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THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

June 26, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP W. BUCHEN *P.*

SUBJECT: F.B.I. BURGLARIES

On Thursday, June 24, the New York Times printed an article written by Nicholas Horrocks reporting that the Department of Justice is conducting a nationwide investigation of alleged illegal burglaries conducted by the F.B.I. since 1971. The article also contained the following passages:

"... the F.B.I. told the Senate Select Committee on Intelligence Activities and the Ford Administration that it had no record of using burglary in domestic cases after 1966 when the director, the late J. Edgar Hoover, ordered the practice halted.

Clarence M. Kelley, the current director of the bureau, has consistently stated that the practice ended in 1966."

Out of concern that there may have been misrepresentations by the F.B.I. concerning the scope of previous surreptitious entries and the period for which they were conducted, I have checked the Report of the Select Committee of the Senate To Study Governmental Operations with Respect to Intelligence Activities as to the exact information furnished by the F.B.I. This was the same information that was furnished to the White House staff during the course of our coordination of responses by the various agencies to the Select Committee's inquiry.

Attached at TAB A are pertinent quotations from Book II of the final report of the Select Committee.

I have also learned that on July 14, 1975, Clarence Kelley did give a press conference in which he stated there had been no break-ins by the F.B.I. after 1966 except for a few instances related to national security.

The Department of Justice is now investigating additional break-ins which apparently did occur during the 1970's although none has yet been found which occurred after you came into office. The current investigations were started in March of this year when additional documents were found in the New York office of the F.B.I. These documents were in a file maintained exclusively by the director of that office who had earlier retired from active service. This investigation is particularly critical because unlike the break-ins learned about previously, the ones being currently investigated fall within a period for which prosecution is not barred by the statute of limitations.

Apart from the possible illegality of the break-ins themselves, the issue is possible intentional failure of people within the Bureau to disclose to their superiors evidence of such acts. Thus, the current investigation of the Department of Justice will also focus on whatever "cover-ups" of material evidence may have occurred that misled Director Kelley and people in the Department of Justice at the time of investigations by Congress into possible illegal activities by the F.B.I.

In order to keep the current investigations from being compromised, I do not think that any comments from the White House are in order. However, insofar as those investigations bear on the integrity of existing personnel within the Bureau, you may want to comment that you expect to be kept informed and that you look to the Director of the F.B.I. and the Department of Justice to take such personnel actions as their findings may require.

Attachments

permitted the FBI to continue to install microphones subject only to its own "intelligent restraint".⁷³

(4) In several cases, purely political information (such as the reaction of Congress to an Administration's legislative proposal) and purely personal information (such as coverage of the extra-marital social activities of a high-level Executive official under surveillance) was obtained from electronic surveillance and disseminated to the highest levels of the federal government.⁷⁴

(5) Warrantless break-ins have been conducted by intelligence agencies since World War II. During the 1960's alone, the FBI and CIA conducted hundreds of break-ins, many against American citizens and domestic organizations. In some cases, these break-ins were to install microphones; in other cases, they were to steal such items as membership lists from organizations considered "subversive" by the Bureau.⁷⁵

(6) The most pervasive surveillance technique has been the informant. In a random sample of domestic intelligence cases, 83% involved informants and 5% involved electronic surveillance.⁷⁶ Informants have been used against peaceful, law-abiding groups; they have collected information about personal and political views and activities.⁷⁷ To maintain their credentials in violence-prone groups, informants have involved themselves in violent activity. This phenomenon is well illustrated by an informant in the Klan. He was present at the murder of a civil rights worker in Mississippi and subsequently helped to solve the crime and convict the perpetrators. Earlier, however, while performing duties paid for by the Government, he had previously "beaten people severely, had boarded buses and kicked people, had [gone] into restaurants and beaten them [blacks] with blackjacks, chains, pistols."⁷⁸ Although the FBI requires agents to instruct informants that they cannot be involved in violence, it was understood that in the Klan, "he couldn't be an angel and be a good informant."⁷⁹

4. Ignoring the Law

Officials of the intelligence agencies occasionally recognized that certain activities were illegal, but expressed concern only for "flap potential." Even more disturbing was the frequent testimony that the law, and the Constitution were simply ignored. For example, the author of the so-called Huston plan testified:

Question. Was there any person who stated that the activity recommended, which you have previously identified as being

⁷³ Memorandum from Attorney General Brownell to J. Edgar Hoover, 5/20/54.

