

DOCUMENT RESUME

03998 - [B3194438]

Federal Bureau of Investigation's Conduct of Domestic Intelligence Operations under the Attorney General's Guidelines. November 9, 1977. 9 pp.

Testimony before the House Committee on the Judiciary: Civil and Constitutional Rights Subcommittee; by Victor L. Lowe, Director, General Government Div.

Issue Area: Law Enforcement and Crime Prevention (500).

Contact: General Government Div.

Budget Function: Law Enforcement and Justice (750).

Organization Concerned: Department of Justice; Federal Bureau of Investigation.

Congressional Relevance: House Committee on the Judiciary: Civil and Constitutional Rights Subcommittee.

The Federal Bureau of Investigation's (FBI's) domestic intelligence operations have changed significantly in scope, level of effort, and investigative controls under the Attorney General's domestic security guidelines which went into effect on April 5, 1976. The guidelines and the accompanying oversight and review by the Department of Justice have played a vital role in redirecting and narrowing the scope of the FBI's domestic intelligence operations. The number of groups and individuals being investigated and the extent of FBI agent and informant resources being devoted to domestic intelligence have declined substantially. The Department of Justice and the FBI have better control over intelligence activities because current policies more clearly distinguish preliminary from full investigative phases in terms of permissible techniques and duration and scope of investigation and require regular reporting by field offices to FBI headquarters and the Department. However, in order to prevent erosion of the present controls, the Congress should clearly mandate what the objectives and scope of domestic intelligence activities should be and what controls should exist. Coupled with diligent congressional oversight, management controls by the Justice Department and the FBI, and citizens' access to records, such a mandate would go a long way toward preventing a recurrence of past abuses. (SC)

4438  
03998  
United States General Accounting Office  
Washington, D.C. 20548

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

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

Mr. Chairman and Members of the Subcommittee:

Our testimony today deals with the results of our review of the FBI's domestic intelligence operations. As you know, this review is essentially a followup of the report we issued to the Committee on February 24, 1976, entitled "FBI Domestic Intelligence Operations--Their Purpose and Scope: Issues That Need to Be Resolved" (GGD-76-50). Also, this is the third time we have testified before the Subcommittee on this important and controversial subject. We will now summarize the results of our completed review work. Our review focused on the conduct of the FBI's domestic intelligence operations under the Attorney General's domestic security guidelines which went into effect on April 5, 1976. The detailed results of our review are contained in a more comprehensive

statement which we are submitting separately for the record.  
(See p. 8.)

Our observations and conclusions today are based primarily on an analysis of 319 domestic intelligence cases randomly selected from 2,431 investigative matters acted on between April and November 1976 in five FBI field offices--Los Angeles, Miami, Minneapolis, New York, and San Francisco. The Los Angeles, New York, and San Francisco field offices were included in our first review. (See p. 9 and app. II.)

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

Thus, we believe the observations and conclusions we have today are valid. However, we would have greater knowledge of investigative activities, and thus the Congress would be better served, if we had been provided full access to the investigative files. Such access would be

necessary for us to fully evaluate the impact of intelligence investigations on the individual rights of the subjects.

#### SYNOPSIS OF PRIOR REPORT

Our 1976 report concluded:

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

#### CHANGES AND EVENTS AFFECTING DOMESTIC INTELLIGENCE OPERATIONS

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

- On April 5, 1976, the Attorney General's guidelines for domestic security investigations became the FBI's principal policy and procedures in the domestic intelligence area. (See p. 10 and app. IV.)

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

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

#### DECLINE IN DOMESTIC INTELLIGENCE OPERATIONS

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

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

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

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

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

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

- the lack of militant activity by protest groups;
- the FBI's implementation of the "quality over quantity" management approach in August 1975;
- the implementation of the Attorney General's domestic security guidelines on April 5, 1976, and subsequent Department of Justice review and approval of full investigations;
- the FBI's adoption, on August 30, 1976, of a more restrictive investigative policy than the Attorney General's guidelines, and a related FBI-wide review of all domestic intelligence cases with a view toward keeping only "quality" cases;
- the transfer of some investigations from the domestic intelligence program; and
- outside inquiries into the FBI's domestic intelligence operations.

#### CONTROLS OVER DOMESTIC INTELLIGENCE OPERATIONS

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

During our first review, when field offices were not required to report the initiation of preliminary investigations to FBI headquarters, we found that 73 percent of the preliminary investigations in our sample lasted more than the

90-day time limit and that FBI headquarters was not aware of about 65 percent of the extended cases. This time, only 7 of the 58 preliminary investigations within our sample, or about 12 percent, were not reported to FBI headquarters; and 5 of these were not reported because they were closed shortly after they were opened.

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

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

Also, the extent and nature of the controls themselves could change, since they are not specifically mandated by statute. This is witnessed by the fact that the Justice Department's Investigations Review Unit, which is responsible for providing policy guidance on the FBI's domestic intelligence operations, is currently without staff and its future undecided.



## RESULTS OF DOMESTIC INTELLIGENCE OPERATIONS

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

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

## CONCLUSIONS

The Department of Justice and the FBI have made the effort to bring domestic intelligence under control. The actions they have taken are generally consistent with the conclusions and recommendations in our first report. However, our principal concern is to insure that the present policies, procedures, and controls do not erode. Due to the many subjective judgments involved in intelligence work and the

potential for abuse, we do not believe reliance should be based solely on the judgments of the responsible agencies or on guidelines and controls which are subject to change and varying interpretations over time.

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

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