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Nixon's FBI: The Bureau In Crisis

Melissa Graves

University of Mississippi

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NIXON’S FBI: THE BUREAU IN CRISIS

A Dissertation

presented in partial fulfillment of requirements

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in the Department of History

The University of Mississippi

MELISSA GRAVES

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When historians write about Watergate, they do not immediately think of the Federal Bureau of Investigation (FBI). This dissertation argues that they should. Watergate represented a perilous moment for the FBI, as its director allowed himself to become an arm of President Richard Nixon. In turn, Nixon used his control of the FBI to frustrate its investigation into Watergate. The break-in of the Watergate Hotel in 1972 took place six weeks after the death of longtime FBI director, J. Edgar Hoover. For nearly half a century, Director Hoover remained loyal to the Bureau and held his own against eight presidents, both Democrats and Republicans. History largely remembers Hoover for his numerous indiscretions, seen in COINTELPRO, his vitriol towards Martin Luther King, Jr., and his tyrannical crusade against Communism. Towards the end of his life, Hoover was weakened by failing health, vocal critics, and President Nixon. This dissertation argues that despite Hoover’s indiscretions and the diminishment of his power, he manifested one critical strength: Hoover was apolitical and more than willing to stand up against a president’s orders when he believed such orders compromised himself or his Bureau.

Hoover's replacement, L. Patrick Gray, a longtime friend of Nixon, held no such qualms. During his 360-day tenure as interim director, Gray professed his loyalty to Nixon and ordered the FBI to assist with the president's reelection campaign, thwarted the FBI's investigation into Watergate (leading his Associate Director, Mark Felt, to become the Washington Post's infamous
"Deep Throat" source), and destroyed Watergate documents seized from “Plumber” Howard Hunt's secret White House safe. This dissertation compares Hoover's directorship to that of Gray and contends that a political FBI director who blindly followed a president turned the Bureau into a state police.
DEDICATION

This work is dedicated to Matthew and Nora.
ACKNOWLEDGMENTS

I could never have written this dissertation without the help of many people. I am deeply indebted to the wonderful individuals who encouraged and mentored me. My advisor, Dr. Ted Ownby provided thoughtful feedback and constructive criticism throughout the writing of this dissertation. It was a privilege to work under such a tremendous scholar, and I am grateful for the opportunity. I am a better writer and historian because of him. I am also grateful for the feedback provided by my readers Dr. Charles Wilson, Dr. Darren Grem, and Professor Matthew Hall. In addition to serving on my dissertation committee, all have greatly influenced my academic career. Dr. Wilson saw me through my master’s thesis; Dr. Grem coached me through comps; Professor Hall helped me find my voice in law school. I am fortunate to have received help from four giants in their fields who have held my feet to the fire and helped me become a better scholar.

This dissertation would not have been possible without the help of Dr. John Elliff. I had the good fortune to find his name in Loch Johnson’s *A Season of Inquiry*, a book about the Church Committee. I ran an internet search on Dr. Elliff’s name and sent him an email, asking if he might have papers that I could review. He responded enthusiastically and invited me to visit him in Alexandria, Virginia. For a week, he and his wife, Linda, set me up in their dining room
and fed me an endless supply of granola bars to ease my queasy stomach in the early weeks of my pregnancy while I photographed thousands of documents. Talking to Dr. Elliff allowed me the opportunity to ask myriad questions about the FBI in the early 1970s. His influence in my understanding of the FBI is indelible.

Many librarians assisted me in my research. Megan Lee and the staff at the Richard Nixon Presidential Library patiently hunted for me. While researching this dissertation, I had to narrow its scope, as I found myself overwhelmed by primary sources. My research took me to the Gerald Ford Presidential Library, the Jimmy Carter Presidential Library, the ACLU Archive at Princeton University, and the National Archives, where librarians helped me uncover a broad array of sources representing the political climate for the Bureau in the 1970s. Though I have yet to use those sources in my writing, I look forward to continuing my research of the FBI in the future and using those resources for further analysis. The Society of Former Special Agents of the FBI generously allowed me to solicit members for oral histories; Christopher Pyle provided insight to help me understand the military’s influence on the FBI’s surveillance. Many thanks also to John Fox, FBI Historian, who answered my many questions and helped me understand how to find unclassified historical sources about the FBI.