⁷⁴ See finding on Political Abuse. To protect the privacy of the targeted individual, the Committee has omitted the citation to the memorandum concerning the example of purely personal information.

⁷⁵ Memorandum from W. O. Sullivan to C. D. DeLoach, 7/19/66, p. 2.

⁷⁶ General Accounting Office Report on Domestic Intelligence Operations of the FBI, 9/75.

⁷⁷ Mary Jo Cook testimony, 12/2/75, Hearings, Vol. 6, p. 111.

⁷⁸ Gary Rowe deposition, 10/17/75, p. 9.

⁷⁹ Special Agent No. 3 deposition, 11/21/75, p. 12.

General White were specifically informed of this surveillance. But the Attorney General received information which came from the "bug" and authorized a wiretap of the Congressman's secretary.²³³

Furthermore, FBI records disclose that the FBI conducted warrantless microphone surveillances in 1960-1963 directed at a "black separatist group," "black separatist group functionaries" and a "(white) racist organization."²³⁴ There may have been others for purely domestic intelligence purposes.²³⁵

The FBI maintained no "central file or index" to record all microphone surveillances in this period, and FBI records did not distinguish "bugs" involving trespass.²³⁶

(2) "*Black Bag Jobs*."—There is no indication that any Attorney General was informed of FBI "black bag" jobs, and a "Do Not File" procedure was designed to preclude outside discovery of the FBI's use of the technique.

No permanent records were kept for approvals of "black bag jobs," or surreptitious entries conducted for purposes other than installing a "bug." The FBI has described the procedure for authorization of surreptitious entries as requiring the approval of Director Hoover or his Assistant Clyde Tolson. The authorizing memorandum was filed in the Assistant Director's office under a "Do Not File" procedure, and there-

²³³ In the course of an investigation, authorized by Attorney General Kennedy, into lobbying efforts on behalf of a foreign country regarding sugar quota legislation, the FBI determined that Congressman Harold D. Cooley, chairman of the House Agriculture Committee, planned to meet with representatives of a foreign country in a hotel room. (FBI memorandum, 2/15/61; Memorandum from W. R. Wannall to W. C. Sullivan, 12/22/66.)

At the instruction of Director Hoover, the Bureau installed a microphone in the hotel room to record this meeting. (FBI memorandum, 2/15/61; Memorandum from D. E. Moore to A. H. Belmont, 2/16/61.) The results of the meeting were subsequently disseminated to the Attorney General. (Memorandum from J. Edgar Hoover to Attorney General Kennedy, 2/18/61.)

A review of this case by FBI officials in 1966 concluded that "our files contain no clear indication that the Attorney General was specifically advised that a microphone surveillance was being utilized. . ." (Memorandum from Wannall to Sullivan, 12/21/66.) It was noted, however, that on the morning of February 17, 1961—after the microphone was in place but an hour or two before the meeting actually occurred—Director Hoover spoke with Attorney General Kennedy and, according to Hoover's contemporaneous memorandum, advised him that the Cooley meeting was to take place that day and that "we are trying to cover" it. (Memorandum from J. Edgar Hoover to Messrs. Tolson, Parsons, Mohr, Belmont, and DeLoach, 2/17/61.)

