration. The judge detailed the wide scope of the illegal police action: “[T]he defendants, through their undercover agents, actively participated in interviewing potential plaintiffs for this lawsuit, attended private meetings between plaintiffs and their counsel, infiltrated plaintiff’s legal preparations, strategy and evidence, and in fact gathered information about plaintiffs’ litigation plans and strategy by such means as infiltration.” The FBI interpreted the lawsuit as a subversive enemy action that required extralegal means to crush.²³

Race and the FBI

The FBI’s animus toward black civil rights and black power groups was deep and profound. Hoover long equated black protest with Communist influence, unwilling to view movements for equality or liberation as legitimate responses to racist oppression. Hoover opened investigations of both black and white critics of Jim Crow, while also working with Southern city police to uphold the color line. Before the 1960s, he helped to protect the practice of lynching. Within the FBI itself, Hoover rarely hired black Americans as agents. Hoover detested Martin Luther King Jr., trying in multiple ways to discredit him.²⁴ Almost one-third of COINTELPRO actions categorized under “racial matters” were directed to divide black groups.²⁵ Moreover, in 1968 the FBI labeled the Black Panthers the number one threat to domestic security and attacked the group in any way it could.²⁶

The killing of Panther leaders Fred Hampton and Mark Clark in Chicago in 1969 led to civil litigation. A detailed history of this case shows widespread misconduct in the legal proceeding phase. The FBI’s role investigating the Panthers, plotting their demise, and orchestrating a cover-up eventually was brought before the court resulting in defeat for the government. The cover-up worked at first but the lies by police and the FBI eventually unraveled. The first trial in the case lasted eighteen months and ended in a deadlocked jury. In 1979, a federal appeals court ordered a second trial, establishing two government conspiracies. The first conspiracy implicated the police and the FBI in the planning and execution of the raid. The second conspiracy involved withholding about twenty-five thousand pages of evidence.²⁷ Panther attorney

Flint Taylor noted the court “found that we proved a strong prima facie case of conspiracy between the FBI and [chief prosecutor] Hanrahan. The court found that the FBI and the Justice Department had obstructed justice.” Before a second trial began in 1992, both sides agreed to a \$1.8 million settlement. Taylor said, “The appellate decision was so strong and the size of the settlement was so large that we were able to righteously claim that it was a very important victory.”²⁸

In New York City, the police kept African American radicals under heavy surveillance. According to FBI Agent Danny Coulson, who tracked Panther leaders, the pattern of surveillance being conducted meant that “We’ll know all about their girlfriends, illegitimate children, drugs of choice, and favorite T-shirts. We’ll tell Hoover whatever he wants to hear about how perverted they are.”²⁹ In the case of Bin Wahad, the police department and the FBI orchestrated a long prison sentence based on police perjury. Bin Wahad joined the Panthers in 1968 and the New York Police Department (NYPD) falsely arrested him in the “Panther 21” conspiracy case the next year, when the group was charged with plotting to bomb several targets in New York. Although that case later was dismissed, Bin Wahad became a marked man. In 1971, the NYPD arrested him again—this time for the slaying of two police officers. The FBI withheld exculpatory evidence during the trial and he was sentenced to twenty-five years to life. In 1990, a judge overturned Bin Wahad’s conviction after defense lawyers, including Robert Boyle, obtained the extensive FBI files on New York Panthers.³⁰ Bin Wahad explained the evolution of the case:

In 1975, four years after I was captured, I filed a suit in federal court in the Southern District in New York. At that time they had the Church Committee hearings on government excess as a consequence of Watergate and all that stuff, and it was revealed that the FBI had carried out this massive Counter-Intelligence Program in the African American community and especially against the Black Panther Party. . . . [T]he federal judge ordered the FBI to turn over all their documents that they had on me and the Black Panther Party in New York. And they turned over 300,000 pages. And when we got these documents we found material that indicated they were working with the New York City Police Department every step of the way and that at major junctures in the investigation into the shooting, they had been present, and that they had taken in the same information.³¹

In another prominent case of race-based surveillance, Muhammed Kenyatta (Donald Jackson) filed a suit in 1977 claiming the FBI violated his civil rights. In the late 1960s, he worked in black power and antipoverty movements while studying at Tugaloo College in Mississippi. As a teacher at a local black school which taught African American culture and history, he edited a

newspaper that urged self-defense. In 1967, the FBI started its investigation and recommended that Kenyatta be placed on the Agitator Index because he allegedly traveled interstate to participate in violent demonstrations. The FBI tried to neutralize Kenyatta two years later by sending him a bogus threatening letter at his home purportedly from a student group at his college. The letter told him to cease his activism and to “remain away from the campus until such time as your conduct and general demeanor reach the desired level.” The letter warned that if he did not stay away, “we shall consider contacting local authorities regarding some of your activities or take other measures available to us which would have a more direct effect and which would not be as cordial as this note.” This sounded like a death threat and the letter, as well as ongoing harassment, led him to leave Mississippi with his family. That is exactly what the FBI had in mind. An FBI memo indicates, “It is hoped that this letter, if approved and forwarded to Jackson, will give the impression that he has been discredited at the Tugaloo College campus and is no longer welcomed there. . . . It could discourage him from inviting out of state extremists to visit him and while there to speak at Tugaloo College. It may possibly also cause him to decide to leave Mississippi and return to his original home in Pennsylvania.” A second FBI memo said the intimidation had worked because Kenyatta “has commented recently that he received a letter . . . was upset with this letter and the fact that he was no longer welcome at Tugaloo College.” The FBI also noted Kenyatta “feels that the police and the FBI are continually watching him and harassing him.”³²

At the time the Bureau mailed its letter, the FBI worried the black power movement was beginning to make headway into the South, expanding from beyond its northern and western bases. A June 26, 1970, memo to President Nixon warned, “The sudden thrust of the BPP operations into the South is a new and alarming development. Undaunted by previous failures to influence southern blacks, the BPP has achieved a great deal of success in recent recruitment and propaganda efforts.” The Bureau referred to BPP or other black power activity in Winston-Salem, North Carolina; Tulsa, Oklahoma; Augusta, Georgia; Dallas and Houston, Texas; New Orleans, Louisiana; Richmond, Virginia; and Greenville and Sunflower, Mississippi. A second FBI letter to the president six weeks later noted, “Surge of black extremist activities in the South remains unabated.” It referred to activity in Texas and Alabama.³³

The Kenyatta FBI memos presented a strong legal case against the government. Kenyatta named three FBI agents in his lawsuit, including Roy Moore, a top intelligence official in Mississippi, and James Ingram, director of the Division Five “Racial Intelligence” Section. Kenyatta’s lawyers, including the ACLU and David Rudovsky, also advanced a creative legal idea: The government

abridged Kenyatta's constitutional right to equal protection of the law because the FBI program that targeted him—the COINTELPRO's Black Nationalist/Hate program—was infused by “racial animus” focused exclusively on black activists.

The case raised other questions, such as how Justice Department lawyers would mount a defense when FBI misconduct was so transparent. The government repeatedly claimed that protecting the nation against enemies required unconstitutional practices. The Nixon administration, for example, held that illegal wiretaps were a legitimate extension of presidential power, an argument rejected by the Supreme Court in the “Keith” case (1972). As for break-ins, the FBI knew they were illegal. The Justice Department still argued in its legal briefs that forgeries, death threats, and other dirty tricks did not constitute rights violations. “The point of this episode is not limited to the shocking nature of one Justice Department brief,” Anthony Lewis wrote in the *New York Times*. “The case illustrates the Department's general disregard these days for established principles of the law.”³⁴

Rudovsky recalled the FBI agents insisted on a jury trial. Typically, the federal government fears jury trials related to government crimes, reluctant to put power in the hands of ordinary people. But the location of the trial in the deep South assuaged their fears of losing. In Jackson, Mississippi, a conservative, nearly all-white jury ruled for the government. As Rudovsky notes, “Plaintiff was a civil rights activist/troublemaker; defendants were FBI agents portrayed as trying to keep the peace.” Although he lost before the jury, Rudovsky feels the case served a wider purpose: “I don't know if we were pioneers, but given the insidious nature of COINTELPRO, we thought it important to expose this program.” Regarding procedural legal issues, the judge turned down the government's attempt to dismiss the case on immunity grounds and Rudovsky notes constant resistance by Justice Department lawyers: “They fought this case at every stage and we needed court intervention to get discovery. . . . Eventually we got most of what we requested, by court order.”³⁵

In a major defeat for the Black Panthers, the government's invasive questioning of the plaintiffs about their political activities stymied an important lawsuit. In 1976, the BPP, Huey Newton, and other individuals sued the Justice Department, alleging that the FBI unlawfully conspired to destroy their party. This broad legal attack sought \$100 million on behalf of all individuals who had been, or continued to be, members of the Party and all individuals who had provided it with political or financial assistance. The Panthers claimed the government's efforts against them began in 1968 and they first learned of these efforts in 1976 following the Church Committee hearings. In the lawsuit, discovery battles and other pretrial disputes lasted three years. A

deliberate effort to preserve BPP records, saving them from routine destruction, was ordered by the director on January 12, 1977. Kelley noted, “[I]n connection with your existing authority to destroy files in field offices, great care should be taken to insure that no files are destroyed which contain the BPP in the caption of the case or the BPP as a subcaption in any individual investigation irrespective of classification. This restriction will remain in effect until you are advised to the contrary.”³⁶

The government found a way to undermine the lawsuit by serving the Party with 244 interrogatories. Newton and other Party members would have to answer questions about their political activity, including divulging names of party members who preferred their identities remained secret. The government served Newton with eighty-four separate interrogatories. In answering some of these questions, Newton and the Party claimed First and Fifth Amendment privileges. They believed the government used their lawsuit as an excuse to gather additional intelligence on their activity. The court took the side of the government, reasoning that “plaintiff cannot assert this [First Amendment] privilege and at the same time proceed with this lawsuit, withholding information vital to the defense of the parties sued.” The court rejected Fifth Amendment claims, especially as held by Newton, who declined to answer thirty of the interrogatories. Either he told the government everything he knew or the suit would be dismissed: “If plaintiff Newton is to proceed with this lawsuit, he must answer.”

The partial response of the BPP led the judge to dismiss the case: “Plaintiffs cannot choose to be litigants and at the same time exempt themselves from the rule of law that binds all federal litigants.” However, the decision was reversed on appeal because the court found protecting membership lists is protected under the law, especially if a group’s cause is unpopular: “Privacy is important where the government itself is being criticized, for in this circumstance it has a special incentive to suppress opposition.” The appeals court seemed to be setting the stage for a full-scale trial of FBI repression of the Panthers. However, such a trial did not occur because the Justice Department then urged the U.S. Supreme Court to overturn the appeals court decision. The Supreme Court, with only Justice Thurgood Marshall dissenting, dismissed the lawsuit on the grounds that the Panthers had not properly answered the government’s questions. The conservative Burger court had little sympathy for anti-spying litigation. The legal system betrayed the Panthers once again.³⁷

In the case of Los Angeles Panther leader Geronimo ji Jaga Pratt, who was released from prison in 1997, he won one of the largest settlements in the history of anti-spying litigation. In early 2000, the FBI paid \$1.75 million and the City of Los Angeles paid \$2.75 million. Pratt had been arrested in 1970 on bogus murder charges and the guilty verdict was based on the perjured

testimony of a police and FBI informer, who concealed his informer status. The prosecution withheld exculpatory evidence that proved that Pratt was in Oakland at Panther headquarters at the time of the murder, far away from the scene of the crime in southern California. The case stands as one of the greatest political miscarriages of justice in the late twentieth century.

The FBI put Pratt under intensive surveillance in the months before his arrest. Police followed him on the street and pulled his car over to harass him on multiple occasions. The FBI also created rifts inside the BPP and turned Panther leader Huey Newton against Pratt by mailing a forged letter claiming that Pratt “brutalized” and “mistreated” Party members. A January 28, 1970, FBI memo indicated that the Bureau created fake documents and leaflets “designed to challenge the legitimacy of the authority exercised by Elmer Gerald Pratt.” Newton soon expelled Pratt from the Party. The FBI wrote, “Newton’s Hitler-like hysterical reaction, which has very likely been aggravated by our present counterintelligence activity, has resulted in the suspension of loyal Black Panther workers.” The Newton-Pratt antagonism would come to play an important role in the case. At the time of Pratt’s trial, the defense was unable to find any Panthers who would come forward as witnesses to place Pratt in Oakland at the time of the crime. Newton ordered the Panthers not to help Pratt. As Pratt recalled, “The FBI convinced Huey I was destroying the party. They convinced him I was robbing and killing, bad-mouthing him, raping the sisters. He reacted to disinformation.” Many years later, Pratt and Newton reconciled their differences. Pratt said, “He showed me an envelope full of FBI bullshit—cartoons showing me beating up women, anonymous letters, memos that I was trying to kill him and Bobby Seale and take over. He said he remembered my trip to Oakland and so did David Hilliard and others, but we were at war and he couldn’t let ’em testify for me.”³⁸

Pratt rebuffed an FBI effort to make him an informer five months before he falsely was charged with murder. Did his rejection of the FBI escalate the repression? An FBI memo written after Pratt declined the FBI offer says, “In view of PRATT’s adamant expression of hatred toward law enforcement personnel in general, no consideration is being given to reinterview PRATT for the purpose of development as a PRI [informer]. It is noted, however, that constant consideration is given to the possibility of the utilization of counterintelligence measures with efforts being directed toward neutralizing PRATT as an effective BPP functionary.”³⁹

Prison authorities forced Pratt to spend the first eight years of his incarceration in solitary confinement. The FBI told the Department of Corrections to keep Pratt isolated because they thought he would organize others in the general prison population. Attorney Johnnie Cochran describes what was written in Pratt’s prison file: “You’re a militarily trained assassin. You’re

a twenty-four hour escape risk. You'll try to incite riots and take over the prison. For the safety of the institution you have to be kept in the hole." Eventually attorney Stuart Hanlon won a legal suit to get Pratt out the hole, charging that the conditions of his imprisonment constituted "cruel and unusual" punishment. The prison was found to have violated Pratt's civil rights and Pratt was awarded a symbolic \$1 in damages.⁴⁰

Prison authorities repeatedly raised Pratt's politics to deny him parole. In year nine of his imprisonment, a Los Angeles Police Department sergeant testified, "In the opinion of Los Angeles law enforcement, this defendant, if released, would become a rallying point for a long-defunct Black Panther organization in Los Angeles. . . . We urge you not to release him to prey on the citizens of Los Angeles again." In 1980, Amnesty International declared Pratt a "prisoner of conscience." At a parole hearing in 1981, District Attorney Richard Kalustian covered for the FBI by insisting,

I see Mr. Pratt as a man still motivated by the same forces that motivated him in the early seventies and the late sixties. He has this fixation with the fact that the FBI framed him. He can't seem to get that out of his mind. I think that single factor is one of the things that's going to prevent him from ever assimilating his role in society. I think he simply is not able to put that behind him. . . . Everything that I have seen tells me in my gut that you have a man who is so unhappy, who is so mad, who is so upset at the system—and he is just waiting for the time when he can get out and do something about it.⁴¹

Around this time retired FBI agent M. Wesley Swearingen completed an affidavit asserting the FBI knew of Pratt's innocence. The FBI also admitted that they had an informer inside the Cochran defense during the original trial. This informer sat in on at least four legal strategy sessions, a disclosure that might have led to a new legal proceeding. It took four more years before a court hearing was held and the judge was not swayed. Another parole hearing ended in defeat despite public support from the NAACP, the Jewish Rabbi Foundation, and the Congressional Black Caucus. The government kept Pratt locked up because they did not like his politics. A Los Angeles district attorney described Pratt as "still a revolutionary man" and added, "He has a network of people ready to assist him in any cause that he wishes. I think that is manifested and corroborated in the letters that are presented to this board. . . . It does show, and I think the letters generated by Mr. Hanlon and Pratt shows, that he does have the network out there. If he chose to set up a revolutionary organization upon release from prison, it would certainly be easy for him to do so."⁴²

All told, Pratt's lawyers filed five habeas corpus petitions. Finally in 1991 six ex-Panthers testified about Pratt's presence in Oakland and the Rev. Jesse Jackson, Coretta Scott King, and five members of the Congressional Black

Caucus wrote supporting letters. But Pratt again lost an opportunity to gain his freedom. The FBI and the police continued to deny that their informer Julius Butler was a government operative and they withheld wiretap evidence from the Panther's Oakland headquarters that proved Pratt's innocence. The case later turned in 1995 when Hanlon and Cochran turned up hard evidence that Butler indeed served as an informer, which exposed decades of lies. Cochran said, "I think we've won, but I can't forget all those other decisions. There's one big unknown factor: politics. This is the most political case I've ever tried. The FBI is always lurking in the background. I have the feeling that all it would take is one call from [Director] Louie Freeh and—phffft! We're tubed again." Such an intervention did not occur. In 1997, the guilty verdict was thrown out and after twenty-seven years Pratt finally was free. He had become one of the world's best known and longest-held political prisoners. When Pratt sued for damages, he won a large settlement because, as ACLU attorney Mark Rosenbaum said, "It wasn't just a story of the past. It was a story of three decades of cover-up, and we made it clear that we were going to litigate that and that it would implicate current officials. Nobody [on their side] wanted that trial."⁴³

Two lawsuits on behalf of Martin Luther King Jr. resulted in the sealing of some of the FBI's vast records on the civil rights leader. Bernard Lee, an assistant to King, and the Southern Christian Leadership Conference sued the FBI, focusing on only one aspect of the surveillance: the wiretapping and bugging of King's conversations and the FBI disclosure of these records to third parties, including the press. In 1977, a federal judge joined both suits into one action, and ruled a partial victory for King by sealing the wiretapping portion of the King files dating from 1963 to 1968 for at least fifty years. (In 1983, Senator Jesse Helms attempted to get a judge to open the files so Helms could find information to tarnish King as Congress was debating his national holiday. Helms's effort failed.) On the issue of monetary compensation, the judge decided against the plaintiffs, finding that the statute of limitations had run out.⁴⁴

White supporters of the black liberation movement also came under FBI attack. Actress Jane Fonda contributed money to the Black Panthers, prompting FBI counteractions. For example, a 1970 FBI intelligence report submitted to President Nixon noted, "Actress Jane Fonda bankrolls Black Panther Party, providing over \$15,000 in cash and securities in recent months. A leader of this extremist group plans to meet with the movie star, whom he considers 'ugly' and of no interest other than as a source of funds, to ask her for another \$10,000 for the Panthers. Fonda is also supposed to arrange television coverage of the Panther's People Revolutionary Constitutional Convention scheduled for November, 1970."⁴⁵ Among the FBI's dirty tricks, Hoover authorized

sending a fictitious letter to a Hollywood gossip columnist alleging Fonda and a Black Panther led a chant at a rally proposing to kill President Nixon. In 1973, Fonda sued the FBI for surveillance done during the prior two years, which included phone taps, the recording of her public speeches, and gaining access to her bank records. It took a decade for the court to decide *Fonda v. Gray*. Although she failed to win monetary compensation, new legal ground was broken, expanding the coverage of *Bivens* to private individuals. As the judge ruled, "A private party may be considered to have acted under color of state law when it engages in a conspiracy or acts in concert with state agents to deprive one's constitutional rights."⁴⁶

In another case, a federal judge in 1984 awarded Detroit civil rights activist Walter Bergman \$50,000. Klansmen attacked Bergman during the 1961 Freedom Rides to integrate Southern transportation, which left him in a wheelchair. The judge found the FBI liable because they had advance knowledge of the Klan assault and should have prevented it. Bergman had been part of an integrated group of fourteen activists who traveled by bus from Washington, D.C., to New Orleans to challenge segregation. During the ride from Atlanta to Birmingham, their only stop was in Anniston and as the bus entered the station a white mob attacked the vehicle. When the Freedom Riders' bus later entered the Birmingham station, another white mob was waiting. As the Riders got off the bus and an integrated group entered a "white only" waiting room, they were attacked with iron bars. Bergman was beaten unconscious.