I am grateful to the faculty and staff of the Center for Intelligence and Security Studies at the University of Mississippi. Former director and former FBI agent Carl Jensen has mentored me and influenced my decision to settle on the FBI as a research topic. No one has influenced my academic trajectory more than Carl, and I am grateful to work with him. Colleagues Carl Hill, Wesley Yates, Walter Flaschka, Mackenzie Metcalfe, Connor Hagan, Marie Barnard, and Christy Babb are dear friends who share an interest in the intelligence community. The
thousands of hours of study and discussion about the intelligence community with them
developed my understanding of the field. To the many students, whom I have taught, that work
in the intelligence community and the FBI—your tenacity and service inspires me.

Finally, I wish to express my heartfelt appreciation to my family for their support. My
in-laws, Jerel and Carolyn Graves, have eagerly encouraged me as I have continued my
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young age and have seen me through years of school and studying. My brothers, Matt and
Michael, and my sister in law, Meribeth, provided laughs along the way. My best friend,
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Countless problems were solved (and tabled) over glasses of wine and computer memes.

I am deeply grateful for my husband, Matthew. Shortly after finishing law school, I told
him that I really wished I’d pursued a Ph.D. instead. Instead of responding with exasperation, he
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a Ph.D., and he has supported me every single step of the way. He’s cooked meals, brought me
lunch, cooked me breakfast, eaten late dinners, brewed coffee, provided soul-sustaining study
breaks, and served as a sounding board for my ideas. Thank you for your unending patience,
your encouragement, and your love. This dissertation is as much yours as it is mine.

As I worked to complete this dissertation, Nora Blythe Graves entered the world. I
traveled the country, heavily pregnant, during the summer of 2015. During the day, I’d research
in archives. At night, I’d go “out on the town” and shop for baby clothes. Towards the end of
the summer, as her birth drew near, I felt an urgency to write. After she was born, I continued
writing and editing in between feedings and during naps. In many ways, her impending birth
inspired me to work hard in order to finish. I will always associate this dissertation with her and be grateful for the immense happiness and sense of fulfillment that her birth provided me. Nothing could have prepared me for the glorious wonder that she is. I am happy that in the midst of working on this dissertation, she served as a daily reminder of life beyond the walls of academia, and all that truly matters.
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INTRODUCTION

When people think of the FBI, they often conjure an image of J. Edgar Hoover, the famed director of the Bureau for 48 years. Since his days as leader, historians have viewed the Bureau as an extension of Hoover. These political histories have explored Hoover’s actions and their impact on the United States, portraying him as fierce, relentless, and idiosyncratic. Dichotomy is interwoven through these accounts. Hoover is both the consummate law enforcement officer

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1 Following Hoover’s death in 1972, historians, journalists, and popular writers clamored to write the definitive piece on the enigmatic man. Rhodri Jeffreys-Jones’s The FBI: A History contends that early Bureau historians, such as crime fiction writer Courtney Ryley Cooper and Pulitzer-prize winning journalist Don Whitehead, portrayed the history of the Federal Bureau of Investigation as “virtually synonymous with the efforts of Hoover himself.” See Rhodri Jeffreys-Jones, The FBI: A History (Hartford, CT: Yale University Press, 2008), 10.

2 Don Whitehead’s The FBI Story stated, “the history of the FBI, in reality, is the story of America itself and the struggle for an ideal.” Whitehead’s The Federal Bureau of Investigation presents the FBI as an institution with a precarious start that later evolved, under the leadership of Hoover, into a great and honorable crime-fighting institution. Whitehead, a journalist, wrote to Hoover requesting permission to write an article about the Bureau’s battle against Communists. Rather than grant his request for an article, the Bureau extended an unprecedented offer to Whitehead to draft a book about the FBI, offering him unparalleled access to FBI files. After the response to Lowenthal’s disparagement of the Bureau, Hoover demanded that citizens read his approved version of the organization’s history. In exchange for Whitehead’s access to files, Hoover insisted upon personally reviewing the drafts, reserving the right to make changes when necessary. See Don Whitehead, The FBI Story: A Report to the People (New York, NY: Random House, 1956), 323. Some excerpts related to the FBI historiography appeared in an earlier chapter. See Melissa Graves, “FBI Historiography: From Leader to Organization,” in Intelligence Studies in Britain and the US: Historiography Since 1945, ed. Christopher K. Moran and Christopher J. Murphy, (Edinburgh: Edinburgh University Press, 2013), 129-145.
and the personification of persecution run amuck. He is destroyer of the Ku Klux Klan and a racist. Some works have questioned his sexuality. Others have heralded and berated his relentless drive to fight communism. Historians remember Hoover largely for his

