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STATEMENT OF
ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
HOUSE COMMITTEE ON THE JUDICIARY
ON
DOMESTIC INTELLIGENCE OPERATIONS OF THE
FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to present our report on the FBI's domestic intelligence operations, which we have reviewed at the request of the Chairman of the House Judiciary Committee. The report is entitled "FBI Domestic Intelligence Operations--Their Purpose and Scope: Issues That Need to be Resolved."

As you know, we made our review pursuant to the Budget and Accounting Act, 1921, the Accounting and Auditing Act of 1950, and the Legislative Reorganization Act of 1970. However, despite our clear authority in those acts to investigate the administration and operation of the FBI, the Attorney General denied us proper access to FBI investigative files. Thus, we cannot adequately assure you, the full Committee, and the Congress that our findings are complete.

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Staats

In September 1975 we testified before this Subcommittee on the interim results of our review. Those results were based on our analysis of 676 randomly selected domestic intelligence cases. The results in our report are based on our total random sample of 898 cases. However, the findings and conclusions in our report are similar to those we testified to in September. The report also includes more detailed information on the FBI's domestic intelligence programs and activities as well as our recommendations for improving overall domestic intelligence operations.

Since we testified extensively in September on the details of the FBI operations and on our findings and conclusions, we will today discuss five main areas of concern which we believe need to be addressed by the Congress and the Executive branch.

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

We will focus primarily on the extent to which these issues are addressed by the Attorney General's January 1976 draft guidelines for controlling the FBI's domestic intelligence operations and our recommendations to the Congress and the Attorney General.

Authority for Domestic Intelligence Operations

We recommend that the Congress enact legislation to clarify the FBI's authority to initiate and conduct domestic intelligence operations. In doing this, we recommend that the Congress (1) define the extent to which domestic intelligence investigations should be predicated on existing criminal statutes relating to the overthrow or advocating the overthrow of the Government and (2) specify the activities that should be investigated solely so appropriate Government officials can be aware of them. The Attorney General's guidelines do not address this issue. However, the FBI agreed with our recommendation that legislation is needed to clarify its authority to conduct domestic intelligence investigations. The FBI stated that it has no vested interest in the status quo. It stated that intelligence collection with responsible oversight is continually needed but with sufficient flexibility to be able to respond to changing conditions and needs. To preserve this flexibility, the FBI believes any statute should clearly set forth FBI responsibility in the area but "provide that the administration of our investigative effort should be placed in the hands of the FBI Director and the Attorney General."

Initiating and continuing investigations

We recommend that the Congress enact legislation so that:

--Only those groups involved in activities that have resulted, or are likely to result, in use of violence could properly be investigated as part of domestic intelligence operations.

- A determination regarding the likelihood that a group's activities could result in the use of violence be made at least annually by the Attorney General or Deputy Attorney General on the basis of evidence presented by the FBI and in accordance with specific criteria promulgated by the Attorney General for making such judgments.
- No individual who is merely a member of a group properly classified as warranting domestic intelligence investigation, but which has only shown a likelihood of violence, be investigated unless the FBI receives information that that individual has committed or is likely to commit specific acts involving violence.
- With respect to properly classified groups which have evidenced a likelihood of using, or have used violence, the FBI will be allowed to use certain investigative procedures, so that the FBI may continually assess the extent to which individuals in the groups might be involved in criminal conspiracies or acts involving use of violence. Allowable procedures would be:
 1. Establishing and using informants or other confidential sources which could penetrate the groups to report on the groups' activities.

2. Investigating leaders of groups or potential groups to determine their identities, the extent of their followings, and their propensities for violence.

--The FBI could conduct yearlong, extensive investigations of individuals associated with or suspected of associating with groups that have proven abilities to commit violent acts and, on this basis, have been classified by the Attorney General or Deputy Attorney General, at least yearly on the basis of evidence presented by the FBI, as being grave threats to the public well-being. In enacting this recommendation, the Congress may want to discuss with Justice Department and FBI officials the feasibility of defining "proven ability to commit violent acts" by frequency of acts and the time periods in which they were committed.

Our view that domestic intelligence investigations be tied to the use of force or violence is apparently shared by the Justice Department committee drafting the Attorney General's guidelines for the FBI's domestic intelligence operations. The committee's January 1976 draft guidelines state that domestic intelligence investigations are to be conducted primarily on individuals, or individuals in concert, whose activities involve, or will involve, use of force or violence and violation of Federal law. The main difference between our recommendations and the Attorney General's guidelines, however, is that our recommendations would restrict even the initiation and conduct of a preliminary inquiry.