The ACLU filed a suit on behalf of Bergman, a former Wayne State University professor and Detroit school board official, after FBI Klan informant Gary Thomas Rowe testified before the Church Committee that Birmingham police officials met with Klan leaders and urged them to attack the Freedom Riders. The FBI and the Alabama Highway Patrol also monitored the route of the Freedom Riders' bus, informed the Birmingham police about its route, and tipped off Klansmen. The FBI should have taken active measures to protect the Freedom Riders instead of encouraging the violence. According to Bergman, "We sued for much more money, but money wasn't the important thing. It was a principle we won: that the FBI was responsible for protecting citizens and had no right to cooperate with vigilantes by giving them a free hand for mayhem as they did in Anniston and Birmingham."⁴⁷

The case of Viola Liuzzo, a white activist in Friends of SNCC, suggests the difficulties inherent in suing the state when a conservative judge decides the outcome. Liuzzo traveled to the South from Detroit to help the civil rights movement in its voting rights campaign. On March 25, 1965, four Klan members followed her for twenty miles on a highway before shooting her in the head near Selma, Alabama. The murder shocked the nation. "Mrs. Liuzzo went to Alabama to serve the struggle for justice," President Lyndon B. Johnson

said. “She was murdered by the enemies of justice who for decades have used the rope and the gun, the tar and the feather to terrorize their neighbors.” The FBI became implicated in the crime because the Klan member who pulled the trigger was an informant—the same individual, Gary Thomas Rowe, implicated in the Bergman beating. Rowe was a high-ranking member of the Eastview Klan 13 with veto power over violent activity committed by the group.⁴⁸

In civil litigation, the infiltration of the Klan created liability for the Bureau if its informers promoted or participated in violence. Did informers have a responsibility to try to prevent these attacks or at least notify city police? In 1979, the Michigan chapter of the ACLU filed a lawsuit against the FBI for Liuzzo’s murder. As one of the lawyers said, “They [FBI] had a monster working for them. They took no effort to keep him on a leash. The FBI had a direct choice between preventing a crime and keeping him as an informer. They kept him as an informer.” Federal judge Charles Joiner heard the case in 1983. Two Klan members testified that Rowe pulled the trigger that night in Selma. Former attorney general Ramsey Clark, who in 1965 was in charge of the federal forces that provided little protection to civil rights workers, acknowledged not only that southern FBI agents often regarded civil rights activists as agitators but the Justice Department knew ahead of time that violence-prone individuals were flocking to Selma to stop the voting rights efforts. The plaintiffs also relied on the testimony of a local police officer who claimed Rowe confessed to the murder.

When victory seemed assured, the FBI increased the pressure. Director William Webster appeared in the courtroom on the last day of the trial and his presence seems to have swayed the judge, whose ruling the next day completely exonerated the Bureau. The judge found, “Rowe did not kill, nor did he do or say things causing others to kill. He was there to provide information, and his failure to take steps to stop the planned violence by uncovering himself and aborting his mission cannot place liability on the government.” No charges were ever brought against Rowe, who was placed in the Federal Witness Protection Program to prevent Klan retaliation.⁴⁹ In 1999, the FBI put its Liuzzo file (1,520 pages) on its website, but in introducing these materials left out’s Rowe’s participation in the murder, saying that *three* Klan members (not four) were responsible for the killing.

Federal limits on private lawsuits against the government require that cases be heard and decided by a federal judge, but federal judges have discretion to bring in juries. Few judges have allowed the people to judge the police. In *Hobson v. Wilson*, only the second case to go to a jury trial, the plaintiffs contested the FBI practice of pitting people of color against the New Left. The *Hobson* jury initially awarded \$712,000 in 1981 to seven anti-war and community activists in Washington, D.C.—a huge victory. But on appeal

a federal court reduced the amount to just \$51,000. The plaintiffs included several well-known local people—Arthur Waskow; Sammie Abbott, a local anti-freeway activist who became mayor of Takoma Park; the Rev. David Eaton, who was elected to the D.C. School Board; Abe Bloom, chairman of the Washington Area Peace Center; and Tina Hobson, who sued on behalf of her deceased husband, Julius, who was a civil rights activist and a former City Council member. The group charged the FBI violated their civil rights as part of COINTELPRO, documenting ten examples of governmental misconduct.

The FBI sent false press releases to “friendly media” contacts to tarnish the reputation of Julius Hobson. It tried to divide and instigate violence between local anti-war and black civil rights organizations by sending activists in the Black United Front a racially inflammatory leaflet titled “Give Them Bananas!” which appeared to have been written by the New Mobilization Committee. “We consider you and your kind as black bandits. . . . Suck on your bananas, brother, and someday you might learn how to make a fire or build a wheel,” the leaflet said. According to an FBI memo, this leaflet was “designed to widen the rift” between the two groups and “has been written in the jargon of the New Left, necessitating the use of a certain amount of profanity.” In another instance, the Bureau filled in fictitious names on housing forms used by a group to lodge visiting demonstrators at the 1969 presidential inauguration ceremonies. It further interfered with this demonstration by gaining access to the parade marshal’s walkie-talkie radio communications, countermanding orders and sending marchers outside approved demonstration areas. To reach college students, the FBI published its own “student” newspaper, *The Rational Observer*, attacking the American University student newspaper, *The Eagle*. The FBI urged students to suppress publication of *The Eagle*, questioning the motives of those who opposed the Vietnam War: “Remember, you will be faced with joining society upon completion of your academic training. Don’t do anything in haste today which could cause you embarrassment tomorrow.”

The extremism of COINTELPRO tactics is evident when FBI informers encouraged violence at demonstrations. At a protest at the Capitol against the Vietnam War, an undercover police informant hurled a canister of tear gas at the police in an effort to get the police to attack the crowd. The court referred to another incident where an informant urged the crowd to disobey protest instructions and march to an off-limits area where police awaited in the hopes of instigating a confrontation. About two hundred demonstrators followed this informant’s leadership, resulting in numerous arrests. Two days before another major demonstration, informers smashed the duplicating equipment of a peace group to impede organizing efforts. An informer in a peace group deliberately wrote bad checks to the telephone company to disrupt phone

service. An informer also stole private mailing and membership lists. “What the FBI was trying to do was keep the peace movement from being effective, and trying to create racial tension,” said Anne Pillsbury, an ACLU lawyer who handled the case. No one at the FBI disputed the facts of the harassment as presented by the plaintiffs.⁵⁰

New Left Plaintiffs

After the student protests at Columbia University in 1968, Hoover created a special COINTELPRO section targeting the New Left movement. The Bureau also established a new list known as “key activists”—individuals subject to intensive surveillance and disruption with monitoring in day-to-day activities. In turning to lawsuits brought by New Left groups and individuals during the 1970s, we find significant victories of principle accompanied by relatively small monetary settlements. Yippie leaders Stew Albert and Judith Clavir won just \$25,000 despite the fact that the FBI broke into their upstate New York home six times, allegedly looking for information about the Weather Underground and political fugitives. The litigation began in 1976 after Albert and Clavir discovered an electronic device planted on their car. Lawyers Paul Chevigny of the ACLU and Michael Ratner of the Center for Constitutional Rights handled the case. The Justice Department, in its first reply to the lawsuit, admitted that the couple had been followed, their mail had been examined, and that the electronic transmitter had been placed in the car by the FBI. However, the government held that Clavir and Albert were never under electronic surveillance nor were victims of a black bag job—a claim which the government reversed in 1976 when the Justice Department admitted that the Bureau broke into their home to plant listening devices. This admission made national headlines because it undercut prior Bureau claims that no break-ins occurred anywhere in the U.S. after 1973.⁵¹ Albert described their activism: “We were active in the peace movement, both locally (Berkeley) and nationally. We were involved in working with the leadership of the Black Panther Party. We were founders of the Yippies. Judy was an early activist in the women’s liberation movement.”⁵²

The litigation revealed not only black bag jobs but that the FBI also opened their mail, investigated their friends, and visited the place of Clavir’s employment at New Paltz College.⁵³ Albert had no hints at the time that break-ins occurred, but he had suspicions they were under surveillance: “We did develop a general suspicion when the son of one of the women that worked in the small Hurley, N.Y., post office came to our Catskill Mountain cabin and told us his mother and the other two postal workers were turning over our

mail to the FBI.” He noted, “The FBI files that we obtained through discovery told the story of the break-ins. . . . We discovered that many of our neighbors had informed on our actions to the FBI. We thought we were all friends, helping each other through the harsh Catskill winters, but they were informants. This was perhaps the greatest violation.” Initiating the lawsuit ended the FBI surveillance: “To the best of our knowledge, they did not harass us for suing them. In fact, the FBI files state that they closed their investigation of us due to the embarrassment that the suit was causing.”⁵⁴

In another small but important victory, the Justice Department in 1981 agreed to pay five activists \$10,000 each for illegal wiretaps, burglaries and mail openings dating from the early 1970s. The FBI again argued in its defense that surveillance was done because the activists had associations with political fugitives. The plaintiffs, who were defended by the ACLU and the National Emergency Civil Liberties Committee, included Sara Blackburn, a freelance writer, who came to the Bureau’s attention because she contributed money to the Black Panthers; Lewis Cole, a leader of SDS at Columbia University who helped organize campus protests; William A. Price, a former reporter for the *New York Daily News*; Deborah Offner, an actress; and Johanna Lawrenson, a companion of Abbie Hoffman. Freidman, Blackburn and Cole’s phones were tapped and homes broken into by the FBI. The Bureau opened Offner’s mail on four occasions and put a wiretap on Lawrenson’s phone for more than four years at two locations. Price, who is deceased, told friend Peter Vos that the FBI tapped not only his phone but all the public pay phones for several blocks around his house on West 87th Street in Manhattan. “Bill explained he knew his phone was tapped because he had stopped paying the phone bill and they never shut off the service,” Vos said.⁵⁵

In 1977, several peace groups working on the Honeywell Project in Minneapolis, Minnesota, contested illegal surveillance, infiltration and wiretapping. Although the settlement in the case was not large, it was hailed by peace groups as the first lawsuit to link a large defense contractor to the FBI’s counterintelligence against the anti-war movement. Founded in 1966, the Honeywell Project protested weapons production by the Honeywell Corporation, whose national headquarters were based in Minneapolis. Peace activists held a series of long-term protests at the corporation’s headquarters, including civil disobedience, and conducted other advocacy and public education with the goal of pressuring Honeywell to cease production of anti-personnel weapons, such as cluster bombs and land mines, as well as guidance systems for cruise and Pershing nuclear missiles. Ed Felen, editor of the alternative newspaper *Pulse*, said about these protests, “Sometimes we would share bread in a secular communion. Sometimes we would camp out in the hallways [of the corporation] to block entryways. When Honeywell built fences, we

climbed over them. . . . There was always music and national speakers like Noam Chomsky or Dave Dellinger the night before.” The anti-Honeywell activists were affiliated with two peace groups, the American Friends Service Committee (AFSC) and the Clergy and Laity Concerned—both had large FBI files at the time. Declassified FBI documents showed that in 1975 the FBI fed Honeywell officials information about a planned nonviolent protest at the company’s annual stockholder meeting in order to “neutralize its impact.” In a 1985 settlement, both the FBI and the Honeywell Corporation each agreed to pay the Honeywell Project \$35,000 in damages.⁵⁶

When attorney David Rudovsky initiated a lawsuit on behalf of the Institute for Policy Studies (IPS), the FBI ceased spying as soon as the litigation commenced. Rudovsky recalled that the IPS case was “one of the many situations in which the FBI was targeting political groups because of their beliefs, not because of any criminal activity. They investigated groups who were critical of the government.” Does the FBI really cease investigating a group even when it says it does in a court consent decree? “I think they probably stopped infiltrating. The informers, the trash covers, the electronic surveillance. I think this stopped as a result of the suit. . . . But they still probably clipped articles about IPS and kept track of the group in a less direct way.”⁵⁷

Rudovsky also won a case on behalf of the anti-war Philadelphia Resistance. The FBI targeted the group as suspects in the theft of COINTELPRO files from an FBI office in Media, Pennsylvania, on March 8, 1971. The theft helped lead to the end of COINTELPRO. No one ever was arrested for the break-in, but the FBI believed Philadelphia Resistance, as well as a local chapter of the American Friends Service Committee, were responsible. The Bureau sought retribution by following around members from the groups, assaulting one member, conducting illegal searches and wiretappings, engaging in one false arrest, as well as carrying on intimidation of friends, relatives and employers of suspects. In a 1974 settlement of *Philadelphia Resistance v. Mitchell*, the FBI agreed not to infiltrate the group in the future.⁵⁸

In another very early lawsuit, the New York City anti-war group known as the Fifth Avenue Peace Parade Committee contested FBI surveillance in 1969 during an anti-Vietnam War demonstration in Washington, D.C., of more than five hundred thousand protestors. The Fifth Avenue Committee—an umbrella organization of more than one hundred anti-war groups—documented FBI surveillance, including the inspection of their bank records. As protestors boarded more than five hundred buses in New York, fifty-six FBI agents were dispatched to the departure sites to conduct monitoring. The Fifth Avenue group argued the surveillance chilled their free speech rights and infringed on their privacy. The court disagreed, finding that inspecting private bank accounts was legitimate; the FBI wanted to know how many people

were going to the demonstration.⁵⁹ Moreover, establishing a claim against the government cannot rest only on extensive FBI surveillance of political activity. They could not show any damages.

Plaintiff Losses

In illegal wiretapping cases, the government almost always won but activists could claim the legal process helped document a pattern of FBI misconduct. In the *Dellinger v. Mitchell* lawsuit, the government admitted that certain of the Chicago Conspiracy defendants had been overheard during the course of electronic surveillance. The class action complaint alleged, "This class, which includes groups of all political persuasions—radical, liberal, and conservative—is so numerous that joinder of all members is impossible." Nine organizations joined in the complaint: Black Panther Party, Student Nonviolent Coordinating Committee, Congress of Racial Equality, Southern Conference Educational Fund, American Servicemen's Union, National Mobilization Committee to End the War in Vietnam, New York Resistance, Catholic Peace Fellowship, and War Resisters League.⁶⁰ *Dellinger*, as the first anti-spying suit, prompted wide discussion within the Justice Department. Dozens of FBI memos documented the legal proceeding. Some of the early memos cover procedural issues: who in the Justice Department should handle the case and what FBI agents should do if deposed. For example, in a memo to William C. Sullivan, a chief architect of COINTELPRO, the Justice Department outlined the bold factual questions sought by the plaintiffs.

It inquires whether electronic surveillances have been used on the plaintiffs, their offices, agents, members or employees. . . . It requests data such as: whether plaintiffs were a target of the interceptions; involved in a conversation; mentioned during a conversation; time and location of the coverage; who authorized, installed and monitored the coverage; contents of all instructions and regulations; basis for the coverage; and the contents of all tapes and communications resulting from the coverage.⁶¹

How did the government respond? They concluded, "Of the eight plaintiffs who are defendants in the Chicago criminal case, the Bureau has kept the Department informed on a continuing basis concerning any interception of conversations through electronic surveillance for referral to the court. This has been a time consuming task. To comply with the requests concerning the nine organizations which are plaintiffs in captioned case is virtually an impossible task." The government hoped to deny the plaintiffs any of this information: "While the ultimate goal should be to secure dismissal of the

action, immediate resistance should be made to the requested Interrogatories on the ground that the matter called for relates to the national security and as such is privileged and not subject to production and disclosure.”⁶²

In 1971, the judge ruled the FBI could no longer delay based on the pending criminal charges in the Chicago case. Memos from different field offices detailed the history of electronic surveillance of each plaintiff bearing the same title: “David T. Dellinger et al. vs. Attorney General John N. Mitchell et al., Alleged Violation of Constitutional Rights.” The latter phrase (“alleged violation of constitutional rights”) carries weight: It was one of the first times the FBI considered such a matter. An FBI official told the Justice Department, “We have previously corresponded with the Department in this matter, claiming that current investigation would be jeopardized by disclosure of electronic surveillance coverage and recommended that executive privilege be invoked.”⁶³ The FBI director approved most of the documents turned over to the plaintiffs. A Justice Department official wrote the director, “If each of the documents can be declassified, we would appreciate your accomplishing such declassification. However, if in your judgment, any of the documents cannot be properly declassified, please provide us with the necessary facts for a representation as to a continuing need for classification.”⁶⁴

In a 1974 ruling, the judge further forced the FBI’s hand, resulting in the turnover of about 75,000 pages of field office files and some 7,800 tapes.⁶⁵ FBI memos document that the Bureau closely followed each of the Chicago Seven individuals, reporting on any political statements they made, with long copies of their speeches in the FBI file. It is not clear if the FBI spied on the lawyers in connection with *Dellinger v. Mitchell*, but some of them, such as Kunstler and Kinoy, were already under surveillance in separate investigations for subversive activities. In 1979, the lawsuit was dismissed because the litigants refused to answer invasive questions submitted to them by the Justice Department. By then, they had won a reversal of their convictions in the 1969 trial and were content to let the matter pass.⁶⁶

In the “Keith” case, the Justice Department for the first time admitted they conducted warrantless wiretaps and tried to get the court to sanction this longstanding practice as legitimate in defense of national security. The Supreme Court disagreed, ruling, “The freedoms of the Fourth Amendment cannot properly be guaranteed if domestic security surveillances are conducted solely within the discretion of the Executive Branch without the detached judgment of a neutral magistrate. . . . Resort to appropriate warrant procedure would not frustrate the legitimate purposes of domestic security searches.”⁶⁷ Although the Court effectively outlawed warrantless domestic wiretaps, the ruling did not guarantee that victims of such wiretapping could sue for compensation. For example, in 1971 the Jewish Defense League (JDL)

sued Attorney General John Mitchell for illegal wiretapping, but lost on dubious grounds. Although the group's constitutional rights might have been violated, at the time there were no clearly established legal requirements for national security wiretaps, so the attorney general could not be held to blame. Mitchell could claim "qualified immunity" from liability for the FBI wiretaps of JDL headquarters in 1970 and 1971, a time when the JDL was organizing protests at Soviet installations in New York. The electronic surveillance included conversations between the defendants and their lawyer. The litigation lasted twelve years.⁶⁸

In *Weinberg v. Mitchell*, the court in effect found that illegal action by the government is legitimate as long as such illegality is longstanding. Plaintiffs Doron Weinberg and Patti Roberts, the subjects of warrantless telephone wiretapping between 1969 and 1972, could not qualify for damages: "The question we face is whether we should retroactively apply the holding in *Keith* and thus render unlawful warrantless domestic security surveillance occurring prior to the announcement of that decision. . . . There may not have been any judicial authority for the warrantless wiretaps, but the executive branch had long proceeded on the assumption that surveillance exercised in the interest of national security was within its power."⁶⁹ This ruling narrowed the scope of anti-FBI challenges, a very conservative attempt by the court to stop other lawsuits from developing based on the thousands of acts of warrantless FBI surveillance carried out under Hoover's direction.