²³⁴ According to records compiled by the FBI, there was FBI microphone surveillance of one "black separatist group" in 1960; one "black separatist group" and one "black separatist group functionary" in 1961; two "black separatist groups," one "black separatist group functionary," and one "(white) racist organization" in 1962; and two "black separatist groups" and one "black separatist group functionary" in 1963. (Memorandum from FBI to Select Committee, 10/23/75.)

²³⁵ The Select Committee has determined that the FBI, on at least one occasion, maintained no records of the approval of a microphone surveillance authorized by an Assistant Director. (FBI Memorandum, 1/30/75, Subject: Special Squad at Democratic National Convention, Atlantic City, New Jersey, 8/22-28/64.)

²³⁶ Memorandum from the FBI to the Senate Select Committee, 10/17/75. This memorandum also states that, on the basis of the recollections of agents and a review of headquarters files, the FBI has "been able to identify" the following number of "surreptitious entries for microphone installations" in "internal security, intelligence, and counterintelligence" investigations: 1960: 49; 1961: 63; 1962: 75; 1963: 79; and the following number of such entries "in criminal investigations" (as opposed to intelligence): 1960: 11; 1961: 69; 1962: 106; 1963: 84.

after destroyed. In the field office, the Special Agent in Charge maintained a record of approval in his office safe. At the next yearly field office inspection, an Inspector would review these records to ensure that the SAC had secured FBI headquarters approval in conducting surreptitious entries. Upon completion of the review, these records were destroyed.²³⁷

The only internal FBI memorandum found discussing the policy for surreptitious entries confirms that this was the procedure and states that "we do not obtain authorization from outside the Bureau" because the technique was "clearly illegal." The memorandum indicates that "black bag jobs" were used not only "in the espionage field" but also against "subversive elements" not directly connected to espionage activity. It added that the techniques resulted "on numerous occasions" in obtaining the "highly secret and closely guarded" membership and mailing lists of "subversive" groups.²³⁸

(3) *Mail Opening.*—The FBI did not seek outside authorization when it reinstated mail opening programs in the fifties and early sixties. Eight programs were conducted for foreign intelligence and counterespionage purposes, and Bureau officials who supervised these programs have testified that legal considerations were simply not raised at the time.²³⁹

Beyond their original purpose, the FBI mail opening programs produced some information of an essentially domestic nature. For example, during this period one program supplied "considerable data" about American citizens who expressed pro-Communist sympathies or made "anti-U.S. statements."²⁴⁰ Some of the mail-opening by-product regarding Americans was disseminated to other agencies for law enforcement purposes, with the source disguised.²⁴¹

c. Use of FBI Wiretaps

The authorization for wiretapping issued by President Truman in 1946 allowed the Attorney General to approve wiretaps in the investigation of "subversive activity" to protect the "domestic security."²⁴²

²³⁷Memorandum from the FBI to the Senate Select Committee, 9/23/75.

²³⁸Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66. Subject: "Black Bag" Jobs. Initials on this memorandum indicate that it was prepared by F. J. Baumgardner, an FBI Intelligence Division Section Chief, and approved by J. A. Sizoo, principal deputy to Assistant Director W. C. Sullivan. This memorandum was located in Director Hoover's "Official and Confidential" files, and it appears that the memorandum was shifted from Hoover's "Personal Files" shortly before his death. (Helen Gandy deposition, 11/12/75, pp. 4-6.)

The FBI compiled a list of the "domestic subversive" targets, based "upon recollections of Special Agents who have knowledge of such activities, and review of those files identified by recollection as being targets of surreptitious entries." The list states "at least fourteen domestic subversive targets were the subject of at least 238 entries from 1942 to April 1968. In addition, at least three domestic subversive targets were the subject of numerous entries from October 1952 to June 1966. . . . One white hate group was the target of an entry in March 1966." The Bureau admits that this list is "incomplete." (Memorandum from the FBI to the Senate Select Committee, 9/23/75.)