Our recommendations would not allow the FBI to open any investigation-- preliminary or otherwise--of an individual merely associated with groups classified by the Attorney General as only evidencing a likelihood of using violence unless the individual is involved in specific criminal acts. Our recommendation, however, would allow the FBI to investigate leaders of such groups without evidence that they are involved in or are likely to become involved in specific criminal acts.

Also our recommendations would allow the FBI to investigate individuals associated with, or suspected of associating with groups classified by the Attorney General or Deputy Attorney General as having proven abilities to commit violent acts without evidence that they are involved or are likely to become involved in specific criminal acts.

The Attorney General's guidelines propose that the following factors or circumstances be considered in determining whether a full scale investigation should be undertaken:

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

Essentially, the guidelines permit the initiation of preliminary inquiries basically to determine the above factors or circumstances. However, with the exception of groups which have evidenced a high probability of using force or violence, and the leaders of groups which are less likely to use violence, we believe the initiation of preliminaries should be restricted. The draft guidelines do not, in our opinion, adequately resolve the problem. They still leave it up to the FBI to judge whether to initiate preliminary inquiries and, on the basis of past experiences, that judgment has resulted in initiating more investigations and in contacting too many and too varied sources. Furthermore, many such inquiries did not positively determine that the individuals investigated were in any way likely to use violence, or were even associated with subversive or extremist groups.

The Attorney General's draft guidelines would systematically involve the Justice Department in decisions to continue investigations. Specifically, the Department would be required to determine at least annually whether ongoing, full scale investigations should be continued. This action is consistent with our recommendations that the Attorney General or Deputy Attorney General annually determine and categorize groups warranting investigation.

Use of sources and techniques

Techniques covered by the Attorney General's guidelines include use of electronic surveillance, informants, and mail covers. Electronic surveillance is to be carried out in accordance with title III of the Omnibus Crime Control and Safe Streets Act of 1968 and Supreme Court decisions. This is similar to current policy and would reaffirm what we believe to be a correct policy.

Similarly, policies pertaining to use and control of informants are, we believe, correct. Current FBI policy requires that all intelligence informants be approved by headquarters. The draft guidelines provide the same. FBI policy also requires that all field offices submit quarterly reports detailing informant coverage of groups so headquarters can assess the adequacy of the coverage. The draft guidelines state that informants are subject to review at 90-day intervals.

The draft guidelines note that informants are not to be used to obtain "privileged information." The term is not defined, but the requirement appears to be no different than current FBI instructions.

The draft guidelines would also change procedures relating to use of mail covers. Currently, the FBI directly requests approval for mail covers from the Chief Postal Inspector; the guidelines would require the FBI to first seek the Attorney General's approval. The Attorney General's draft guidelines would also permit the use of nonviolent emergency measures to obstruct or prevent the

use of force or violence in violation of Federal law only when there is probable cause to believe:

- (1) that an individual, or individuals acting in concert, is preparing to use force or violence for purposes described in the appropriate guideline sections; and
- (2) such force and violence pose a real and immediate threat to life, or to property the impairment of which would interfere substantially with the essential functioning of Government as described in the appropriate guideline section.

Such measures would have (1) to be approved specifically by the Attorney General for limited time periods, (2) be necessary to minimize the danger to life and property, and (3) be conducted in accordance with the provisions set forth in the Attorney General's guidelines. The Attorney General would also be required to report to the Congress at least annually on those preventive actions approved and carried out.

The Attorney General's proposed draft guidelines and controls regarding emergency preventive measures appear to be reasonable. However, because of the sensitivity of such techniques and their potential impact on individual rights, we recommend that the Congress enact legislation limiting the extent to which the Attorney General may authorize the FBI to take nonviolent emergency measures to prevent the use of violence in violation of Federal law. The limitations proposed in the

Attorney General's January 1976 draft guidelines appear to us to be a reasonable basis for such legislation.

We also recommend that the Attorney General direct the FBI to enforce its current requirements until further legislative changes are enacted, so that (1) only established sources--those sources already used frequently by the FBI as opposed to new ones--be contacted during preliminary inquiries and (2) preliminary inquiries be completed within the required 90-day time frame or FBI headquarters approve an extension for such investigations.

Dissemination and retention of records

Criteria regarding dissemination of domestic intelligence information remains essentially unchanged. The Attorney General's draft guidelines do change procedures for retaining information by noting that, within a yet unspecified number of years after closing domestic intelligence investigations, all information obtained during the investigations, as well as all pertinent index references, either be destroyed or transferred to the National Archives and Records Service.