Post-COINTELPRO Cases

After 1980, lawsuits against the FBI declined in number. With the "reform" of the FBI, it became harder to sue the Bureau. The FBI recognized litigation as a new legal recourse so in key respects they obtained legal authorization for their methods. They applied for official warrants for break-ins, wiretaps, and mail surveillance to reduce liability. In this new environment, the legal community was uncertain that "suing the FBI for spying" could be done. There was a retreat. Victims of official repression found it hard to find legal representation. For example, both the ACLU and the NLG exhibited less enthusiasm to contest FBI spying. Yet several of the post-COINTELPRO cases resulted in big monetary awards. Earth First! leaders Judi Bari and Darryl Cherney won \$4.4 million and Muslim attorney Brandon Mayfield won \$2 million. These cases, as well as others, involved the false criminal arrests of subjects of FBI investigation.

The 1980s revival of spying by Reagan under the terrorist framework allowed the Bureau to open investigations on the basis of speech—advocacy of

violence—rather than only on the more narrow grounds of potential criminal conduct. The FBI investigated some Americans sympathetic to the Sandinistas in Nicaragua. Edward Haase, a freelance writer, belonged to the National Network in Solidarity with the People of Nicaragua. In 1985, U.S. Customs and FBI agents confiscated his address book, diary and other papers at a Miami airport upon his return from a trip to Nicaragua. The Center for Constitutional Rights (CCR) sued the FBI on his behalf, declaring the search to be illegal. They also asked for an injunction barring all federal agencies from singling out U.S. travelers from Nicaragua. In 1990, the FBI agreed to place all copies of the documents they seized under court seal and promised they would not be used in any investigation. A second suit filed by the CCR against the Customs Service resulted in a directive that agents cannot seize materials from travelers unless there is evidence of a possible crime. Congressman Don Edwards, a leading civil liberty advocate on the Hill, said the airport searches “have the odor of harassment. They have the odor of politics, and the FBI is supposed to stay out of politics.”⁷⁰

Two successful civil lawsuits contested the FBI’s extensive monitoring of the Committee in Solidarity with the People of El Salvador (CISPES). From 1981 to 1985, the FBI put the group under a microscope, looking for terrorist activity or foreign connections and found none. After the CCR sued under the FOIA to obtain part of the CISPES’s large FBI file, the legal group in 1988 initiated a civil lawsuit to seal the CISPES file. The FBI would be prohibited from using their material during background checks for government jobs or to start other investigations. Some activists reported being denied employment by federal, state and local government agencies because they were indexed or referenced in the FBI’s files as suspected terrorists. The lawsuit revealed that some 2,300 people were listed in the FBI files and the CCR managed to obtain a class action expunging of these names.⁷¹

In 1988, the local CISPES chapter in Chicago initiated a separate lawsuit to seal its FBI records. Why Chicago? The city police and the FBI in the Windy City had signed an agreement in 1982 restricting political surveillance as a result of a class action lawsuit, and the FBI investigation seemed to violate this agreement. After nearly a decade of litigation, the FBI agreed to expunge its files and to pay litigant attorney costs of \$190,000.⁷² The FBI promised also that it “would not conduct an investigation solely on the basis of activities protected by the First Amendment of the Constitution of the United States, or on the lawful exercise of any right secured by the Constitution or laws of the United States.” But the court acknowledged,

Implementing these general principles is, of course, extremely difficult in many cases since Agents often are confronted with an ambiguous situation at the beginning of an investigation. Persons or organizations engaged in political or

social advocacy are exercising rights guaranteed by the First Amendment to the Constitution. However, the fact that a person or entity is engaging in political or social advocacy protected by the First Amendment is not enough, in itself, to prevent a properly-controlled investigation of that person or entity's criminal activity.⁷³

Here is a tension as the First Amendment faces the power of the political police. If courts give the FBI wide latitude to engage in surveillance, the Bureau is bound to conduct politically motivated investigations, committed as it is to fighting a political war to defend the status quo. The FBI keeps investigations ongoing after they know no crimes will be committed.

Surveillance of the environmental movement dates at least to the first Earth Day celebrations in 1970.⁷⁴ The protesters who belonged to Earth First! called themselves "eco-warriors" and engaged in civil disobedience to protect old growth forests in the Pacific Northwest. The group's lawsuit stemmed from an unsolved bombing incident. On May 24, 1990, a pipe bomb exploded under the seat of Earth First! leader Judi Bari as she drove in Oakland, California, with fellow environmental activist Darryl Cherney. Bari and Cherney were in the midst of organizing the Redwood Summer protest, a campaign of nonviolence in defense of California's redwood forests. The Redwood Summer posed a direct challenge to the lumber industry and in the weeks prior to the bombing, Earth First! activists received numerous death threats, which they reported to the authorities.

The bomb was hidden under Bari's driver's seat and triggered by a motion device. The activists believed a lumber industry group might have planned an assassination attempt.

The police and the FBI showed up at the crime scene, where Bari was seriously injured, and accused the Earth First! leaders of transporting the bomb. The police believed the bomb accidentally exploded. According to Oakland police testimony, the FBI informed them that Bari and Cherney were "the type of individuals who would be involved in transporting explosives; bombs."⁷⁵ The police arrested Bari and Cherney, although they later were released without criminal charges. The police applied two questionable warrants to search Bari's home for bomb-making material.

In their 1991 lawsuit against the Oakland Police Department and the FBI, Earth First! claimed the false arrest was part of a campaign to smear the group in the media. The plaintiffs also charged the police with an illegal search, part of a conspiracy to violate Bari and Cherney's First Amendment rights to engage in political activity. During six years of legal discovery, in which the lawyers for Earth First! obtained FBI documents, the Bureau "accidentally" lost some key files relevant to the period immediately surrounding the bombing. "These pages are undoubtedly absent," Earth First! concluded, "because they

show damning evidence of the FBI's political spying on Earth First! around the time of the bombing."⁷⁶

The FBI long claimed that it was not investigating the group at the time of the incident. It was only *after* the bombing that the FBI started a terrorist investigation of Earth First! The facts of the case, as outlined in court, contradicted this assertion.⁷⁷

The lawsuit appeared to have a moderating effect on FBI activity. The group claimed in 1997, "Up until now, this lawsuit and the public understanding and support it has generated have been effective in holding back FBI disruption of Earth First!, and the group has been able to continue its work on the front lines of the struggle to save the last of the ancient redwood forest ecosystem." Earth First! used the suit to put the FBI on trial: "The case has been invaluable in educating forest activists and others about FBI techniques used to destabilize movements, and how to recognize those tactics when they are being used against us. As a result, Earth First! has become more sophisticated, has recovered from the 1990 assault, and gone on to spearhead the national effort to protect the Headwaters Forest."⁷⁸

In 1999, the case finally went to trial after Judge Stephan Reinhardt ruled the FBI exaggerated and misled in a number of areas. Bari and Cherney "have shown the requisite intent and recklessness on the part of appellants [FBI] with respect to misrepresentation in the two search warrant affidavits of the information purportedly obtained by the FBI agents, including the false or reckless statements about the location of the bomb and the two separate false and reckless statements tying nails possessed by Bari to the bombs." Moreover, the FBI "knowingly or recklessly omitted mention of the death threats against Bari." The Bureau built a shaky case by relying on misstatements by two witnesses who claimed Bari often talked about violence. Judge Reinhardt also found a reasonable suspicion that the FBI and Oakland police engaged in a conspiracy to undermine First Amendment rights. The FBI "actively publicized the inaccurate information to the media, an act which is consistent with a desire to create a negative impression of Earth First! among the public." It seemed clear the FBI investigated Earth First! prior to the bombing. As the judge wrote, "The Oakland police department had a division that had monitored the activities of Earth First! and cooperated with the FBI prior to the bombing. The Oakland police in the search warrant affidavits state their belief that appellees were 'members of a violent terrorist group.' Such a statement strongly suggests that the officers might have wanted to inhibit both the group's operations and the activities of its members."⁷⁹

The trial began in April 2002. "This was a golden opportunity for them to show that these environmentalists were dangerous and had to be feared," Earth First! attorney Dennis Cunningham told the jury in opening remarks.

The criminal investigation of Bari and Cherney had “a drastic effect at the time on the public image of Earth First!” Cunningham reiterated that Bari endorsed nonviolence and led a campaign within Earth First! to give up sabotage tactics, such as tree-spiking. “She was the one they targeted because she was effective. She moved people,” he said. “The bomber struck at her, and then law enforcement struck at her.”⁸⁰

During the trial representatives of several groups spoke out at a rally in front of the courthouse. Jim Wheaton, president of the Environmental Law Foundation, said, “History is being made here today by Darryl and Judi. They are taking on the government and they’re going to win. The fight they are fighting is as old as the republic itself. It illustrates again that here in John Ashcroft’s America the real terrorism is when your government turns against you, when there’s no place to hide because your government wants to silence you.” It pleased Cherney that “Earth First! gets to prosecute the FBI. I can’t think of a more appropriate venue to protect our civil rights than a lawsuit in which two innocent environmental activists get to call the FBI and the Oakland Police on the carpet for supporting an act of terrorism, for covering up an act of terrorism. In Washington, D.C., our president proclaimed ‘Either you are with us or you are with the terrorists.’ But in this case the FBI has sided with the terrorists, and that is unacceptable.”⁸¹

It was a positive sign for the plaintiffs that on the second day of deliberations the jury asked for a copy of the First and Fourth Amendments, judging FBI conduct against the Bill of Rights. Justice Department lawyers tried to block the request; the judge ruled that the jury would be read the First and Fourth Amendments but could not get a written copy. Cherney commented sarcastically, “Their agents obviously haven’t read the Constitution, so why would they want anyone else looking at it.”⁸² What is wrong with getting a written copy? Is the Constitution a biased document?

After eighteen days of deliberation, the eight-woman, two-man jury came back with a huge victory for Earth First!, awarding the plaintiffs \$4.4 million. The FBI was held liable for \$2,399,000 and the Oakland Police Department was told to pay \$2,001,000. The verdict found that law enforcement violated both the First and Fourth Amendments, with about 80 percent of the damages attributed to First Amendment violations. Six of the seven defendants—three FBI agents and three Oakland police officers—were found liable. Robert Bloom, another Earth First! attorney, commented, “This verdict is critical for everyone to understand how law enforcement works in this country. This jury got a look at a new side of the FBI and saw their secrets. This jury told the truth.”⁸³ A juror in the case shed light on why Earth First! won. Mary Nunn told the press, “They [FBI] were lying. I didn’t just think they were lying. The search warrant showed that they were lying. Their inconsistency showed they

were lying. Their stories didn't jibe, not one together. Each one was evading the question or saying they didn't remember. These people are notorious for note keeping. They're notorious for their files. So all of a sudden they don't recall anything? Well you had 12 years to catch up. Why didn't you prepare yourself? Why didn't you go at least to acting classes and get lessons in how to prepare yourself in a desirable fashion on the stand? Because they were not desirable characters to me."⁸⁴

The large award set a new standard for anti-spying litigation. The police violations were limited to a single incident. Earth First! did not sue over a pattern of FBI harassment. It also seems clear that plaintiffs fare better if a jury decides the outcome, rather than a federal judge.

Right-wing activists embraced legal activism in only a few cases. White supremacist Randy Weaver sued the FBI after a nine-day standoff in front of his cabin in Ruby Ridge, Idaho, in 1992. FBI agents mistakenly killed his wife, Vicki, and his fourteen-year-old son. Weaver hired lawyer Gerry Spence and the Justice Department agreed to a \$3.1 million settlement in 1995. We do not know the extent of prior surveillance of Weaver but the case is more complicated than most media stories suggested at the time. Prior to the standoff, the Bureau of Alcohol, Tobacco, and Firearms (BATF) engaged in a sting operation by paying \$5,000 to an informer to buy two illegal guns from Weaver. After Weaver was caught for the sale, the BATF offered to drop the charges if Weaver agreed to become an informer within neo-Nazi and Aryan Nations groups. Weaver, who held strong anti-government views and shared Aryan Nations sympathies, turned down the government's offer. According to Spence, the government set up the whole sale in an unethical manner: "He had been entrapped—intentionally, systematically, patiently, purposefully entrapped—by a federal agent who solicited him to cut off, contrary to Federal law, the barrels of a couple of shotguns. Randy Weaver never owned an illegal weapon in his life. He was not engaged in the manufacture of illegal weapons. The idea of selling an illegal firearm had never entered into his mind until the government agent suggested it and encouraged him to act illegally."⁸⁵ Weaver's friend Kevin Harris, also injured by FBI agents in the shootout, filed a separate civil suit. In 2000, the FBI agreed to a \$380,000 settlement.⁸⁶

Surveillance of "anti-globalization activists" led to several lawsuits against spying. During protests in 2000 against the World Bank and International Monetary Fund in Washington, D.C., plaintiffs charged the D.C. police and seven federal law enforcement agencies, including the FBI, with unconstitutional tactics to intimidate and disrupt their activity. The police made nearly 1,300 arrests and infringed on civil rights by stopping and frisking activists on the street, searching vehicles, and engaging in cases of excessive force. In a sweep of the protestors' headquarters, law enforcement confiscated protest

materials. They also spread false information to the media. The ACLU and the NLG brought the lawsuit on behalf of four protest groups (Fifty Years Is Enough, Mobilization for Global Justice, Alliance for Global Justice, and the International Action Center).⁸⁷

In the post-9/11 era, the profiling of Muslims and Arab Americans as dangerous terrorists also prompted civil litigation. Portland attorney Brandon Mayfield became ensnarled in the government's net when he represented accused terrorist Jeffrey Leon Battle in a child custody lawsuit. At the time, Battle was a defendant in the "Portland Seven" sleeper cell case hyped by Attorney General Ashcroft as a key victory in the "War on Terror." In 2002, the group was charged with treason after they traveled to China attempting unsuccessfully to reach Afghanistan to join the Taliban. The government sentenced Battle, a former army reservist, to eighteen years in prison for "conspiracy to levy war on the United States." Mayfield, who was hired by Battle during the trial, knew the men under prosecution from the local Bilal mosque, where all they prayed.

Only two years earlier Mayfield established his own solo law practice, struggling to make a living. He and his family circulated in the affairs of the local Muslim community. Mayfield volunteered during weekends to teach English to African Muslim immigrants. He advertised his legal services in a local Muslim yellow pages, which the FBI appears to have monitored. Mayfield was a recent convert to Islam, after marrying an Egyptian immigrant, and the FBI said that Mayfield "had contacts with suspected terrorists." His arrest was based on false fingerprint evidence after the Madrid train bombings on March 11, 2004, which killed 191 people. The FBI claimed Mayfield's fingerprint was found at the crime scene in Spain. Specifically, his fingerprint was alleged to be on a plastic bag connected to the bomb. As a former army lieutenant, Mayfield's fingerprints were already on file with the U.S. government and the FBI made a match against the advice of the Spanish police. Before his arrest, the FBI secretly broke into his home, office, and car. They also monitored his mail and tapped his phone, conducting around-the-clock surveillance for six weeks.⁸⁸ Mayfield also aroused suspicion because he donated money to the Holy Land Foundation, which the FBI shut down for allegedly funneling money to Hamas.⁸⁹

Mayfield also hired Gerry Spence to sue the FBI, charging he was targeted because of his religion. The Justice Department investigated and partly substantiated the charge. As the U.S. attorney in Portland said, "I think the fact that he was a Muslim convert couldn't be ignored." His \$2 million settlement constituted compensation for the pain and embarrassment caused to him and his family. Unlike many litigants, he also received a formal apology from the government.⁹⁰

Mayfield talked about the not-so-secret surveillance: "[W]e were actually seeing telltale signs that somebody had been in our house, that had burglarized our home, such as doors that were left unbolted—that is,

where we would lock the bottom lock and not bolt it, we would come home and find the bolt locked. Blinds that were left closed, we would come back and find them partially opened. And even freshly vacuumed carpets, we would find footprints in the house that, by custom, we didn't wear shoes in the home. So that's our unofficial contact with the FBI. And that created a great deal of paranoia, fear and suspicion, even before I was actually arrested on May 6 of 2004."⁹¹

Another successful lawsuit contested FBI policing under the "terror scare." Ehab Elmaghraby, an immigrant from Egypt, was among dozens of Muslim men detained in New York after 9/11 on unspecified charges. He spent nearly a year in a federal detention center in Brooklyn before being cleared of any links to terrorism. A resident of New York City for thirteen years, he used to run a restaurant near Times Square in Manhattan. His lawsuit charged not only that his detention violated his civil rights, but that as a detainee he was shackled, physically assaulted by guards, and subjected to multiple body-cavity searches, including one in which a flashlight was inserted into his rectum. In 2006, the government agreed to pay \$300,000 in a settlement.⁹² He discussed the case in an interview with journalist Amy Goodman.

I have my restaurant in Manhattan. And I work in the flea market also on the weekend. And I have a normal life. I have no problem at all. And then September 30, I was returning from the flea market on Sunday, and found four F.B.I. and two secret service at my house. They were talking to me like they were suspecting me because I'm Arab Muslim like I have something to do with September 11. . . . My father tried to visit me. He came especially from Egypt all the way to New York to visit me. And they threw him out from MDC [Manhattan Detention Center]. The manager of the ninth floor with the special unit he tell him, "If I see you one more time at the MDC in Brooklyn, I'm going to put you in a new the cell next to him." They have to—he had to return back to Egypt after one week . . . I was thinking it's the end of my life, you know. I think, you know, like the way they treat me, I did something wrong in my life and this is the end of my life. I am never going to see my family again. I'm never going to see the street again.