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3 Richard Gid Powers’ *Secrecy and Power: The Life of J. Edgar Hoover* argued that Hoover’s childhood values as a Southerner (born in Washington DC, which Powers argues is part of the South) shaped the priorities of the Bureau under Hoover’s leadership. Hoover came from a traditional, middle-class, and religious background. He used the FBI to protect the values that he espoused. Powers argues that Hoover held onto his position as director for too long. As the world around him changed, his Southern and segregated values increasingly contrasted with progressive agendas espoused by the civil rights movement. Towards the end of his life, Hoover no longer represented the values of America but rather his own, outdated values and the values of his Bureau. See Richard Gid Powers, *Secrecy and Power: The Life of J. Edgar Hoover* (New York, NY: The Free Press, 1987), 20.

4 Popular author Anthony Summers’ *Official and Confidential: The Secret Life of J. Edgar Hoover* relied upon hearsay and rumor to argue that Hoover was a homosexual who donned drag clothing to homosexual orgies and that organized crime bosses used compromising information on Hoover’s sexuality to neuter any efforts on the director’s part to investigate or prosecute their wrongdoing. See Anthony Summers, *Official and Confidential: The Secret Life of J. Edgar Hoover* (New York, NY: Putnam, 1993). In response to Summers’ book, Historian Athan Theoharis wrote *J. Edgar Hoover, Sex, and Crime: An Historical Antidote*. He deconstructs Summers’ argument and finds no evidence to prove Hoover’s homosexuality. Theoharis surmises that even if Hoover had been a homosexual, he would never have entered into the sort of compromising situations Summers details. See Athan Theoharis, *J. Edgar Hoover, Sex, and Crime: An Historical Antidote* (Chicago, IL: Ivan R. Dee, 1995), 55.

5 Courtney Ryley Cooper’s *Ten Thousand Public Enemies* praised Hoover’s fight against Communism. Arguably one of the most important books written about the Bureau, it depicted a fearless and effective agency. Approved personally by Hoover, the account shaped the public’s earliest impression of the FBI. In the preface, Hoover endorsed the author, claiming he could not imagine a man more fit to recount the FBI’s history. Despite Hoover’s outward praise, he insisted upon reviewing and editing Cooper’s book prior to publication. The book is as much a historical product as it is a mass-marketed piece of propaganda; Cooper aggrandized Hoover as “the most feared man the underworld ever has known.” See Courtney Ryley Cooper, *Ten Thousand Enemies* (Boston, MA: Little, Brown, and Company, 1935), 30. Richard Gid Powers maintains that Cooper’s book introduced the “FBI formula,” an easily readable crime story involving villains and action by the federal government, with Hoover as the central hero. See Powers, 185. Using melodrama to effect, Cooper warned readers of ubiquitous networks of crime supported by seemingly ordinary people; he made his audience aware of many threats so they would, in turn, believe in the need for a federal law enforcement agency. Cooper posited that, but for the FBI, any person might fall victim to crime at any moment. Fred J. Cook’s 1964 critical piece, *The FBI Nobody Knows*, provided a scathing analysis of the FBI and attacked Hoover’s power-driven hunt for Communists. Cook contended that the FBI historically abused
indiscretions—his intimidation of public figures such as presidents, congressmen, and civil rights heroes.\textsuperscript{6} He seems a shadowy figure with a file on everyone and an insatiable hunger to collect more intelligence.