Based on our findings, we believe further changes are needed in the area of dissemination and retention of intelligence information. Therefore, we recommend that the Attorney General direct the FBI to:

- Limit the type of information that can be collected by any source to that relevant to the case. Information about things such as an individual's sex life or drinking habits should not be collected unless the FBI special agent

responsible for the case can justify directly to the special agent in charge of the field office that such information is pertinent and necessary to the investigation.

- Only disseminate information relevant to an appropriate agency's organizational interest in the case and, in usual circumstances, disseminate no information on individuals whose associations with properly classified groups or propensities for violence have not been established.
- Establish a time limit for retaining all information obtained in domestic intelligence investigations, after completing a comprehensive study showing how information in investigative files is to be used in subsequent investigations; the type of information to be used; and the frequency, in terms of times used, and relevancy, in terms of age, of the information to be used.
- Review, with appropriate agencies, current agreements regarding the dissemination and exchange of information, to assess the usefulness of FBI-provided information and if possible, to reduce the amount of information exchanged.

Oversight and Control

The Attorney General's January 1976 draft guidelines are an important step in the right direction and indicate a firm commitment to begin exercising proper departmental control of the FBI. Another important issue is how the guidelines will be implemented and oversight will be exercised by the Department of Justice. In addition, we recommend that the Congress exercise oversight on a regular basis and provide a clear statement setting forth what the objectives of the FBI's domestic intelligence operations should be, what functions they should include, and what their scope should be.

Our concern has been that the divisions in the Justice Department responsible for investigating and prosecuting certain statutory crimes would be solely responsible for reviewing and approving appropriate full-scale domestic intelligence investigations.

We noted in our September 1975 testimony that the Attorney General or Deputy Attorney General (1) should be ultimately responsible for such decisions and (2) should establish a regular review process at their level to focus on investigative problems faced by the FBI, the priorities established by the Bureau, and the appropriateness of alternative strategies to achieve these goals. Those divisions responsible for monitoring the crime being investigated should not be ultimately responsible for decisions relating to the propriety of certain operations.

The Deputy Assistant Attorney General responsible for drafting the Attorney General's guidelines has since agreed with our position. Thus, while the appropriate Justice Department divisions, primarily the Civil Rights and Criminal Divisions, will be initially responsible for judging the need to continue investigations, the Attorney General or his Deputy will ultimately be responsible for the decisions.

In response to our draft report, the Deputy Assistant Attorney General stated that:

"* * * any meaningful guidelines will place a substantial responsibility upon the Attorney General and the Deputy Attorney General to insure that effective implementation goes forward. Oversight of FBI domestic security investigations will be time consuming and require difficult judgments. Careful consideration is already underway within the Department of Justice for implementing departmental oversight for the guidelines."

With respect to the implementation of departmental oversight, we recommend that the Attorney General promulgate rules and regulations establishing a systematic process for providing proper departmental control and oversight of FBI operations. Such rules and regulations should cover such issues as (1) the type of communications the FBI must provide to the Department describing the existence of certain programs or indexes resulting in the intensified investigations of certain individuals, (2) the nature of FBI activities that must be approved by the Attorney General or Deputy Attorney General, (3) how often the FBI must report to Justice officials on specified matters, and (4) the extent to which the Department of Justice internal auditors will be responsible for providing the Attorney General information on how the FBI is carrying out departmental policies and procedures.

In order to assure that the Congress receives adequate information as a basis for exercising regular oversight, we recommend that the Congress enact legislation:

--Requiring the Attorney General to periodically advise and report to the appropriate committee(s) on (1) the focus of current domestic intelligence operations, (2) the groups under investigation, (3) the anticipated actions of various extremist or subversive groups and how such actions would affect policy decisions regarding the possible changes in emphasis of domestic intelligence operations, and (4) the extent to which certain sensitive techniques, such as mail covers and preventive action, were approved and used in domestic intelligence investigations.

On the basis of the results of our review, it is clear that changes are needed in the FBI's domestic intelligence operations. The issue is not whether the FBI should conduct domestic intelligence operations, but rather, what the purpose and scope of such operations should be. Few would deny that some elements or groups within our Nation pose threats to our domestic tranquility. But differences begin to surface on questions of the exact natures, intents, and threats of certain groups; the techniques used to identify and monitor them; and the scope of coverage applied to specific investigations.

As the Attorney General said in a December 1975 speech, the issue of the proper jurisdictional scope and base and the procedure to be used by the FBI is not an adversary matter between the Congress and the Executive

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