One of his lawyers, Haeymoon Yoon, of the Urban Justice Center, said:

Mr. Elmaghraby's story is, unfortunately, too typical. I think that our case along with the other detainees have clearly stated that the treatment that he received was very, very common. It was systematic. It was on a daily basis. The physical, the verbal abuse, he was subjected to the brutal mistreatment, the repetitive strip searches, denial of access to calling their lawyers, was on—it occurred on a daily basis and the fact that this type of treatment occurred in a systematic way because of the fact of they were Arab-Muslim men in the wake of September 11.⁹³

In another post-9/11 case, Colorado lawyer and civil rights activist Francisco “Kiko” Martinez was placed on the terrorist “no fly” watch list. Police also repeatedly stopped him in his car. He said, “We supposedly have a constitutional right to travel, but I can’t get on a plane. If I drive, even the slightest infraction can result in a detention of one to three hours or more. I have to be careful who I travel with because I don’t want to subject most people to what I have to go through if I’m stopped.”⁹⁴ According to his attorney, Richard Rosenstock of Santa Fe, “We’re challenging their ability to subject him to de facto arrests. They’re not just tracking him.” In 2007, Martinez settled a civil lawsuit against the FBI and state police for \$106,500.⁹⁵

Meanwhile, environmentalist Josh Connole won \$100,000 from the FBI after false imprisonment for terrorism in 2003. The Bureau put Connole under twenty-four-hour surveillance after a neighbor anonymously phoned the FBI and suggested he might be a suspect in a highly publicized multi-million-dollar vandalism and arson spree against four Los Angeles–area car dealerships. The vandals spray-painted the initials “ELF” on Hummers, suggesting an Earth Liberation Front action. The anonymous caller who reported Connole, twenty-five, held a grudge against the young people living in an environmental co-op in Pomona, California, because they did not appear to hold jobs and put environmental bumper stickers on their cars. After his arrest, Connole spent four days in jail chained to the floor. He was urged by FBI agents to confess to the arsons, although he had no connection to the crime. In his wrongful-arrest lawsuit, Connole learned the FBI placed his commune under surveillance and developed detailed profiles of the residents. According to FBI documents, no evidence of ELF ties existed. Rather, intelligence alluded to broad ecological sympathies. The owner of the house “posted statements on websites opposing the use of fossil fuels.” Another document said the owner and Connole worked with Food Not Bombs, an “anarcho-vegan food distribution group,” and posted on a website opposing ocean whaling in Norway. The Bureau mentioned the commune’s interest in alternative, electric cars. “How does advocacy of electric cars become the basis for suspicion?” asked Bill Papanian, Connole’s lawyer. Connole also was awarded \$20,000 from the West Corvina Police Department to settle a damage claim.⁹⁶

Conclusion

The ability to sue the federal police is fundamental to expanding democracy. The changing political environment from the 1950s to the 1970s encouraged such challenges, especially after Watergate, when the legitimacy of the political system came under attack and government opened itself up to reform to

restore credibility and maintain social order. During the course of these lawsuits, the legal framework to fight the state expanded. Not only can federal agents be held liable but so too can the conduct of informers, a precedent established in the SWP lawsuit. In addition, private individuals who work with federal agents may be held liable. Litigation became an important social justice tactic to expose state crimes and to establish a legal framework to seek reparations from the federal government for political policing. Does civil litigation by itself force the FBI to cease its spying? In specific cases, suing has this effect. Putting the FBI on trial is part of a larger effort to build a just society. This effort will continue to draw upon the FOIA. While the difficulty of obtaining FBI files is all too clear, as scholars pry open new material they will get new information leading to new forms of knowledge, which victims may use to wage new legal struggles. Americans will contest government spying as long as they continue to live in a Surveillance Society. The monitoring of political activity poses a severe challenge to the constitutional protection of political freedom.

Notes

1. Individual plaintiffs who contested COINTELPRO practices include Jane Fonda, William Albertson, Frank Wilkinson, Stew Albert, Judith Clavir, Roger Lippman, Martin Luther King Jr., Muhammed Kenyatta (Donald Jackson), David Dellinger, Doron Weinberg, Patti Roberts, John Sinclair, Keith Forsyth, Walter Bergman, James Peck, Abdeen M. Jabara, Dhoruba Bin Wahad (Richard Moore), Fred Hampton, Mark Clark, Imari Obadele, Huey Newton, Geronimo ji Jaga Pratt, Julius Hobson, Arthur Waskow, Sammie Abbott, Rev. David Eaton, Abe Bloom, Viola Liuzzo, Lori Paton, Jennifer Dohrn, Sara Blackburn, Lewis Cole, William A. Price, Deborah Offner, Johanna Lawrenson, Judi Bari, Darryl Cheney, Brandon Mayfield, Edward Haase, Randy Weaver, Kevin Harris, Ehab Elmaghraby, Francisco “Kiko” Martinez, David Lippman and Josh Connole. Organizations which sued include the Socialist Workers Party, National Lawyers Guild, Institute for Policy Studies, Philadelphia Resistance, Black Panther Party, Fifth Ave. Peace Parade Committee (New York), Wounded Knee Legal Defense/Offense Committee, Alliance to End Repression (Chicago), Honeywell Project, the Ku Klux Klan, the Jewish Defense League, Committee in Solidarity with the People of El Salvador, New Alliance Party, Provisional Party of Communists, and Fifty Years Is Enough.

2. Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (Boston: Little Brown, 1988), 301–305; Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Urbana: University of Illinois Press, 1996), 91–197.

3. *Dellinger v. Mitchell* 442 F.2d 783 (1971).

4. Arthur Kinoy, *Rights on Trial: The Odyssey of a People's Lawyer* (Cambridge, Mass.: Harvard University Press, 1983), 6. See also David J. Langum, *William M.*

Kunstler: The Most Hated Lawyer in America (New York: New York University Press, 1999); and David Kairys, ed., *The Politics of Law: A Progressive Critique* (New York: Basic Books, 1998).

5. Although the facts of *Tatum* concerned Defense Department spying, it set a standard for all federal police agencies. James X. Dempsey and David Cole, *Terrorism and the Constitution*, (Los Angeles: First Amendment Foundation, 1999), 91–92; Robert Howard and Kathleen M. Crowley, “Pleading, Discovery, and Pretrial Procedure for Litigation Against Government Spying,” *University of Detroit Journal of Urban Law* 55 (Summer 1978): 933.

6. “Kelley: Agents Affected by Fear of Future Lawsuits,” *Washington Post*, Dec. 17, 1977.

7. “Libertarians Oppose U.S. Staff Immunity in Rights Violations,” *Washington Post*, Nov. 26, 1977; “Liability of U.S. Officials: High Court, Justice Dept. Disagree,” *Washington Post*, July 22, 1978.

8. *Pratt v. Webster* 673 F.2d 424 (1982); *Jones v. FBI* 41 F.3d 238 (1994).

9. FBI Director, “Destruction of Field Files and Records,” Dec. 12, 1987, Destruction of Records FBI File.

10. Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (Carbondale: Southern Illinois Press, 1999), 193, 333–34; “Ex-Official of ACLU Gave FBI Information,” *Los Angeles Times*, Aug. 4, 1977.

11. Ann Fagan Ginger and Eugene M. Tobin, eds., *The National Lawyers Guild: From Roosevelt through Reagan* (Philadelphia: Temple University Press, 1988), 36–38, 190, 306–7, 336–38; Percival R. Bailey, “The Case of the National Lawyers Guild, 1939–1958,” in *Beyond the Hiss Case: The FBI, Congress, and the Cold War*, ed. Athan Theoharis (Philadelphia: Temple University Press, 1982), 133.

12. Ginger and Tobin, eds., *The National Lawyers Guild*, 336.

13. Chip Berlet, “Case Study in FBI Harassment: The National Lawyers Guild,” *Guild Notes* 16 (Winter 1992): 27; “Landmark Settlement in *NLG v. FBI*,” *Guild Notes*, 13 (Nov.–Dec. 1989): 1.

14. Margaret Jayko, ed., *FBI on Trial: The Victory of the Socialist Workers Party Suit Against Government Spying* (New York: Pathfinder Press, 1988), 2, 8, 14, 50–51, 54–55, 238; Anthony Marro, “FBI Break-in Policy,” in *Beyond the Hiss Case*, 97; Robert Goldstein, “The FBI and American Politics Textbooks,” *PS: Political Science and Politics* 18 (Spring 1985): 238; Chip Berlet, “Hunt for Red Menace,” Political Research Associates, 1998.

15. Kenneth O’Reilly, *Hoover and the UnAmericans: The FBI, HUAC, and the Red Menace* (Philadelphia: Temple University Press, 1983).

16. Robert Sherrill, *First Amendment Felon: The Story of Frank Wilkinson, His 132,000 Page FBI File, and His Epic Fight for Civil Rights and Liberties* (New York: Nation Books, 2005), 274.

17. Dale E. Treleven, “Interviewing a Close Friend, First Amendment Activist Frank Wilkinson,” *The Journal of American History* 85 (Sept. 1998): 516; Frank Wilkinson, “Why I Won My Case Against the FBI: A Personal Story of Twenty Years of Invisible Persecution,” *Human Rights* 15 (Summer 1988): 38–55; Wilkinson, “Revisiting the ‘McCarthy Era’: Looking at *Wilkinson v. United States* in Light of *Wilkinson v. Federal*

Bureau of Investigation,” *Loyola of Los Angeles Law Review* 33 (Jan. 2000): 681–698; “FBI Failed to Warn of Death Plot, ACLU Says,” *Los Angeles Times*, Feb. 2, 1983.

18. Dempsey and Cole, *Terrorism and the Constitution*, 193.

19. Frank J. Donner, “Let Him Wear A Wolf’s Head: What the FBI Did to William Albertson,” *Civil Liberties Review* 3 (April–May 1976): 12–22.

20. F. J. Baumgardner to W. C. Sullivan, “Request For Special Handling of File Relating to Highly Sensitive Counterintelligence Technique,” July 8, 1964, Confidential Files Maintained in Room 6527 FBI File.

21. Lillie Albertson, “The Domestic Legacy of the Cold War McCarthyite Persecution: A Personal Account” (paper presented at “Ending the Cold War at Home” conference, ACLU, 1991).

22. Frank J. Donner, *The Age of Surveillance: The Aims and Methods of America’s Political Intelligence System* (New York: Knopf, 1980), 138; *Stern v. FBI* 737 F.2d 87 (1984).

23. Richard M. Gutman, “Combating Defendants’ Obstructionism in the Discovery Process,” *University of Detroit Journal of Urban Law* 55 (Summer 1978): 985–88.

24. See David Garrow, *The FBI and Martin Luther King, Jr: From “Solo” to Memphis* (New York: W.W. Norton, 1981); Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York, 1988); and Theoharis, ed., *From the Files of J. Edgar Hoover* (Chicago: Ivan R. Dee, 1991), 102–3.

25. Clarence M. Kelley and James Kirkpatrick Davis, *Kelley: The Story of an FBI Director* (Kansas City: Andrews, McMeel, and Parker, 1987), 171.

26. Kenneth O’Reilly, “Racial Matters”: *The FBI’s Secret Files on Black America* (New York: The Free Press, 1989); Ward Churchill, “‘To Disrupt, Discredit and Destroy’: The FBI’s Secret War Against the Black Panther Party,” in *Liberation, Imagination, and the Black Panther Party*, eds. Kathleen Cleaver and George Katsiaficas (New York: Routledge, 2001), 78; James Kirkpatrick Davis, *Spying on Americans: The FBI’s Domestic Counterintelligence Program* (New York: Praeger, 1992), 103. See also Doug Rossinow, “Letting Go: Revisiting the New Left’s Demise,” in *The New Left Revisited*, ed. John McMillian and Paul Buhle (Philadelphia: Temple University Press, 2002), 249–50.

27. O’Reilly, “Racial Matters,” 229–30.

28. Bud Schultz and Ruth Schultz, *The Price of Dissent: Testimonies to Political Repression in America* (Berkeley: University of California Press, 2001), 248–49; Ward Churchill and Jim Vander Wall, *The COINTELPRO Papers: Documents from the FBI’s Secret War Against Dissent in the United States* (Boston: South End Press, 1990), 140–41; O’Reilly, “Racial Matters,” 314–15. The case is *Iberia Hampton et al. v. Edward V. Hanrahan et al.*

29. Danny O. Coulson and Elaine Shannon, *No Heroes: Inside the FBI’s Secret Counter-Terror Force* (New York: Simon Schuster, 2001), 37–38, 49–50.

30. “Withholding Justice: The Continuing Prosecution of Dhoruba Bin Wahad,” *Village Voice*, Sept. 22, 1992; “Judge Rules FBI Wronged Ex-Panther,” *New York Newsday*, Oct. 21, 1991; Paul Wolf, “COINTELPRO: The Untold American Story,” Sept. 1, 2001, 45–51; “City Agrees to Settle Suit by Former Panther Leader,” *New York Times*, Dec. 8, 2000; *Wahad v. FBI* 132 F.R.D. 17 (1990).

31. "Interview with Dhoruba Bin Wahad," *Shadow* 36 (June/Aug. 1995): 1.
32. *Kenyatta v. Moore* 744 F. 2d 1181 (1984); Christy Macy and Susan Kaplan, eds., *Documents* (Washington: Center for National Security Studies, 1980), 142–145; O'Reilly, "Racial Matters," 337.
33. "FBI Intelligence Letter," June 26, 1970, Aug. 3, 1970, Inlet FBI File.
34. Anthony Lewis, "Mocking the Law," *New York Times*, June 11, 1984.
35. David Rudovsky to Ivan Greenberg, email, May 2, 2007, and May 4, 2007.
36. FBI Director to SAC Albany, Jan. 12, 1977, Destruction of Files FBI File.
37. *Black Panther Party v. Smith* 661 F.2d. 1243 (1981), vacated 458 U.S. 1118 (1982).
38. Jack Olson, *Last Man Standing: The Tragedy and Triumph of Geronimo Pratt* (New York: Doubleday, 2000), 229, 280, 309–11. The FBI's monitoring of Bobby Seale included electronic surveillance. In response to a FOIA request by Seale, the San Francisco field office released 3,025 pages covering electronic monitoring. Mr. Finzel to J. K. Hall, "Freedom of Information Act (FOIA) Request Concerning Bobby Seale," Sept. 9, 1981, FOIPA High Visibility Memoranda 1974–1985 FBI File.
39. Olson, *Last Man Standing*, 233.
40. Olson, *Last Man Standing*, 181, 240–45.
41. Olson, *Last Man Standing*, 252, 275.
42. Olson, *Last Man Standing*, 258–59, 277–83, 302–3.
43. Olson, *Last Man Standing*, 333–35, 464; Amnesty International, "USA: New Trial for Elmer Pratt—25 Years of Injustice Could Finally End," May, 30, 1997; "Former Black Panther Geronimo Pratt Declares Prosecutorial Efforts 'A Waste,'" Associated Press, Feb. 2, 1999; ACLU, "Judge Turns Down Efforts to Halt Elmer 'Geronimo' Pratt Civil Rights Suit," Sept. 13, 1999; "Ex-Black Panther Wins Long Legal Battle," *New York Times*, April 27, 2000.
44. "FBI Tap Data on King to Go to Archives," *Washington Post*, Feb. 1, 1977.
45. "FBI Intelligence Letter," Aug. 10, 1970, Inlet FBI File.
46. *Fonda v. Gray* 707 F. 2d 435, 437 (1983); Mary Hershberger, *Jane Fonda's War: A Political Biography of an Antiwar Icon* (New York: W.W. Norton, 2005), 51–74; Evan Hendricks, ed., *Former Secrets: Government Records Made Public Through the Freedom of Information Act* (Washington: Campaign for Political Rights, 1982), 175.
47. James Peck, who suffered a beating along with Bergman, sued in 1976 and a federal judge awarded him \$25,000 in damages. The National Emergency Civil Liberties Committee represented Peck, an official of the War Resisters League. Mary Stanton, *From Selma to Sorrow: The Life and Death of Viola Liuzzo* (Athens: University of Georgia Press, 1998), 208–10; "FBI Sued by Freedom Rider Crippled in '61 KKK Beating," *Washington Post*, Jan. 5, 1977; Schultz and Schultz, *The Price of Dissent*, 149–56, 162, 517–18; Raymond Arsenault, *Freedom Rides: 1961 and the Struggle for Racial Justice* (New York: Oxford University Press, 2006).
48. Stanton, *From Selma to Sorrow*, 202–4.
49. Stanton, *From Selma to Sorrow*, 204–8.
50. *Hobson v. Wilson* 737 F.2d 11–12, 23, 54 (1984); "D.C. Jury Hears Activists' '76 Suit on Rights Issue," *Washington Post*, Dec. 13, 1981; "Jury Awards \$711, 937.50 to Demonstrators," *Washington Post*, Dec. 24, 1981; "Justice Dept. Will Pay Damages in

FBI Case,” *Washington Post*, Oct. 16, 1986; “\$51,000 Awarded in FBI Spying,” *Washington Post*, Oct 23, 1986.

51. “U.S. Uncovers Evidence Indicating an FBI Break-In in Upstate Town,” *New York Times*, Oct. 1, 1976.

52. Stew Albert to Ivan Greenberg, email, Aug. 21, 2002.

53. Stew Albert to Ivan Greenberg, email, Aug. 19, 2002.

54. Albert to Greenberg, Aug. 21, 2002.

55. “Five Gain Settlements for FBI Acts in 70s,” *New York Times*, March 16, 1981; Peter Vos to Ivan Greenberg, email, May 10, 2009.

56. Bruce Shoemaker, “Legacy of the Secret War,” American Friends Service Committee, March 1994, 9; Henriks, ed., *Former Secrets*, 165.

57. Donner, *The Age of Surveillance*, 154; Jerry Berman, “FBI Charter Legislation,” 1065–1067; David Rudovsky interview by Ivan Greenberg, Aug. 11, 1999.

58. David Rudovsky interview; “Suit Charges FBI with Harassment,” *New York Times*, July 15, 1971.

59. *Fifth Avenue Peace Parade Committee v. Hoover* 327 F. Supp. 238 (1971); *Fifth Avenue Peace Parade Committee v. Gray* 480 F.2d 326 (1973).

60. *Delinger v. Mitchell* 442 F.2d 783 (1971).

61. C. D. Brennan to W. C. Sullivan, Aug. 8, 1969, War Resisters League (WRL) FBI File.

62. C. D. Brennan to W. C. Sullivan.

63. Domestic Intelligence Division letter, March 3, 1974, WRL FBI File.

64. Henry E. Pettersen to Director, March 11, 1974, WRL FBI File.

65. FBI Legal Counsel [text redacted] to J. B. Adams, July 6, 1994, WRL FBI File.

66. “Chicago 7 Damage Suit,” *Washington Post*, March 9, 1979.

67. *United States v. United States District Court* 407 U.S. 297 (1972) (also known as the Keith case); Kinoy, *Rights on Trial*, 4

68. *Zweibon v. Mitchell* 720 F.2d. 162 (1983).

69. *Weinberg v. Mitchell* 588 F.2d 277 (1978).

70. See the following stories in the *Washington Post*: “Traveler’s Suit Against the FBI Is Dismissed” (May 15, 1985); “Writer’s Suit Against FBI Reinstated” (Dec. 10, 1986); and “FBI Probing Nicaragua Visitors” (May 12, 1987).

71. “Dissident Group Seeks to Seal Records of 3-Year FBI Probe,” *Washington Post*, Nov. 30, 1988; “FBI to Purge Names of Central American Activists from Files,” *Chicago Tribune*, Nov. 5, 1989. In 1982, CISPES unsuccessfully sued the FBI over their right to protest outside the Honduran Consulate in New Orleans, Louisiana. See *CISPES v. F.B.I.* 770 F.2d 468 (1985).

72. “FBI Agents Get Training About Rights,” *Chicago Sun Times*, Dec. 17, 1997; *CISPES v. FBI*, www.concentric.net/~gutmanpc (March 16, 2000).

73. “Settlement Agreement,” Chicago CISPEs and FBI, Dec. 5, 1997, 3.