²³⁹Deposition of William R. Branigan, Section Chief, FBI Intelligence Division, 10/9/75, pp. 13, 39, 40. Testimony of Assistant Director W. Raymond Wannall, FBI Intelligence Division, 10/24/75, Hearings, vol. 4, pp. 148-49.

²⁴⁰Memorandum from San Francisco field office to FBI Headquarters, 3/11/60.

²⁴¹Memorandum from S. B. Donahoe to W. C. Sullivan, 9/15/61; Memorandum from San Francisco field office to FBI headquarters, 7/25/61.

²⁴²Letter from Attorney General Clark to President Truman, 7/17/46.

believe and none warrant the FBI being used to justify them.⁵¹⁷

Several days later, according to a memorandum of the FBI Director, the Attorney General "advised that he had talked to Senator Long," and that the Senator "said he did not want to get into any national security area."⁵¹⁸ Katzenbach has confirmed that he "would have been concerned" in these circumstances about the Subcommittee's demands for information about "matters of a national security nature" and that he was "declining to provide such information" to Long.⁵¹⁹

Again in 1966, the FBI took steps to, in the words of Bureau official Cartha DeLoach, "neutralize" the "threat of being embarrassed by the Long Subcommittee."⁵²⁰ This time the issue involved warrantless electronic surveillance by the FBI, particularly in organized crime matters. DeLoach and another ranking Bureau official visited Senator Long to urge that he issue a statement that "the FBI had never participated in uncontrolled usage of wiretaps or microphones and that FBI usage of such devices had been completely justified in all instances."⁵²¹ The Bureau prepared such a statement for Senator Long to release as his own, which apparently was not used.⁵²² At another meeting with DeLoach, Senator Long agreed to make "a commitment that he would in no way embarrass the FBI." When the Subcommittee's Chief Counsel asked if a Bureau spokesman could appear and "make a simple statement," DeLoach replied that this would "open a Pandora's box, in so far as our enemies in the press were concerned." Senator Long then stated that he would call no FBI witnesses.⁵²³

(2) *Director Hoover's Restrictions.*—The Director subsequently issued instructions that the number of warrantless wiretaps installed at any one time be cut in half. One of his subordinates speculated that this was done out of a concern that the Subcommittee's "inquiry might get into the use of that technique by the FBI."⁵²⁴

In July 1966, after hundreds of FBI "black bag job" operations had been approved over many years, Director Hoover decided to eliminate warrantless surreptitious entries for purposes other than microphone installations.⁵²⁵ In response to an Intelligence Division analysis that such break-ins were an "invaluable technique," although "clearly illegal," Hoover stated that "no more such techniques must be used."⁵²⁶ Bureau subordinates took Hoover's "no more such tech-

⁵¹⁷ Hoover Note on-Belmont Memorandum to Tolson, 2/27/65.

⁵¹⁸ Memorandum from Hoover to Tolson, *et al.*, 3/2/65.

⁵¹⁹ Katzenbach testimony, 12/3/75, Hearings, Vol. 6, pp. 205-206.

⁵²⁰ Memorandum from DeLoach to Tolson, 1/21/66.

⁵²¹ Memorandum from DeLoach to Tolson, 1/10/66.

⁵²² Memorandum from M. A. Jones to Robert Wick, 1/11/66.

⁵²³ Memorandum from DeLoach to Tolson, 1/21/66.

⁵²⁴ C. D. Brennan deposition, 9/23/75, p. 42.

⁵²⁵ According to FBI records and the recollections of Bureau agents, the following number of microphone surveillances involving "surreptitious entry" were installed in "internal security, intelligence, and counterintelligence" investigations: 1964: 80; 1965: 59; 1966: 4; 1967: 0; 1968: 9; 1969: 8; 1970: 15; 1971: 6; 1972: 22; 1973: 18; 1974: 9; 1975: 13. The similar figures for "criminal investigations" (including installations authorized by judicial warrant after 1968) are: 1964: 83; 1965: 41; 1966: 0; 1967: 0; 1968: 0; 1969: 3; 1970: 8; 1971: 7; 1972: 19; 1973: 27; 1974: 22; 1975: 11. (Memorandum from FBI to Select Committee, 10/17/75.)

⁵²⁶ Hoover note on memorandum from Sullivan to DeLoach, 7/19/66. This memorandum cited as a "prime example" of the utility of a "black bag jobs" a break-in to steal records of three high-ranking Klan officials relating to finances

niques" language as an injunction against the Bureau's mail opening program as well.⁵²⁷ Apparently, a termination order was issued to field offices by telephone. FBI mail-opening was suspended, although the Bureau continued to seek information from CIA's illegal mail-opening program until its suspension in 1973.

A year and a half before Hoover's cutbacks on wire-tapping, "black bag jobs," and mail-opening, he prohibited the FBI's use of other covert techniques such as mail covers and trash covers.⁵²⁸

FBI intelligence officials persisted in requesting authority for "black bag" techniques. In 1967 Director Hoover ordered that "no such recommendations should be submitted."⁵²⁹ At about this time, Attorney General Ramsey Clark was asked to approve a "breaking and entering" operation and declined to do so.⁵³⁰ There was an apparently unauthorized surreptitious entry directed at a "domestic subversive target" as late as April, 1968.⁵³¹ A proposal from the field to resume mail opening for foreign counterintelligence purposes was turned down by FBI officials in 1970.⁵³²

7. Accountability and Control

a. The Huston Plan: A Domestic Intelligence Network

In 1970, pressures from the White House and from within the intelligence community led to the formulation of a plan for coordination and expansion of domestic intelligence activity. The so-called "Huston Plan" called for Presidential authorization of illegal intelligence techniques, expanded domestic intelligence collection, and centralized evaluation of domestic intelligence. President Nixon approved the plan and then, five days later, revoked his approval. Despite the revocation of official approval, many major aspects of the plan were implemented, and some techniques which the intelligence community asked for permission to implement had already been underway.

In 1970, there was an intensification of the social tension in America that had provided the impetus in the 1960s for ever-widening domestic intelligence operations. The spring invasion of Cambodia by United States forces triggered the most extensive campus demonstrations and student "strikes" in the history of the war in Southeast Asia. Domestic strife heightened even further when four students were killed by Na-

and membership which "we have been using most effectively to disrupt the organization."

⁵²⁷ Wannall, 10/13/75, pp. 45-46. There is to this day no formal order prohibiting FBI mail-opening, although Assistant Director Wannall contended that general FBI Manual instructions now applicable forbid any unlawful technique.

⁵²⁸ These techniques were not prohibited by law. Their use was banned in all cases, including serious criminal investigations and foreign counterintelligence matters. (Memorandum from W. C. Sullivan to A. H. Belmont, 9/30/64.) Mail covers, which may be used to identify from their exteriors certain letters which can then be opened with a judicial warrant, were reinstated with Justice Department approval in 1971. (Memorandum from Hoover to Mitchell, 7/27/71; Memorandum from Assistant Attorney General Will Wilson to Hoover, 9/31/71.)

⁵²⁹ Memorandum from Hoover to Tolson and DeLoach, 1/6/67.

⁵³⁰ "Once Mr. Hoover, apparently at the request of the National Security Agency, sought approval to break and enter into a foreign mission at the United Nations to procure cryptographic materials to facilitate decoding of intercepted transmissions. The request was presented with some urgency, rejected and presented again on perhaps several occasions. It was never approved and constituted the only request of that kind." [Statement of former Attorney General Ramsey Clark, Hearings before the Senate Judiciary Subcommittee on Administrative Practice and Procedure. (1974).]

⁵³¹ Memorandum from FBI to Senate Select Committee, 2/23/75.

⁵³² Memorandum from W. A. Branigan to W. C. Sullivan, 3/31/70.