74. Dempsey and Cole, *Terrorism and the Constitution*, 6–7.

75. Redwood Summer Justice Project, “Overview of the Earth First! Bombing Case: Who Bombed Judi Bari?” Nov. 1997.

76. Redwood Summer Justice Project, “Bombing Case Update: A Victory (of Sorts) in the Courts,” Nov. 1997, 2.

77. On earlier FBI efforts against the group, see David Helvarg, *The War Against the Greens* (San Francisco: Sierra Club Books, 1997), 395–97; Martha F. Lee, *Earth First!: Environmental Apocalypse* (Syracuse: Syracuse University Press, 1995), 126–27; Noelle Hanrahan, “America’s Secret Police: FBI COINTELPRO in the 1990s,” Redwood Summer Justice Project, April 1998.

78. “Bombing Case Update,” 3.

79. Judge Stephan Reinhardt opinion in *Bari v. Sims* (case number 97-17375), U.S. Court of Appeals for the Ninth Circuit, Sept. 24, 1999, p. 12161–62, 12175.

80. “Attorney Alleges Effort to Discredit Earth First!,” *San Jose Mercury News*, April 10, 2002.

81. Kathy Glass, “Progressive Leaders Speak Out in Support of Bari vs. FBI Suit,” May 5, 2002 (no longer available online).

82. Jean Eisenhower, “FBI Tries to Stop Jury from Reading the Constitution,” May 20, 2002 (no longer available online).

83. “Earth First! Activists Win Case,” *San Francisco Chronicle*, June 11, 2002; “Environmentalists Win Bombing Lawsuit,” *New York Times*, June 12, 2002.

84. “Juror Talks About the Bari vs. FBI Trial,” *Albion Monitor*, July 16, 2002.

85. Gerry Spence, *From Freedom to Slavery: The Rebirth of Tyranny in America* (New York: St. Martin’s Press, 1996), 5; U.S. Department of Justice, “Report Regarding Internal Investigation of Shootings at Ruby Ridge, Idaho, During Arrest of Randy Weaver,” 1994, 25–31; David B. Kopple and Paul H. Blackman, *No More Wacos: What’s Wrong with Federal Law Enforcement and How to Fix It* (Amherst: Prometheus Books, 1997), 301; Jeffrey Kaplan, ed., *Encyclopedia of White Power: A Sourcebook on the Radical Racist Right* (New York: Altamira Press, 2000), 331–34; Theoharis, ed., *The FBI: A Comprehensive Reference Guide* (Phoenix: Oryx Press, 1998), 90–91.

86. “U.S. Settles Final Civil Lawsuit Stemming From Ruby Ridge Siege,” *New York Times*, Sept. 23, 2000.

87. “Suit Says Police Violated Protestors’ Rights,” *Washington Post*, July 28, 2000.

88. Eric Lichtblau, *Bush’s Law: The Remaking of American Justice* (New York: Pantheon Books, 2008), 65–74.

89. Ronald Kessler, *The Terrorist Watch: Inside the Desperate Race to Stop the Next Attack* (New York: Crown Forum, 2007), 101.

90. Lichtblau, *Bush’s Law*, 74. See also Stephen T. Wax, *Kafka Comes to America* (New York: Random House, 2008).

91. “Falsely Jailed Attorney Brandon Mayfield Discusses His Case After Feds Award \$2 Million and Written Apology,” *Democracy Now!*, Nov. 30, 2006.

92. “U.S. Is Settling Detainee’s Suit in 9/11 Sweep,” *New York Times*, Feb. 28, 2006.

93. “U.S. Agrees to Pay Egyptian Man \$300K For Post-9/11 Detention in Unprecedented Settlement,” *Democracy Now!*, March 1, 2006.

94. “Kiko Martinez: Watch Listed for Life,” *In These Times*, Jan. 19, 2007.

95. “Lawyer Challenges Terrorist Watch List,” *Denver Post*, July 28, 2007; “Terror Suspect List Yields Few Arrests,” *Washington Post*, Aug. 25, 2007.

96. “FBI Settles with Environmentalist,” *Los Angeles Times*, Nov. 15, 2003; “Profiling: How the FBI Tracks Eco-Terror Suspects,” *Newsweek*, Nov. 21, 2005.

8

The FBI in the Surveillance Society

IN RECENT YEARS, researchers using the Freedom of Information Act (FOIA) have begun to uncover the role of the FBI in American society. Unfortunately, political policing has a rich and sordid past. Suppression of political activity became an institutional feature of U.S. politics in the twentieth century. Despite a strong American tradition of free speech and political assembly, with support in the Bill of Rights of the Constitution, government concerns for stability and to fight social change created a large network of official spying. As the United States emerged as a leading industrial power, it also developed a national security apparatus with a focus on monitoring and containing domestic critics. The suppression of activism persisted under both Democratic and Republican presidents.

More is known about the period before 1975 than the period after it. For example, the Church Committee documented that between 1955 and 1975 the FBI conducted about 740,000 domestic subversive and 190,000 extremist investigations. While only limited statistics have been made public about the number of investigations started after 1975, many people assume the number of inquiries is now much lower. The Bureau admitted to about 2,300 separate “dirty tricks” during COINTELPRO, but again public statistics do not exist on the number of disruptive acts carried out during the post-Hoover period. By the mid-1970s, the FBI admitted to using about fifty thousand informers in national security cases.¹ We still do not know how many informers have been embedded in American life during the last three decades.

While in recent years the Bureau concentrated surveillance on “terrorists” rather than on subversives, the investigation of a very wide range of peaceful

and lawful political activity occurred within the new framework. The FBI rarely tolerated the American idea of pluralism in which different points of view coexisting with one another are considered an asset to society. Rather, dissent equaled disloyalty. Practicing “guilt by association,” FBI spy files swelled to include people who merely associated with the subject of a government investigation. Civil liberties were ignored to put down movements for social change. The government used scare politics in an attempt to sway the general public that such efforts are necessary.

Unfortunately, the end of the Cold War did not bring about significant curtailment of spying. From the government’s perspective, the fall of Communism did not reduce the level of intelligence activity conducted against the United States. There was no “peace dividend” reducing the need for domestic surveillance. The budget for the FBI continued to increase dramatically and a surge in spying followed both the 1995 Oklahoma City bombing and the terrorist attacks of September 11, 2001. After the reforms of the 1970s, the FBI no longer operated with relative autonomy in the government, but congressional oversight generally provided a weak check since the Bureau remained unwilling to open up the details of its secret investigations for scrutiny. On the occasion of the FBI’s ninetieth anniversary in 1998, the American Civil Liberties Union (ACLU) called for the establishment of a Civilian Complaint Review Board to contest a broad range of FBI practices. Such reform is in keeping with a bottom-up critique of surveillance activity. People need to gain more control over the powers of large social forces in society which can track and monitor them in ways never before possible. With each new advance in communications, the FBI demanded the ability to increase its spying capabilities. Director Mueller articulated the FBI’s surveillance goals in a November 10, 2008 speech: “In the FBI, we have a mantra: ‘Know Your Domain.’ Knowing your domain means understanding every inch of a given community—its geography, its populations, its economy, and its vulnerabilities.”² Another term which captures this mentality is “total information awareness.” The Pentagon developed a program by that name in 2002 but later abandoned it due to public outcry. But informational social control by government persists in ways the public rarely comprehends.³

No Place to Hide

The wide range of FBI surveillance occurs in a broader context: Americans now live in a “Surveillance Society.” Since the late 1980s, academic and popular writers note the ways that surveillance is shaping our world and intruding on privacy. The anonymous individual is an endangered species. Writing in 1988,

Gary T. Marx believed we were heading toward a society in which “the line between the public and private is obliterated; we are under constant observation, everything goes on a permanent record, and much of what we say, do, and even feel may be known and recorded by others we do not know. Data from widely separated geographical areas, organizations, and time periods can be merged and analyzed easily.”⁴ Surveillance in liberal democracies can develop in “total” ways with vast private and state dossiers. According to Reg Whitaker, “The technical scope of surveillance today and in the immediate future has far surpassed the capacities of the totalitarian states of the immediate past.”⁵

By the late 1990s, popular awareness of privacy invasion emerged as a top issue. A 1998 poll found that 88 percent of Americans expressed concern about their privacy. A second poll reported similar results—90 percent worried about the possible misuse of personal information. About 38 percent reported being the victim of an improper invasion of their privacy with 12 percent citing law enforcement as the culprit. Even after 9/11, Americans expressed mixed attitudes about police surveillance that infringed on their privacy. In March 2004, a high 71 percent of Gallup poll respondents disapproved of federal agents secretly searching citizen homes without their consent. Such “sneak and peak” break-ins had been authorized under the Patriot Act. A 2005 poll reported that about 70 percent of Americans opposed random police street searches. Some segments of the population expressed stronger support for civil liberties than others—for example, young adults, African Americans, urban residents, and college graduates.⁶

Top-down monitoring is done without popular consent and this “transparency” is overwhelmingly one-sided. As the lives of Americans are opened up for inspection, the same cannot be said for business or governing elites. While it is true that most government agencies now produce official websites in which they make available reports and press releases, this information is as much for propaganda as openness. By 1998, OMB Watch, a public interest group that tracks information policy, found that

[g]overnment leaders in recent years have both expressed and demonstrated interest in enhancing public access to government, but that interest has not translated into widespread agency practices. The reasons for this are not cost—public access costs are relatively small. They are not technological—an increasing number of people have access to the Internet and it is not very difficult to make government information available in searchable formats. The real reason is that government rhetoric is not matched by an ongoing commitment to public access.⁷

During the long Cold War, the government decried “Communism” to close down information flows. Successive presidents allowed information to be

restricted on the grounds that the nation's Communist enemies would use the information. Since the end of the Cold War, the same argument emerged with the specter of terrorism replacing the fear of Communism. In a late 1990s example, the Clinton Justice Department modified the Clean Air Act (1990), which mandates that an estimated sixty-six thousand facilities that use hazardous chemicals tell its workers and the public what would happen in a chemical accident. Responding to FBI pressure, the government limited the release of information fearing terrorists could use the data to stage an industrial accident. Moreover, while the Clinton administration voluntarily declassified more old (twenty-five years) government documents than Reagan and the first President Bush combined, government continued to make *new* documents classified on a mammoth and accelerating pace. In 1998 alone, 7.3 million documents were newly classified.⁸ The administration of George W. Bush made matters worse. By the end of 2001, the total number of classification actions increased by 44 percent to more than thirty-three million. Between 2001 and 2005, classification decisions increased by 75 percent. Bush also invoked the "state secrets" privilege in legal cases at about twice the rate of his predecessors.⁹ Steven Aftergood of the Federation of American Scientists, who edits *Secrecy News*, noted,

Yet an even more aggressive form of government information control has gone unenumerated and often unrecognized in the Bush era, as government agencies have restricted access to *unclassified* information in libraries, archives, Web sites, and official databases. Once freely available, a growing number of these sources are now barred to the public as "sensitive but unclassified" or "for official use only." Less of a goal-directed policy than a bureaucratic reflex, the widespread clampdown on formerly public information reflects a largely inarticulate concern about "security." It also accords neatly with the Bush administration's preference for unchecked executive authority.¹⁰

Privacy is recognized as a basic human right in the international community and is embedded in the 1948 Universal Declaration of Human Rights: "No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to protection of the law against such attacks."¹¹ To date, congressional legislation fails to effectively protect individual privacy in the workplace, the private market, or as political citizens.¹² In the United States, the idea of institutionalized data protection never gained ground as it has in Europe. There is no federal government agency or commission whose sole purpose is to protect the privacy and integrity of records on individuals. While the idea of privacy is implicit in the Constitution, the lack of a clear regulatory apparatus has left many Americans vulnerable to intrusions. When

law and order came to cyberspace, for example, it mostly was constructed to criminalize the unauthorized hacking into government or business computers, not to protect the privacy of individual users.

Some apologists for the new surveillance suggest it is multidirectional. Ordinary people can employ their own surveillance methods against large social forces. While this may be possible in a few cases and on a small scale, most of the power remains in the hands of government and business. Overall, I agree with Gary Marx's assessment: "The new surveillance is relatively one-sided: it is likely to increase the power of large organizations, but not that of small ones or individuals. There is hardly equal access to these means."¹³

The U.S. government maintains more than nine hundred major databases with records tracking financial expenditures and sources of income; birth and marriage; driver's license and automobile registration; passports; voter registration; social security benefits; unemployment insurance; disability; pensions; food stamps; veteran's benefits; and senior citizen subsidies.¹⁴ The Paper Age is fading fast. In 2000, *Federal Computer Week* reported, "In less than four years, federal agencies are supposed to stop using paper. Government records—from personnel evaluations to benefits applications to contracts and regulations—are supposed to be created, used and preserved electronically."¹⁵

The FBI can gain access to all of these records. We are heading toward one big government database. In recent years, government deployed "computer matching" to merge data within separate databases to generate full portraits of individuals. Writing as early as 1994, David Lyon found, "The comparison of records through computer matching represents the fastest growing surveillance trend in government throughout the industrialized societies."¹⁶ In the United States, the Department of Health, Education and Welfare conducted the first large-scale computer matching in 1977. Under "Project Match," the records of welfare recipients merged with the payroll records of about three million federal employees to locate abuses of welfare eligibility. During the 1980s, Reagan accelerated the trend. For example, he ordered the Internal Revenue Service (IRS) to use its computerized records to help the Selective Service catch youth who failed to register for the military draft. The administration also launched a major initiative to monitor the welfare system by urging the states to digitize social service and welfare records, in addition to income verification programs. These records would be linked into the computer systems of the Immigration and Naturalization Services and the IRS to curtail welfare fraud. By the mid-1990s, the federal government relied on computer matching in hundreds of programs.¹⁷

The intent of these centralized computer efforts may appear benign, if not socially constructive, a byproduct of efforts to control costs, eliminate

fraud, and improve debt collection. Yet, once again, the practice of computer matching is done without popular knowledge or consent and alters the power relationship between citizens and the state. As one privacy advocate notes, “It is like the investigators entering the home without any warrant or prior suspicion, taking away some or all of the contents, looking at them, keeping copies of what is of interest and returning them all without [your] knowledge.”¹⁸ The potential for abuse is always a serious concern. A government database may be used in repressive ways that have nothing to do with its original function. In an often cited example, the federal government used Census Bureau records during World War II to identify people of Japanese ancestry to help the government carry out its internment policy.¹⁹ In the late 1960s and early 1970s, the government merged FBI files and IRS files to facilitate politically motivated tax audits. Recently, the FBI and the Immigration and Naturalization Service (INS) undertook an effort to merge their fingerprint files into one database.²⁰ There is a strong argument that data surveillance rivals any threat George Orwell depicted in his seminal novel *1984*. The authoritarian potential of the new surveillance may not directly affect most citizens within democratic societies, but, as Lyon observes, “Such authoritarian potential, though present for all citizens, is especially likely to be realized in relation to political dissidents, minorities, and the poor.”²¹

The Big Brother metaphor lurks in the minds of government leaders and law enforcement. At the Clinton White House, a special office database was nicknamed “Big Brother” by White House staff and it served as a central repository for contact information on individuals and groups important to the president and the First Lady. The database had 460,000 entries and each entry had a special “comments” section.²² At a conference on computers and privacy in early 2000, FBI agent Paul George, head the Michigan field office, referred to himself as “the Big Brother in Michigan.” He told the gathering, “If there is going to be a Big Brother in the United States, it is going to be us—the FBI.”²³

Over the past decade, proposals for a national ID system littered the halls of Congress, and some have passed in the context of immigration policy. Social security numbers already serve this function, but other proposals include adding “biometrics”—methods for recognizing people based on physical or behavioral traits. All government information on an individual becomes centralized and continually updated, serving as a new tool for government control. National IDs raise the specter of totalitarian government; failure to carry the ID at all times might lead to unwarranted suspicion and result in detention or arrest. The burden is placed on the individual to prove they have a lawful status to reside in the nation. Errors in the system also might result in the denial of employment or bank loans.

Recently, top-down global transparency is the goal of the NSA's Echelon spying program. The NSA can monitor telephone, email, fax, and other communications worldwide through a series of land-based spying centers in the United States, England, New Zealand, Australia and Canada. European journalists first wrote about the system in 1996 and the European Parliament commented on it in the late 1990s. In the United States, the NSA refused to acknowledge its existence until 1999. Around the same time, Republican Congressman Bob Barr asked the intelligence community for a full accounting and the ACLU launched a special website about Echelon to increase public awareness. The ACLU noted, "If the scope of ECHELON is as large as has been reported, it may be that NSA is effectively engaged in communications surveillance of Americans that dwarfs that done by the FBI and the other domestic law enforcement agencies."²⁴ The view that global spying is an American-led initiative became widespread in parts of Europe. As the *New York Times* reported, "The idea that the United States is already using its vast satellite and spy networks for industrial espionage is readily accepted here [in Europe], as recent debates in the European Union on the Echelon electronic surveillance system showed. . . . Again, the size and scope of the surveillance system make Europe feel dwarfed."²⁵

The surveillance of the World Wide Web is augmented by trawling "cyber worm" programs. A good deal of secrecy surrounds FBI deployment of such worms. But other U.S. government agencies have used them. In one of the first revelations about such monitoring, in 2000 the Securities and Exchange Commission used a program to search the Web looking for stock fraud. The SEC trawling operation relied on an artificial mind emphasizing certain keyword phrases—such as "get rich quick." The worm searched millions of public areas on the Web, including chatrooms, to find information of a suspicious nature.²⁶ If the SEC can do it, why not the FBI? The cyber worm gets inside the hard drive without causing any damage, searches files without the user noticing, and reports back to the FBI.²⁷

One can only guess which American companies currently work with law enforcement to spread the secret DIRT bug, or some updated version. Would the computer giant Microsoft cooperate in this manner? In 1999, the *New York Times* reported Microsoft added a component to its security software system without publicly identifying it. The company called it the "NSA Key" and it is contained in all Windows operating systems. The Key may well serve as a Trojan horse giving the NSA a hidden back door. Andrew Fernandes, a security analyst who found the secret key, said, "The result is that it is tremendously easier for the N.S.A. to load unauthorized security services on all copies of Microsoft Windows, and once these security services are loaded, they

can effectively compromise your entire operating system.” When questioned Microsoft denied working with the government. Of course, they were unlikely to admit such collaboration. Meanwhile, the NSA declined to confirm or deny any partnership with Microsoft.²⁸ News stories in several online publications quoted experts distressed by Microsoft’s security feature.²⁹

Fernandes developed a free program that allegedly replaces the NSA Key and can be accessed from the Cryptonym Corporation, where he served as chief scientist. During the two months after the *Times* article appeared, about three hundred thousand people visited the website and about forty thousand people downloaded the program.³⁰ Now let’s get really paranoid—maybe the free program is some type of government Trojan horse and the forty thousand people who downloaded it opened themselves up to new spying? When government deception is in play, it is hard to know what to think.

When, in February 2000, hackers took down several popular e-commerce websites in a “denial of service” attack, the incident made front-page news and drew a response from the president. At the time of the attack, the FBI publicly lamented that so few businesses or individuals—only about 2,600—had downloaded free software from their website to prevent such attacks. Why had so few sought the help of the FBI? Suspicion about spying: The FBI software contained a secret code which “users must fly on the faith that the FBI has not planted other monitoring tools in the software,” according to *Federal Computer Week*.³¹ Internet analysts postulated that the e-commerce attacks might have been the work of the FBI, the DOD or the NSA to help pave the way for increased government surveillance of the Net. Wayne Madsen, senior fellow with the Electronic Privacy Information Center (EPIC), suggested that the attack may have been the result of a classified government operation.³²

Video surveillance in public places in the form of Closed Circuit TV (CCTV) expanded after 9/11 as a form of social control. In the nation’s capital, about 5,200 cameras were installed throughout the city by 2008, posing new threats to First Amendment activity. As Mark Rotenberg, head of EPIC, testified, “Because many people come to Washington to express their political and religious views, a surveillance system would make it easy to monitor and record people exercising their First Amendment rights.” In litigation, EPIC obtained documents revealing aerial surveillance conducted by the Washington Municipal Police Department and the FBI of protesters at demonstrations—the Million Family March, pro-life rallies at the Supreme Court, and World Bank protests. The images obtained by helicopter were downloaded to law enforcement on the ground.³³

CCTV spread to other cities. Baltimore initiated a CitiWatch program with four hundred cameras installed by 2007 funded by the Department of Homeland Security. In Chicago, about two thousand cameras were placed

around the city during the same period.³⁴ In Manhattan, the rapid growth of street cameras was documented by the ACLU. In 1998, they located about 2,400 cameras, including at sites noted for political protest and alternative culture (such as Washington Square Park in Greenwich Village). But these early efforts pale in comparison to the period after the 9/11 attacks. By 2005, 4,176 cameras were positioned below 14th Street, home to city government and Wall Street, more than five times the number in 1998. What if cameras mounted on street corners monitor people engaged in innocent and lawful activities? What if these innocent activities are confidential and personally damaging and the tapes fall into the wrong hands? Public spaces often serve as meeting places for lawyers and their clients, reporters and sources, and politicians who want to talk privately. The presence of cameras may “prevent law-abiding citizens who hold political or social views not accepted by the majority from expressing themselves freely.” Again, the issue is consent. Cameras arrived in large and small cities with little debate about their use.³⁵

Police departments may plant microphones on building rooftops and utility poles to transmit noise back to headquarters. The official justification for this audio surveillance is to pinpoint bursts of gunfire so patrol cars can be sent swiftly to the scene. To cover one square mile area, police need to install six to ten audio sensors. However, some of these police programs are used to monitor conversations. In 1995, the Defense Department awarded a \$1.7 million contract to a private firm to develop advanced sound pickup networks in Washington, D.C.³⁶ Garfinkel sees an ominous trend toward the “bugging of the outside world.” Again, the reference is to Orwell: “Orwell thought the ultimate threat to privacy would be the bugging of bedrooms and offices. Today, an equally large threat to freedom is the systematic monitoring of public places through microphones, video camera, surveillance satellites, and other remote sensing devices, combined with information processing technology. Soon it may be impossible to escape the watchful outdoor eye.”³⁷

Advanced invasive technology for policing raises troubling questions about personal searches. Electromagnetic cameras can be used to detect a weapon concealed under clothing. Infrared technology, in a hand-held unit, can detect temperature differentials through walls to locate people that are out of normal sight. Stroboscopic photocopy permits hundreds of pictures to be taken in a few seconds at political demonstrations to check for the presence of suspects.³⁸ Holographic visual projections can be combined with artificial sounds to create a false image to confuse a suspect. Infrared night vision goggles first developed for the military are now available in any high-tech store. The police also conduct surveillance photography at night,³⁹ deploy thermo-imaging technology, as well as Realtime Residential Power Line Surveillance (RRPLS) to measure electricity use in a home.⁴⁰ With regard to audio surveillance, it is

no longer necessary to gain physical access to a site to eavesdrop. High-tech laser beam microphones can be directed at a target from across the street to pick up conversations. Both cell phones and landline phones can be wired for listening without an old-fashioned bug being planted: "Agents have the power to take phones 'off the hook' and listen into conversations taking place near the phone, without homeowners ever knowing they are being monitored."⁴¹ Anti-crime surveillance devices can be turned on political dissidents not only by police but also by the enormous private security industry.

In addition to technological capabilities, police undercover activities expanded in the Surveillance Society. By 1995, federal law enforcement paid about \$100 million to informers to reward them for their spying, up from \$63 million in 1989.⁴² Recent statistics are unavailable. In a new development, prosecutors may conduct background checks on prospective jurors, looking at criminal records or prior contact with police. As law professor Bruce Rogow says, "It is kind of scary stuff, that you would be called to jury duty and then subjected to a criminal background check by the government. What you are really hearing is distrust of jurors."⁴³

Proposals to expand police DNA databases from convicted felons to all Americans are part of a mindset that places no priority on privacy. By 1998, the states already collected DNA samples on six hundred thousand people, including many juvenile offenders, and the FBI won the approval of Congress to establish a national DNA computer index system to centralize these records. By 2009, the FBI's DNA database included 6.7 million profiles.⁴⁴ In a first step, law enforcement wants to gather DNA samples from all suspects arrested for a crime regardless of whether they are found guilty. Some have proposed taking DNA samples from all newborn babies. Yet treating DNA casually is dangerous because it contains information on susceptibility to diseases and may predict certain behaviors. What if the government practices genetic discrimination by excluding or penalizing people with the wrong genes?⁴⁵

Among the toxic fallout of a Surveillance Society, ordinary people monitor their own family, friends, enemies, or coworkers. Parents conduct surveillance, placing hidden video cameras in their home to spy on babysitters and using software programs to track their children's Internet activity. Day care centers install cameras to transmit pictures to the Web for parents to view while at work.⁴⁶ Handheld camcorders allow the average person to record criminal activity. Sometimes the cameras are turned on the police, as in the filming of the beating of Los Angeles resident Rodney King in 1991. According to a recent poll, almost half of Web users search their own names under Internet search engines. Americans not only "Google" themselves but also others: Everyone is watching everyone.⁴⁷

While the FBI Is Watching Us, Can the People Put the FBI Under Surveillance?

Transparency for law enforcement greatly is resisted. When I first began researching *The Dangers of Dissent*, I looked at the official FBI website, which in 1998 received about thirty million hits every month and stored more than 2,600 documents. The site was silent on many critical issues. Not one document referred to the Church Committee. Official history referred very briefly to COINTELPRO and rewrote its activity in a distorted way. It said that during the 1960s “it [FBI] used both traditional investigative techniques and counterintelligence programs (‘Cointelpro’) to counteract domestic terrorism and conduct investigations of individuals and organizations who threatened terrorist violence.”⁴⁸ COINTELPRO was designed to monitor and harass subversives generally and was not aimed at violent terrorist threats. To frame the program as a fight against terrorism is not only misleading, it also contributes to the tabooing of legitimate political activity as violent and uncivilized.

In the same vein, top FBI leaders distort the truth as they write the history of the Bureau. They engaged in routine deception as officials, so it is not too surprising their behavior does not change when they propagate a public text. It is incredible to learn how Director Kelley viewed COINTELPRO: “The preponderance of historical evidence and the ultimate results suggest that, by and large, what the Bureau did was right for the time and, without question, in the best interests of the United States. Constitutional liberties were not trampled. Though abuses may have existed, I believe it was minimal. And though minimal, it was not illegal in any instance.”⁴⁹ Not illegal? Has he forgotten the hundreds of illegal wiretaps and black bag jobs and the thousands of mail openings? When the FBI encouraged conflict and violence, it engaged in illegal conspiracies under the law. And so on.

The crafting of the Bureau’s public image in deceptive ways is exemplified in the memoir of Cartha DeLoach, the number three man at the Bureau during the late 1960s. DeLoach supervised political intelligence cases. He claimed, “The perception persists that the FBI was illegal-wiretapping happy. The truth is, neither Hoover nor any of his subordinates would have instituted unauthorized wiretaps. Everyone knew the rules.” What constitutes authorization? The FBI did not get a judicial warrant and often conducted wiretaps without notifying the attorney general. DeLoach also can claim that “the FBI was wrongly perceived to have hindered the civil rights movement” and that the FBI’s attacks on American Communists simply “proposed that we do to the Communists what they were doing to us.” About COINTELPRO, DeLoach puts the blame for abuse on the shoulders of only one official, William Sullivan.⁵⁰ It is certainly DeLoach’s wish that abuse of power be located in one

rogue official, not the Bureau as a whole, and when DeLoach's book appeared in 1995 Sullivan was deceased. He died in a hunting accident.

In the 2008 presidential campaign, the role of the FBI as a secret political police was not raised by the major party candidates. While according to polls the threat of terrorism seemed less of a concern to most voters than ending the war in Iraq and improving the faltering economy, the Republicans tried to erect the terror scare to taint Barack Obama. They spread the false message that Obama was a Muslim, and Muslims are dangerously sympathetic to Al Qaeda. Republicans tried to scare the people about the "foreign" nature of the Democratic candidate. He is not like us, they said. He is a socialist or a Marxist, who wants to "spread the wealth around." Republican candidate John McCain tried to fuse the Red Scare and the terror scare. Sarah Palin, his vice presidential running mate, repeatedly said on the stump that Obama likes to "pal around with terrorists," referring to 1960s radical William Ayers.

Would Obama as president restrict the FBI? As an African American interested in civil rights and constitutional law, he might show less fidelity to political policing. On the transparency question, he seemed to mark a break with the past by supporting legislation for more open business practices and issuing new FOIA Guidelines promising "A New Era of Open Government."⁵¹ Maybe there will be advancement on these issues, as he works with a majority Democratic Congress to shine a light on business and government conduct. While Obama shed the rhetoric of the "war on terror," he also signed legislation in 2010 to renew portions of the Patriot Act scheduled to expire. In part, Obama's response depends on the level of public mobilization against surveillance. Leaders often feel compelled to act when they feel pressure from below. Arguably the first bottom-up president, Obama still needs a citizen movement against spying to rise before he is likely to reform the FBI.

Is anyone protesting the wide-ranging interventions by new surveillance practices? Public opinion polls show that a majority of Americans list assaults on their privacy as top concerns. Liberal Left civil liberties groups are joined by some right-wing groups in denouncing the new surveillance. I've already cited the ACLU at length. It is not too surprising that Phyllis Schlafly, head of the conservative Eagle Forum, also asks, "Are We Becoming a Society of Snoops?" The Right's dislike of big government includes efforts to control the population through monitoring.⁵² Yet the intrusion on privacy has not stirred a broad-based social movement. This may be due to the fact that many people are unaware of just how transparent their lives have become. Transparency renders the average person much weaker in his relationship to powerful elites. In constitutional democracies, the government (with and without legal warrants) conducts in-depth surveillance with technologies that rival, or even surpass, what was imagined in Orwell's *1984*. The FBI, as the lead agency for

social control in the government, is given greater powers over time, which should worry every American

Notes

1. David Garrow, "FBI Political Harassment and FBI Historiography: Analyzing Informants and Measuring Their Effects," *The Public Historian* 10 (Fall 1988): 5.

2. Robert S. Mueller III, speech before the International Association of Chiefs of Police, San Diego, California, Nov. 10, 2008.

3. Peter Galison and Martha Minow, "Our Privacy, Ourselves in an Age of Technological Intrusions," in *Human Rights in the 'War on Terror'* ed. Richard Ashby Wilson (New York: Cambridge University Press, 2005), 264–68; Shane Harris, *The Watchers: The Rise of America's Surveillance State* (New York: Penguin Press, 2010).

4. Gary T. Marx, *Undercover: Police Surveillance in America* (Berkeley: University of California Press, 1988), 221; Simon Garfinkel, *Database Nation: The Death of Privacy in the 21st Century* (Cambridge: O'Reilly, 2001), 11. For a historical overview, see Christian Parenti, *The Soft Cage: Surveillance in America, From Slavery to the War on Terrorism* (New York: Basic Books, 2004).

5. Reg Whitaker, *The End of Privacy: How Total Surveillance Is Becoming a Reality* (New York: New Press, 2000), 4. Whitaker, unlike most writers on the Surveillance Society, also sees possibilities for resistance and progressive networking. See also Daniel J. Solove, *The Digital Person: Technology and Privacy in the Information Age* (New York: New York University Press, 2004).

6. Bureau of Justice Statistics, U.S. Department of Justice, "Privacy, Technology, and Criminal Justice Information," Feb.–March 2000, 1; Darshun Goux, Patrick J. Egan, and Jack Citrin, "The War on Terror and Civil Liberties," in *Public Opinion and Constitutional Controversy*, Nathaniel Persily, Jack Citrin, and Patrick J. Egan, eds. (New York: Oxford University Press, 2008), 318–20, 331.

7. "Agenda for Access," OMB Watch, 1998, 1, www.ombwatch.org (July 23, 2000).

8. Information Security Oversight Office, National Archives and Records Administration, "1998 Report to the President."

9. OpenTheGovernment.org, "Secrecy Report Card 2007"; Public Citizen, "Analysis of Executive Order 13292," www.Bushsecrecy.org (June 5, 2006); "Invoking Secrets Privilege Becomes a More Popular Legal Tactic by U.S.," *New York Times*, June 4, 2006.

10. Steven Aftergood, "The Age of Missing Information," *Slate*, March 17, 2005.

11. Quoted in Whitefield Diffie and Susan Landau, *Privacy on the Line: The Politics of Wiretapping and Encryption* (Cambridge: MIT Press, 2007), 142–43.

12. A groundswell of public interest prompted Congress in select cases to pass single-issue disclosure laws. The JFK Assassination Records Act (1992) and the Nazi War Crimes Disclosure Act (1998) opened up about four million pages of new government documents for public viewing despite the resistance of both the FBI and the CIA. National Archives and Records Administration, "Implementation of the Nazi War

Crimes Disclosure Act: An Interim Report,” Oct. 1999; Statement by White House Press Secretary Dee Dee Myers, Nov. 10, 1993; Kate Doyle, “The End of Secrecy: U.S. National Security and the New Openness Movement,” in *National Insecurity: U.S. Intelligence After the Cold War*, ed. Craig Eisendrath (Philadelphia: Temple University Press, 2000), 104–6.

13. Marx, *Undercover*, 224.

14. Diffie and Landau, *Privacy on the Line*, 154; Anne Wells Branscomb, *Who Owns Information? From Privacy to Public Access* (New York: Basic Books, 1994), 168.

15. “Paperless ‘Paperwork,’” *Federal Computer Week*, March 20, 2000.

16. David Lyon, *The Electronic Eye: The Rise of Surveillance Society* (Minneapolis: University of Minnesota Press, 1994), 90.

17. David H. Flaherty, *Protecting Privacy in Surveillance Societies* (Chapel Hill: University of North Carolina Press, 1989), 344–55; Parenti, *The Soft Cage*, 165–67. In 1985, Reagan advanced top-down surveillance by initiating mandatory drug testing for all federal employees. Private industry soon followed this lead. In 1987, a business survey found that 21 percent of firms required all employees to submit to this screening. A decade later, about 81 percent of firms conducted mandatory drug testing. ACLU, “Drug Testing: A Bad Investment,” Sept. 1999, 5; William G. Staples, “Surveillance and Social Control in Postmodern Life,” in *Punishment and Social Control*, ed. Thomas G. Bloomberg and Stanley Cohen (New York: Walter de Gruyter, 2003), 191.

18. Quoted in Roger Clarke, “A Normative Regulatory Framework for Computer Matching,” *Journal of Computer and Information Law* 13 (Summer 1995): 591.

19. “Group Wants Census Bureau Apology,” Associated Press, March 20, 2000.

20. John A. Andrew III, *Power to Destroy: The Political Uses of the IRS from Kennedy to Nixon* (Chicago: Ivan R. Dee, 2002); “INS-FBI Fingerprint Merger Outlined,” Associated Press, March 9, 2000.

21. Lyon, *The Electronic Eye*, 88. See also William G. Staples, *The Culture of Surveillance: Discipline and Social Control in the United States* (New York: St. Martin’s Press, 1998).

22. The “Big Brother” database is discussed in *Cara Leslie Alexander v. FBI* (1998), 2, 10–11.

23. “FBI Agent: I am Big Brother,” April 6, 2000, ZDNet News, <http://www.zdnet.com/news/fbi-agent-i-am-big-brother/10671> (Jan. 8, 2005).

24. ACLU, “ACLU Urges Congress to Investigate ECHELON Surveillance System,” April, 6, 1999, 2; Whitaker, *The End of Privacy*, 93.

25. “More Vehemently Than Ever, Europe Is Scorning the U.S.,” *New York Times*, April 9, 2000.

26. “ACLU Slams Plan to Trawl Web for Stock Fraud,” *APBnews*, April 5, 2000.

27. Lawrence Lessig, “The Architecture of Privacy,” unpublished paper, April 3, 1998, 11–12.

28. “A Mysterious Component Roils Microsoft,” *New York Times*, Sept. 4, 1999.

29. See two stories in *Wired News* (“MS Denies Windows ‘Spy Key,’” Sept. 3, 1999; “Debate Flares Over MS ‘Spy Key,’” Sept. 4, 1999). In a different publication, it was reported: “The ramifications of this backdoor are staggering. It means basically that Microsoft has included a backdoor for the NSA in all copies of the Windows operating system since Windows 95 and that all implementations of

Windows are potentially insecure.” “Security Expert Says Microsoft Placed NSA Backdoor in Windows,” *HackWatch*, Sept. 3, 1999, www.iol.ie/~kooltek/nsabackdoor.html (Nov. 5, 1999). See also “Uncertainty Over NSA Back Door,” *Intelligence Newsletter*, Jan. 6, 2000.

30. Andrew D. Fernandes to Ivan Greenberg, email, Nov. 3, 1999.

31. “What’s the FBI’s Secret Code?” *Federal Computer Week*, Feb. 21, 2000; “Few Downloaded FBI Tool to Detect E-Commerce Attacks,” *Federal Computer Week*, Feb. 14, 2000.

32. “Conspiracy Theories Abound,” *Federal Computer Week*, Feb. 15, 2000.

33. Mayor’s Office, District of Columbia, “Mayor Fenty Launches VIPS Program; New System Will Consolidate City’s Closed-Circuit TV Monitoring,” April 8, 2008; Mark Rotenberg, “Video Interoperability for Public Safety,” Committee on Public Safety and the Judiciary of the D.C. Council, June 2, 2008.

34. “Under Close Watch,” Aug. 1, 2007, www.GovernmentSecurity.com (Aug. 23, 2009); “City-Wide CCTV Coming to Chicago,” Oct. 1, 2004, www.SecuritySolutions.com (Aug. 23, 2009).

35. “Bio-Code Systems Promise New Age of Security,” 2; ACLU, “NYC Surveillance Camera Project,” 1998, 3, 6; ACLU, “Who’s Watching: Video Camera Surveillance in New York City and the Need for Public Oversight,” Fall 2006, 5–6.

36. David Brin, *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?* (New York: Basic Books, 1999), 6; “Device Takes Aim at Celebratory Gunfire,” *APBnews*, Dec. 31, 1999.

37. Garfinkel, *Database Nation*, 11.

38. “Tampa Crowd Scanned for Suspects,” *St. Petersburg Times*, Jan 31, 2001.

39. “Guidelines for Field Applications of Imaging Technologies,” *Forensic Science Communications* (FBI) 2 (January 2000), www.fbi.gov/hq/lab/fsc/backissu/jan2000/swigit.htm (Dec. 3, 2004).

40. Sykes, *The End of Privacy*, 37–38.

41. Sykes, *The End of Privacy*, 41.

42. Gary T. Marx, “Developments in Undercover Policing,” in *Punishment and Social Control*, Bloomberg and Cohen, eds., 167; Mark Curriden, “Secret Threat to Justice,” *National Law Journal*, Feb. 20, 1995; Dennis G. Fitzgerald, “Inside the Informant File,” *Champion* (NACDL), May 1998.

43. “Privacy vs. Purity: Defense Lawyers Question Criminal Checks of Jurors,” *Daily Business Review*, March 20, 2000.

44. FBI Press Release, Oct. 13, 1999; “FBI and States Vastly Expand DNA Databases,” *New York Times*, April 19, 2009.

45. Nadine Strossen, “Everybody Wants to Know Your Genes,” March 25, 1999, 3, www.IntellectualCapital.com (Feb. 3, 2000).

46. Brin, *The Transparent Society*, 6.

47. “Almost Half of U.S. Internet Users ‘Google’ Themselves,” Pew Internet and American Life Project, Dec. 17, 2007.

48. FBI, “History of the Federal Bureau of Investigation,” 1998, www.fbi.gov (Nov. 13, 1998).

49. Clarence M. Kelley with James Kirkpatrick Davis, *Kelley: The Story of an FBI Director* (Kansas City: Andrews, McMeel and Parker, 1987), 189.

50. DeLoach writes, “Increasingly, Sullivan was running COINTELPRO as if it was an independent agency, without accountability to the law or even to J. Edgar Hoover. . . . Hoover, however, neither planned nor supervised all COINTELPRO operations. Though generally sympathetic, he was largely unaware of what was happening—the illegal break-ins to gather intelligence, the involvement of agents in undercover operations that led to violence, the intimidation of university professors and administrators.” If not Hoover, then what about DeLoach himself, who was Sullivan’s immediate supervisor? “[E]ven I didn’t know how far he’d gone. His [Sullivan’s] reports were spare and conventional in tone and contained few specifics. When we got wind of his excesses, however, we asked for a complete report, after which Hoover immediately put a stop to the illegal techniques Sullivan was employing.” Yet this certainly is misleading. Anyone who reads declassified FBI memos knows that the key ones that planned strategy came from Hoover’s desk, and that Hoover was engaged in the details of many operations. Cartha DeLoach, *Hoover’s FBI: The Inside Story by Hoover’s Trusted Lieutenant* (Washington: Regnery Publishing, 1995), 52, 292–93.

51. U.S. Justice Department, “President Obama’s FOIA Memorandum and Attorney General Holder’s FOIA Guidelines Creating a “New Era of Open Government,” *FOIA Post*, March 2009.

52. Phyllis Schlafly, “Are We Becoming a Society of Snoops?” Feb. 2000, 1, 3, www.eagleforum.org/psr/2000/feb00/psrfeb00.html.

Selected Bibliography

- Abt, John J., with Michael Myerson. *Advocate and Activist: Memoirs of an American Communist Lawyer*. Urbana: University of Illinois Press, 1993.
- Andrew, John A., III. *Power to Destroy: The Political Uses of the IRS from Kennedy to Nixon*. Chicago: Ivan R. Dee, 2002.
- Arsenault, Raymond. *Freedom Rides: 1961 and the Struggle for Racial Justice*. New York: Oxford University Press, 2006.
- Ash, Timothy Garton. *The File: A Personal History*. New York: Vintage Books, 1997.
- Ashby, Leroy, and Rod Gramer. *Fighting the Odds: The Life of Senator Frank Church*. Pullman: Washington State University Press, 1994.
- Askin, Frank. *Defending Rights: A Life in Law and Politics*. Atlantic Highlands, N.J.: Humanities Press, 1997.
- Bailey, Frankie Y., and Alice P. Green. “Law Never Here”: *A Social History of African American Responses to Issues of Crime and Justice*. Westport, Conn.: Praeger, 1999.
- Baldino, Daniel. *Democratic Oversight of Intelligence Services*. Annandale: Federation Press, 2010.
- Ball, Howard. *Bush, the Detainees, and the Constitution: The Battle over Presidential Power in the War on Terror*. Lawrence: University Press of Kansas, 2007.
- Bamford, James. *The Shadow Factory: The Ultra-Secret NSA from 9/11 to the Eavesdropping on America*. New York: Doubleday, 2008.
- Banisar, David. *Freedom of Information Around the World: A Global Survey of Access to Government Information Laws*. London: Privacy International, 2006.
- Barak, Gregg, ed. *Crimes by the Capitalist State: An Introduction to State Criminality*. Albany: State University of New York Press, 1992.
- Berlet, Chip. “Hunt for the Red Menace.” Political Research Associates, 1998.
- Berlet, Chip, and Matthew N. Lyons. *Too Close for Comfort: Right-Wing Populism in America*. Boston: South End Press, 1996.

- Berman, Jerry J. "FBI Charter Legislation: The Case for Prohibiting Domestic Intelligence Investigations." *University of Detroit Journal of Urban Law* 55 (Summer 1977): 1041–77.
- Blanton, Thomas. "The World's Right to Know." *Foreign Policy* 131 (July–Aug. 2002): 50–58.
- Bloomberg, Thomas G., and Stanley Cohen, eds. *Punishment and Social Control*. Hawthorne, N.Y.: Walter de Gruyter, 2003.
- Boykoff, Jules. *Beyond Bullets: The Suppression of Dissent in the United States*. Oakland: AK Press, 2007.
- Branscomb, AnnWells. *Who Owns Information? From Privacy to Public Access*. New York: Basic Books, 1994.
- Brin, David. *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?* New York: Basic Books, 1999.
- Buitrago, Ann Mari, and Leon Andrew Immerman. *Are You Now or Have You Ever Been in the FBI Files?* New York: Grove Press, 1981.
- Burnham, David. *Above the Law: Secret Deals, Political Fixes, and Other Misadventures of the U.S. Justice Department*. New York: Scribners, 1996.
- Cain, Bruce, Russell J. Dalton, and Susan E. Scarrow, eds. *Democracy Transformed? Expanding Political Opportunities in Advanced Industrial Democracies*. Oxford: Oxford University Press, 2003.
- Chang, Nancy. *Silencing Political Dissent*. New York: Seven Stories Press, 2002.
- Charns, Alexander. *Cloak and Gavel: FBI Wiretaps, Bugs, Informers, and the Supreme Court*. Urbana: University of Illinois Press, 1992.
- Chevigny, Paul. *Police Power: Police Abuses in New York City*. New York: Pantheon Books, 1969.
- . *Cops and Rebels: A Study of Provocation*. New York: Pantheon Books, 1972.
- . *Edge of the Knife: Police Violence in the Americas*. New York: The New Press, 1997.
- Chin, Gabriel, and Scott Wells. "The 'Blue Wall of Silence' as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury." *University of Pittsburgh Law Review* 233 (1998).
- Chomsky, Noam, and Edward Herman. *The Washington Connection and Third World Fascism: The Political Economy of Human Rights*. Boston: South End Press, 1979.
- Chomsky, Noam. "Wars of Terror." Pp. 59–77 in *Peace Not Terror: Leaders of the Antiwar Movement Speak Out Against U.S. Foreign Policy Post 9/11*, ed. Mary Susannah Robbins. Lanham, Md: Lexington Books, 2008.
- Churchill, Ward. "From the Pinkertons to the PATRIOT Act: The Trajectory of Political Policing in the United States, 1870 to the Present." *CR: The New Centennial Review* 4 (Spring 2004): 1–72.
- Churchill, Ward, and Jim Vander Wall. *The COINTELPRO Papers: Documents From the FBI's Secret War Against Dissent in the United States*. Boston: South End Press, 1990.
- . *Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement*. Boston: South End Press, 1988.

- Cleaver, Kathleen, and George Katsiaficas, eds. *Liberation, Imagination, and the Black Panther Party*. New York: Routledge, 2001.
- Cloud, Morgan. "The Dirty Little Secret." *Emory Law Journal* 43 (Fall 1994): 1311–48.
- Cole, David, and Jules Lobel. *Less Safe, Less Free: Why America is Losing the War on Terror*. New York: The New Press, 2007.
- Cole, Leonard A. *The Eleventh Plague: The Politics of Biological and Chemical Warfare*. New York: W. H. Freeman and Company, 1998.
- Coulson, Danny O., and Elaine Shannon. *No Heroes: Inside the FBI's Secret Counter-Terror Force*. New York: Pocket Books, 1999.
- Crittenden, Ann. *Sanctuary: A Story of American Conscience and the Law in Collision*. New York: Weidenfeld and Nicolson, 1988.
- Culleton, Claire. *Joyce and the G-Men: J. Edgar Hoover's Manipulation of Modernism*. New York: Palgrave Macmillan, 2004.
- Culleton, Claire, and Karen Leick, eds. *Modernism on File: Modern Writers, Artists, and the FBI 1920–1950*. New York: Palgrave Macmillan, 2008.
- Cunningham, David. *There's Something Happening Here: The New Left, the Klan and FBI Counterintelligence*. Berkeley: University of California Press, 2004.
- Curry, Richard O., ed. *Freedom At Risk: Secrecy, Censorship, and Repression in the 1980s*. Philadelphia: Temple University Press, 1988.
- Davenport, Christian, Hank Johnson, and Carol Mueller, eds. *Repression and Mobilization*. Minneapolis: University of Minnesota Press, 2005.
- Davidson-Smith, G. *Combating Terrorism*. London: Routledge, 1990.
- Davis, Darren W. *Negative Liberty: Public Opinion and the Terrorist Attacks on America*. New York: Russell Sage Foundation, 2007.
- Davis, James Kirkpatrick. *Assault on the Left: The FBI and the Sixties Antiwar Movement*. Westport, Conn.: Greenwood Press, 1997.
- . *Spying on Americans: The FBI's Domestic Counterintelligence Program*. New York: Praeger, 1999.
- Davis, Martha F. *Brutal Need: Lawyers and the Welfare Rights Movement, 1960–1973*. New Haven: Yale University Press, 1995.
- Dees, Morris. *Gathering Storm: America's Militia Threat*. New York: HarperPerennial, 1997.
- D'Emilio, John. *Making Trouble: Essays on Gay History, Politics, and the University*. New York: Routledge, 1992.
- Dempsey, Jack X., and David Cole. *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*. New York: The New Press, 2002.
- Dershowitz, Alan. *Reasonable Doubts: The O.J. Simpson Case and American Criminal Justice*. New York: Simon and Schuster, 1996.
- Diffie, Whitfield, and Susan Landau. *Privacy on the Line: The Politics of Wiretapping and Encryption*. Cambridge: MIT Press, 1998.
- DiMaggio, Anthony R. *Mass Media, Mass Propaganda: Examining American News in the "War on Terror"*. Lanham, Md: Lexington Books, 2008.
- Dobratz, Betty A., and Stephanie L. Shanks-Meile. "White Power, White Pride": *The White Separatist Movement in the United States*. New York: Twayne Publishers, 1997.

- Donner, Frank J. *The Age of Surveillance: The Aims and Methods of America's Political Intelligence System*. New York: Random House, 1980.
- . *Protectors of Privilege: Red Squads and Police Repression in Urban America*. Berkeley: University of California Press, 1990.
- Drabble, John. "To Ensure Domestic Tranquility: The FBI COINTELPRO-WHITE HATE and Political Discourse, 1964–1971." *Journal of American Studies* 38 (Aug. 2004): 297–328.
- . "Fighting Black Power-New Left Coalitions: Covert FBI Campaigns and American Cultural Discourse." *European Journal of American Culture* 27 (July 2008): 65–91.
- Dworkin, Ronald. *A Matter of Principle*. Cambridge, Mass.: Harvard University Press, 1985.
- . *Taking Rights Seriously*. Cambridge, Mass.: Harvard University Press, 1977.
- Eisendrath, Craig, ed. *National Insecurity: U.S. Intelligence After the Cold War*. Philadelphia: Temple University Press, 2000.
- Elias, Robert. *The Politics of Victimization: Victims, Victimology, and Human Rights*. New York: Oxford University Press, 1986.
- Elijah, J. Soffiyah. "Reality of Political Prisoners in the United States: What September 11 Taught Us about Defending Them." 18 *Harvard Blackletter Law Journal* (2002): 129–37.
- Elliff, John T. *The Reform of FBI Intelligence Operations*. Princeton, N.J.: Princeton University Press, 1979.
- Elster, Jon. *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press, 2004.
- Epstein, Barbara. *Political Protest and Cultural Revolution: Nonviolent Direct Action in the 1970s and 1980s*. Berkeley: University of California Press, 1993.
- Falkenrath, Richard A., Robert D. Newman, and Bradley A. Thayer. *America's Achilles' Heel: Nuclear, Biological and Chemical Terrorism and Covert Attack*. Cambridge: MIT Press, 1998.
- Faludi, Susan. *The Terror Dream: Fear and Fantasy in Post-9/11 America*. New York: Metropolitan Books, 2007.
- Fernandez, Luis A. *Policing Dissent: Social Control and the Anti-Globalization Movement*. Piscataway: Rutgers University Press, 2008.
- Felt, W. Mark. *The FBI Pyramid From the Inside*. New York: Putnam, 1979.
- Felt, W. Mark, and John O'Connor. *A G-Man's Life: The FBI, Being "Deep Throat," and the Struggle for Honor in Washington*. Cambridge: Public Affairs, 2006.
- Ferree, Myra Marx. "Soft Repression: Ridicule, Stigma and Silencing in Gender-Based Movements." Pp. 138–58 in *Repression and Mobilization*, eds. Christian Davenport, Hank Johnson, and Carol Mueller. Minneapolis: University of Minnesota Press, 2005.
- Fisher, Stanley Z. "'Just the Facts, Ma'am': Lying and the Omission of Exculpatory Evidence in Police Reports." *New England Law Review* 28 (1993): 1–38.
- Flaherty, David. *Protecting Privacy in Surveillance Societies*. Westport, Conn.: Greenwood Press, 1989.

- Florini, Ann, ed. *The Right to Know: Transparency for an Open World*. New York: Columbia University Press, 2007.
- Forestell, Herbert N. *Surveillance in the Stacks: The FBI's Library Awareness Program*. New York: Greenwood Press, 1991.
- . *Freedom of Information and the Right to Know: The Origins and Applications of the Freedom of Information Act*. Westport, Conn.: Greenwood Press, 1999.
- Flynn, Kevin. *The Silent Brotherhood: Inside America's Racist Underground*. New York: The Free Press, 1989.
- Foreman, David. *Ecodefense: A Field Guide to Monkeywrenching*. Tucson, Ariz.: Earth First! Books, 1985.
- Freeman, Alexia P. "Unscheduled Departures: The Circumvention of Just Sentencing for Police Brutality." *Hastings Law Journal* 47 (1996): 677–777.
- Fuller, Lon L. *The Morality of Law*. New Haven: Yale University Press, 1969.
- Garfinkel, Simon. *Database Nation: The Death of Privacy in the 21st Century*. Cambridge: O'Reilly, 2000.
- Garrow, David. *The FBI and Martin Luther King, Jr: From "Solo" to Memphis*. New York: W.W. Norton, 1981.
- . *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference*. New York: HarperCollins, 1988.
- . "FBI Political Harassment and FBI Historiography: Analyzing Informants and Measuring Their Effects." *The Public Historian* 4 (Fall 1988): 5–18.
- Ginger, Ann Fagan, and Eugene M. Tobin, eds. *The National Lawyers Guild: From Roosevelt through Reagan*. Philadelphia: Temple University Press, 1988.
- Glick, Brian. *War At Home: Covert Action Against U.S. Activists and What We Can Do About It*. Boston: South End Press, 1989.
- Gindin, Susan E. "Lost and Found in Cyberspace: Information Privacy in the Age of the Internet." *San Diego Law Review* 34 (Dec. 1997): 1153–89.
- Goldsmith, Jack. *The Terror Presidency: Law and Judgment Inside the Bush Administration*. New York: W.W. Norton, 2007.
- Goldstein, Robert Justin. *Political Repression in Modern America: From 1870 to 1976*. Urbana: University of Illinois Press, 2001.
- . "The FBI and American Politics Textbooks." *PS: Political Science and Politics* 18 (Spring 1985): 237–46.
- Goldstone, Jack A., ed. *States, Parties and Social Movements*. New York: Cambridge, 2003.
- Gray, L. Patrick, III, with Ed Gray. *In Nixon's Web: A Year in the Crosshairs of Watergate*. New York: Times Books, 2008.
- Green, Penny, and Tony Ward. *State Crime: Governments, Violence and Corruption*. London: Pluto Press, 2004.
- Greenberg, Ivan. "Federal Bureau of Investigation." Pp. 294–298 in *The Jim Crow Encyclopedia*, eds. Nikki Brown and Barry Stentiford. Westport, Conn.: Greenwood Press, 2008.
- Gutman, Herbert G. *Power and Culture: Essays on the American Working Class*. New York: Pantheon Books, 1987.

- Gutman, Richard M. "Combating Defendants' Obstructionism in the Discovery Process." *University of Detroit Journal of Urban Law* 55 (Summer 1977).
- Halberstam, David. *The Children*. New York: Random House, 1998.
- Harris, Shane. *The Watchers: The Rise of America's Surveillance State*. New York: Penguin Press, 2010.
- Hendricks, Evan, ed. *Former Secrets: Government Records Made Public Through the Freedom of Information Act*. Washington, D.C.: Campaign for Political Rights, 1982.
- Herman, Edward S., and Gerry O'Sullivan. *The Terrorism Industry: The Experts and Institutions that Shape Our View of Terror*. New York: Pantheon Books, 1989.
- Hershberger, Mary. *Jane Fonda's War: A Political Biography of An Antiwar Icon*. New York: W.W. Norton, 2005.
- Heymann, Philip B. *Terrorism and America: A Commonsense Strategy for a Democratic America*. Cambridge: MIT Press, 1998.
- Hill, Robert A., ed. *The FBI's RACON: Racial Conditions in the United States during World War II*. Boston: Northeastern University Press, 1995.
- Hoffman, Bruce. *Inside Terrorism*. New York: Columbia University Press, 1998.
- Human Rights Watch. *Shielded from Justice: Police Brutality and Accountability in the United States*. New York, 1998.
- Hunt, G. P., ed. *The Writings of James Madison*. Vol. 9. New York: G. P. Putnam's Sons, 1910.
- Jayko, Margaret, ed. *FBI on Trial: The Victory of the Socialist Workers Party Suit Against Government Spying*. New York: Pathfinder Press, 1988.
- Jeffreys, Diarmuid. *The Bureau: Inside the Modern FBI*. New York: Houghton Mufflin, 1995.
- Jeffrey-Jones, Rhodri. *The FBI: A History*. New Haven: Yale University Press, 2007.
- Jerome, Fred. *The Einstein File: J Edgar Hoover's Secret War Against the World's Most Famous Scientist*. New York: St Martin's Press, 2002.
- Johnson, David K. *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government*. Chicago: The University of Chicago Press, 2004.
- Johnson, Loch K. *A Season of Inquiry: The Senate Intelligence Investigation*. Lexington: University Press of Kentucky, 1985.
- Joseph, Paul. *Peace Politics: The United States Between the Old and New World Orders*. Philadelphia: Temple University Press, 1993.
- Kairys, David, ed. *The Politics of Law: A Progressive Critique*. New York: Basic Books, 1998.
- Kaplan, Jeffrey, ed. *Encyclopedia of White Power: A Sourcebook on the Radical Racist Right*. New York: Altamira Press, 2000.
- Kauzlarich, David, and Ronald C. Kramer. *Crimes of the American Nuclear State: At Home and Abroad*. Lebanon: University Press of New England, 1998.
- Kauzlarich, David, Rick A. Matthews, and William J. Miller. "Toward a Victimology of State Crime." *Critical Criminology* 10 (Oct. 2001), 173–94.
- Keen, Mike Forrest. *Stalking the Sociological Imagination: J. Edgar Hoover's Surveillance of American Sociology*. Westport, Conn.: Greenwood Press, 1999.
- Kelley, Clarence M., with James Kirkpatrick Davis. *Kelley: The Story of an FBI Director*. Kansas City: Andrews, McMeel, and Parker, 1987.

- Keller, William W. *The Liberals and J. Edgar Hoover: Rise and Fall of a Domestic Intelligence State*. Princeton, N.J.: Princeton University Press, 1989.
- Kelly, John F., and Phillip Wearne. *Tainting Evidence: Inside the Scandals at the FBI Crime Lab*. New York: Simon and Shuster, 1998.
- Kessler, Ronald. *The Terrorist Watch: Inside the Desperate Race to Stop the Next Attack*. New York: Crown Forum, 2007.
- Kim, Jinsoo. "Government Surveillance and Erosion of the Fourth Amendment: The CISPES Investigation." Paper presented at "Ending the Cold War at Home" conference, American Civil Liberties Union, 1991.
- Kinoy, Arthur. *Rights on Trial: The Odyssey of a People's Lawyer*. Cambridge, Mass.: Harvard University Press, 1983.
- Kleinig, John. *The Ethics of Policing*. New York: Cambridge University Press, 1996.
- Kleinknecht, William. *The Man Who Sold the World: Ronald Reagan and the Betrayal of Main Street America*. New York: Nation Books, 2009.
- Koepke, Jennifer. "The Failure to Breach the Blue Wall of Silence: The Circling of the Wagons to Protect Police Perjury." *Washburn Law Journal* 39 (Spring 2000).
- Kuhn, Martin. *Federal Dataveillance: Implications for Privacy Protection*. New York: LFB Scholarly Publishing, 2007.
- Kutulas, Judy. *The American Civil Liberties Union and the Making of Modern Liberalism, 1930–1960*. Chapel Hill: University of North Carolina Press, 2006.
- Leach, Edmund. *Custom, Law and Terrorist Violence*. Edinburgh: Edinburgh University Press, 1977.
- Lee, Martha F. *Earth First!: Environmental Apocalypse*. Syracuse, N.Y.: Syracuse University Press, 1995.
- Leone, R. C., and Greg Anrig, eds. *Liberty Under Attack: The War on Our Freedoms in an Age of Terror*. New York: Public Affairs, 2007.
- Levitas, Daniel. *The Terrorist Next Door: The Militia Movement and the Radical Right*. New York: Macmillan, 2002.
- Lichtblau, Eric. *Bush's Law: The Remaking of American Justice*. New York: Pantheon Books, 2008.
- Liddick, Don. *Eco-Terrorism: Radical Environmental and Animal Liberation Movements*. Westport, Conn.: Greenwood Publishing, 2006.
- Lieberman, Robbie. *The Strangest Dream: Communism, Anti-communism and the Peace Movement, 1945–1963*. Syracuse: Syracuse University Press, 2000.
- Lifton, Robert Jay. *Destroying the World to Save It: Aum Shinrikyo, Apocalyptic Violence, and the New Global Terrorism*. New York: Henry Holt, 1999.
- Linfield, Michael. *Freedom Under Fire: Civil Liberties in Time of War*. Boston: South End Press, 1990.
- Lipset, Seymour Martin, and William Schneider. "The Decline of Confidence in American Institutions." *Political Science Quarterly* 98 (Autumn 1983): 379–402.
- Lobel, Jules. "The War on Terrorism and Civil Liberties." Pp. 25–48 in *At War with Civil Rights and Civil Liberties* eds. Thomas E. Baker and John F. Stack. Lanham, Md.: Rowman and Littlefield, 2005.
- Lofland, John. *Polite Protestors: The American Peace Movement of the 1980s*. Syracuse: Syracuse University Press, 1993.

- Lord, Kristin M. *The Perils and Promise of Global Transparency: Why the Information Revolution May Not Lead to Security, Democracy, or Peace*. Albany: State University of New York Press, 2006.
- Los, Maria, and Andrzej Zybertowicz, *Privatizing the Police State: The Case of Poland*. New York: Macmillan, 2000.
- Lowry, Rich. *Legacy: Paying the Price for the Clinton Years*. Washington: Regnery Publishing, 2004.
- Lusane, Clarence. *Pipe Dream Blues: Racism and the War on Drugs*. Boston: South End Press, 1991.
- Lyon, David. *The Electronic Eye: The Rise of Surveillance Society*. Minneapolis: University of Minnesota Press, 1994.
- Mackenzie, Angus. *Secrets: The CIA's War at Home*. Berkeley: University of California Press, 1997.
- Maki, Mitchell, Harry Kitano, and S. Megan Berthold. *Achieving the Impossible Dream: How Japanese Americans Obtained Redress*. Urbana: University of Illinois Press, 1999.
- Marx, Gary T. *Undercover: Police Surveillance in America*. Berkeley: University of California Press, 1988.
- Matthew, Richard Anthony, Bryan McDonald, and Ken Rutherford. *Landmines and Human Security: International Politics and War's Hidden Legacy*. Albany: State University of New York Press, 2004.
- Matthiessen, Peter. *In the Spirit of Crazy Horse*. New York: Penguin Books, 1983.
- McMillian, John, and Paul Buhle, eds. *The New Left Revisited*. Philadelphia: Temple University Press, 2002.
- Miller, DeMond Shondell, Jason David Rivera, and Joel C. Yelin. "Civil Liberties: The Line Dividing Environmental Protest and Ecoterrorists." *Journal for the Study of Radicalism* 2 (2008): 109–23.
- Miller, John. "Settling Accounts with a Secret Police: The German Law on the Stasi Records." *Europe-Asia Studies* 50 (March 1998): 305–30.
- Mitgang, Herbert. *Dangerous Dossiers: Exposing the Secret War against America's Greatest Authors*. New York: Donald I. Fine Books, 1988.
- Moynihan, Daniel Patrick. *Secrecy: The American Experience*. New Haven: Yale University Press, 1998.
- Mueller, John. *Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats, and Why We Believe Them*. New York: The Free Press, 2006.
- Nelson, Jill, ed. *Police Brutality: An Anthology*. New York: W.W. Norton, 2000.
- Noakes, John A. "Using FBI Files for Historical Sociology." *Qualitative Sociology* 18 (1995): 271–90.
- O'Harrow, Robert. *No Place to Hide*. New York: The Free Press, 2004.
- Olmsted, Kathryn S. *Challenging the Secret Government: The Post-Watergate Investigations of the CIA and the FBI*. Chapel Hill: University of North Carolina Press, 1996.
- Olson, Jack. *Last Man Standing: The Tragedy and Triumph of Geronimo Pratt*. New York: Doubleday, 2000.
- O'Neil, William L. *A Bubble in Time: America During the Interwar Years, 1989–2001*. Chicago: Ivan R. Dee, 2009.

- O'Reilly, Kenneth. *Hoover and the Un-Americans: The FBI, HUAC, and the Red Menace*. Philadelphia: Temple University Press, 1983.
- . "Racial Matters": *The FBI's Secret File on Black America, 1960–1972*. New York: The Free Press, 1989.
- Orfield, Myron, Jr. "Deterrence, Perjury and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts." *University of Colorado Law Review* 75 (1992): 63–119.
- Pallitto, Robert M., and William G. Weaver. *Presidential Secrecy and the Law*. Baltimore: John Hopkins University Press, 2007.
- Parenti, Michael. *Land of Idols: Political Mythology in America*. New York: St. Martin's Press, 1993.
- Pell, Eve. *The Big Chill: How the Reagan Administration, Corporate America, and Religious Conservatives are Subverting Free Speech and the Public's Right to Know*. Boston: Beacon Press, 1984.
- Persily, Nathaniel, Jack Citrin, and Patrick J. Egan, eds. *Public Opinion and Constitutional Controversy*. New York: Oxford University Press, 2008.
- Piotrowski, Suzanne J. *Governmental Transparency in the Path of Administrative Reform*. Albany: State University of New York Press, 2007.
- Powers, Richard Gid. *Secrecy and Power: The Life of J. Edgar Hoover*. New York: The Free Press, 1987.
- . *Broken: The Troubled Past and Uncertain Future of the FBI*. New York: Simon and Schuster, 2004.
- Pratt, William C. "Using FBI Records in Writing Regional Labor History." *Labor History* 33 (Fall 1992): 470–82.
- Price, David H. *Threatening Anthropology: McCarthyism and the FBI's Surveillance of Activist Anthropologists*. Durham: Duke University Press, 2004.
- Rabinowitz, Victor. *Unrepentant Leftist: A Lawyer's Memoir*. Urbana: University of Illinois Press, 1996.
- Rawls, J. *A Theory of Justice*. Cambridge, Mass.: Harvard University Press, 1972.
- Regis, Ed. *The Biology of Doom: The History of America's Secret Germ Warfare Project*. New York: Henry Holt, 1999.
- Revell, Oliver "Buck." *A G-Man's Journal*. New York: Pocket Books, 1998.
- Roberts, Alasdair. *Blacked Out: Government Secrecy in the Information Age*. New York: Cambridge University Press, 2006.
- Robin, Corey. *Fear: The History of a Political Idea*. Oxford: Oxford University Press, 2004.
- Robins, Natalie. *Alien Ink: The FBI's War on Freedom of Expression*. New York: W. Morrow, 1992.
- Robins, Robert S., and Jerrold M. Post. *Political Paranoia: The Psychopolitics of Hatred*. New Haven: Yale University Press, 1997.
- Rosen, Ruth. *The World Split Open: How the Modern Women's Movement Changed America*. New York: Penguin, 2001.
- Rosenberg, Tina. *The Haunted Land: Facing Europe's Ghosts after Communism*. New York: Vintage Books, 1995.
- Ross, Jeffrey Ian, ed. *Controlling State Crime*. New Brunswick: Rutgers University Press, 2000.

- . *Varieties of State Crime and Its Control*. Monsey: Criminal Justice Press, 2000.
- Sarre, Rick, Dilip K. Das, and Hans-Jörg Albrecht, eds. *Policing Corruption: International Perspectives*. Lanham, Md: Lexington Books, 2005.
- Sayer, John William. *Ghost Dancing the Law: The Wounded Knee Trials*. Cambridge, Mass.: Harvard University Press, 1997.
- Scheingold, Stuart A., and Austin Sarat. *Something to Believe In: Politics, Professionalism, and Cause Lawyering*. Stanford: Stanford University Press, 2004.
- Schmidt, Regin. *Red Scare: FBI and the Origins of Anticommunism in the United States, 1919–1943*. Copenhagen: Museum Tusulanum Press, 2000.
- Schrecker, Ellen. *Many Are the Crimes: McCarthyism in America*. Boston: Little Brown, 1998.
- Schultz, Bud, and Ruth Schultz. *The Price of Dissent: Testimonies to Political Repression in America*. Berkeley: University of California Press, 2001.
- Schwartz, Paul, and Joel R. Reidenberg. *Data Privacy Law: A Study of United States Data Protection*. Charlottesville, Va.: Michie Law Publishers, 1996.
- Shapiro, Ian, ed. *The Rule of Law*. New York: New York University Press, 1995.
- Sherrill, Robert. *First Amendment Felon: The Story of Frank Wilkinson, His 132,000 Page FBI File, and His Epic Fight for Civil Rights and Liberties*. New York: Nation Books, 2005.
- Signer, Michael. *Demagogue: The Fight to Save Democracy From its Worst Enemies*. New York: Palgrave Macmillan, 2009.
- Slobogin, Chris. "Testilying: Police Perjury and What to Do About It." *University of Colorado Law Review* 67 (1996): 1037–59.
- Sluka, Jeffrey A., ed. *Death Squad: The Anthropology of State Terror*. Philadelphia: University of Pennsylvania Press, 2000.
- Smith, Brent L. *Terrorism in America: Pipe Bombs and Pipe Dreams*. New York: State University of New York Press, 1994.
- Snow, Robert L. *The Militia Threat: Terrorist Among Us*. New York: Plenum Trade, 1999.
- Solove, Daniel J. *The Digital Person: Technology and Privacy in the Information Age*. New York: New York University Press, 2004.
- Spence, Gerry. *From Freedom to Slavery: The Rebirth of Tyranny in America*. New York: St. Martin's Press, 1996.
- Stanton, Mary. *From Selma to Sorrow: The Life and Death of Viola Liuzzo*. Athens: University of Georgia Press, 1998.
- Staples, William G. *Everyday Surveillance: Vigilance and Visibility in Postmodern Life*. Lanham, Md.: Rowman and Littlefield, 2000.
- Stern, Jessica. *The Ultimate Terrorists*. Cambridge, Mass.: Harvard University Press, 2001.
- Stern, Kenneth S. *A Force Upon the Plain: The American Militia Movement and the Politics of Hate*. New York: Simon and Schuster, 1996.
- Stichler, Richard N., and Robert Hauptman, eds. *Ethics, Information and Technology*. Jefferson: McFarland, 1997.
- Stohl, Michael, and George A. Lopez. *The State as Terrorist: The Dynamics of Governmental Violence and Repression*. Westport, Conn.: Greenwood Press, 1984.

- Stone, Geoffrey R. *Perilous Times: Free Speech in Wartime, From the Sedition Act of 1798 to the War on Terrorism*. New York: W.W. Norton, 2004.
- Streitmatter, Roger. *Voices of Revolution: The Dissident Press in America*. New York: Columbia University Press, 2001.
- Sullivan, William C., with Bill Brown. *The Bureau: My Thirty Years in Hoover's FBI*. New York: W.W. Norton, 1979.
- Suskind, Ron. *The One Percent Doctrine: Deep Inside America's Pursuit of its Enemies Since 9/11*. New York: Simon and Schuster, 2006.
- Sykes, Charles J. *The End of Privacy: Personal Rights in the Surveillance Society*. New York: St. Martin's Press, 1999.
- Swearingen, M. Wesley. *FBI Secrets: An Agent's Expose*. Boston: South End Press, 1995.
- Temple-Raston, Dina. *The Jihad Next Door: The Lackawanna Six and Rough Justice in the Age of Terror*. New York: Public Affairs, 2007.
- Tenet, George. *At the Center of the Storm: My Years at the CIA*. New York: HarperCollins, 2007.
- Theoharis, Athan G. *The FBI and American Democracy: A Brief Critical History*. Lawrence: University of Kansas Press, 2004.
- , ed. *A Culture of Secrecy: The Government Versus the People's Right to Know*. Lawrence: University of Kansas Press, 1998.
- , ed. *From the Files of J. Edgar Hoover*. Chicago: Ivan R. Dee, 1991.
- , ed. *Beyond the Hiss Case: The FBI, Congress, and the Cold War*. Philadelphia: Temple University Press, 1982.
- , ed. *The FBI: A Comprehensive Reference Guide*. Phoenix: Oryx Press, 1999.
- . "Secrecy and Power: Unanticipated Problems in Researching FBI Files." *Political Science Quarterly* 119 (2004): 271–90.
- Theoharis, Athan G., and John Stuart Cox. *The Boss: J. Edgar Hoover and the American Inquisition*. Philadelphia: Temple University Press, 1988.
- Treleven, Dale E. "Interviewing a Close Friend, First Amendment Activist Frank Wilkinson." *The Journal of American History* 85 (September 1998): 611–19.
- Tunnell, Kenneth D. *Political Crime in Contemporary America: A Critical Approach*, ed. New York: Garland Publishing, 1993.
- Varon, Jeremy. *Bringing the War Home: The Weather Underground, the Red Army Faction, and Revolutionary Violence in the Sixties and Seventies*. Berkeley: University of California Press, 2004.
- Waddington, David P. *Public Order Policing: Theory and Practice*. Portland: Wilan Publishing, 2007.
- Wainstock, Dennis D. *Malcolm X, American Revolutionary*. Jefferson, N.C.: McFarland, 2009.
- Walker, Samuel. *In Defense of American Liberties: A History of the ACLU*. New York: Oxford University Press, 1990.
- Weinstein, Allen. *Perjury: The Hiss-Chambers Case*. New York: Random House, 1978.
- Welch, Michael. *Scapegoats of September 11: Hate Crimes and State Crimes in the War on Terror*. New Brunswick: Rutgers University Press, 2006.

- Whitaker, Reg. *The End of Privacy: How Total Surveillance is Becoming a Reality*. New York: The New Press, 2000.
- Wilcox, Fred A. *Uncommon Martyrs: The Berrigans, the Catholic Left, and the Plowshares Movement*. Reading: Addison-Wesley, 1991.
- Wilentz, Sean. *The Age of Reagan: A History, 1974–2008*. New York: HarperCollins, 2008.
- Wilkerson, Cathy. *Flying Close to the Sun: My Life and Times as a Weatherman*. New York: Seven Stories Press, 2007.
- Wilkinson, Frank. “Why I Won My Case Against the FBI: A Personal Story of Twenty Years of Invisible Persecution.” *Human Rights* 15 (Summer 1988): 38–55.
- . “Revisiting the ‘McCarthy Era’: Looking at *Wilkinson v. United States* in Light of *Wilkinson v. Federal Bureau of Investigation*.” *Loyola of Los Angeles Law Review* 33 (January 2000): 681–98.
- Williams, Kieran, and Dennis Deletant. *Security Intelligence Services in New Democracies*. New York: Palgrave, 2000.
- Wilson, Richard Ashby, ed. *Human Rights in the “War on Terror”*. New York: Cambridge University Press, 2005.
- Woodward, Bob. *Veil: The Secret Wars of the CIA 1981–1987*. New York: Simon and Schuster, 1987.
- Zald, Mayer N., and John David McCarthy, eds. *The Dynamics of Social Movements*. Cambridge: Winthrop Publishers, 1979.
- Zick, Timothy. *Speech Out of Doors: Preserving First Amendment Liberties in Public Spaces*. Cambridge: Cambridge University Press, 2008.
- Zulaika, Joseba. *Terrorism: The Self-Fulfilling Prophecy*. Chicago: University of Chicago Press, 2009.
- Zuliaka, Joseba, and William A. Douglas. *Terror and Taboo: The Foibles, Fables, and Face of Terrorism*. New York: Routledge, 1996.
- Zunes, Stephan, Lester R. Kurtz, and Sarah Beth Asher, eds. *Nonviolent Social Movements: A Geographical Perspective*. Malden, Mass.: Wiley Blackwell, 1999.

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