Those negative portrayals of Hoover bear more than a kernel of truth. He was a paranoid man. He walked a thin ethical and legal line between national security and respecting U.S. persons’ Constitutional rights when expanding his intelligence unit. He directed the Bureau to

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its powers, thereby violating citizens’ Constitutional rights. He argued that the Bureau pressured agents to secure convictions at the behest of civil liberties. Cook refuted Whitehead’s earlier analysis by portraying Hoover as obsessive, conceited, and erratic. He discussed Attorney General Harlan Fiske Stone’s promotion of Hoover to the role of Director of the FBI in 1924. When Stone offered Hoover his position as director, he explicitly asked Hoover to reduce activities the Bureau engaged in, making them responsible only for “investigations of violations of the law.” Instead of following orders, Hoover greatly expanded the Bureau to fight the inflated threat of communism. See Fred J. Cook, \textit{The FBI Nobody Knows} (New York, NY: Macmillan, 1964).

Historian Athan G. Theoharis and freelance writer John Stuart Cox’s \textit{The Boss: J. Edgar Hoover and the Great American Inquisition} examines Hoover’s abuse of power and usurpation of civil liberties. Theoharis and Cox conclude that Hoover, more than any politician before or since, had done more to “[undermine] American constitutional guarantees.” The notion of Hoover as a figure to which American presidents answered to originates in this book. Theoharis and Cox also shed light on Hoover’s gross misuse of power. The authors relied upon interviews with Hoover’s family members, former acquaintances, and employees as well as FBI files, including three “sensitive FBI files” never used before in any historical research: the record destruction file, the Symbol Number Sensitive Source Index, and the Surreptitious Entries file. Their use of such files is particularly noteworthy, as the authors also surmise that Hoover’s files allowed him to “shape the government [and] alter the laws and attitudes of the country.” Because Hoover held such sensitive and, at times, compromising information about politicians, he was able to wield a great amount of power and control; presidents, attorneys general, and other politicians did not have the courage to act against him and politicians refused to insist upon any congressional investigations. This “inquisition” on the part of Hoover to uncover as much negative information about his political counterparts as he possibly could, ensured his continued authority as “Boss”; he could wield serious leverage on presidential decisions and he ran the FBI with unlimited authority. In addition to Hoover’s access to such information, the authors contend that Franklin D. Roosevelt’s directives allowing for limited federal wiretapping by the FBI were exploited by Hoover and expanded the power of the FBI. Towards the end of his life, however, the authors find that Hoover’s authority as boss had been greatly diminished in light of the COINTELPRO controversy. See Athan G. Theoharis and John Stuart Cox, \textit{The Boss: J. Edgar Hoover and the Great American Inquisition} (Philadelphia, PA: Temple University Press,
infringe upon American citizens’ civil liberties. He was the man who tormented Martin Luther King, Jr. and his family by bugging the famed preacher’s phone lines and hotel rooms and declaring him “the most notorious liar in the country.”\footnote{David J. Garrow’s Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference details Hoover’s obsessive surveillance of King. He disdained King and described him as “a ‘tom cat’ with obsessive degenerate sexual urges, “the “most notorious liar” in America,” and “one of the lowest characters in the country.” Hoover allowed the FBI to bug King’s hotel rooms. Garrow relays King’s experience, particularly the fear that King felt when his wife Coretta Scott King received a package from the FBI containing a threatening note and illicit recordings of King’s conversations as well as sexual indiscretions. See David Garrow, Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference (New York, NY: William Morrow and Company, Inc., 1986), 313, 360.} Even during his lifetime, both admirers and critics of the Bureau acknowledged the “myth” of Hoover. In the heyday of his directorship, he wielded an enormous amount of power; the great extent of Hoover’s power dominates FBI historiography.\footnote{Curt Gentry’s J. Edgar Hoover: The Man and the Secrets exposes Hoover’s enormous power wielding, and further advances Theoharis and Cox’s thesis that Hoover had a huge amount of control over presidents due the compromising information he kept on them. See Curt Gentry, J. Edgar Hoover: The Man and the Secrets (New York, NY: W. W. Norton & Co. Inc., 1991).} In contrast, this dissertation examines a time in Hoover’s life when his power was compromised. At the end of his life, his failing health, vocal critics, and distrust from Richard Nixon led the aged director to look nothing like the mammoth icon he had been.

This dissertation examines the Bureau under Richard Nixon. As the president who is most often associated with “law and order,” it is ironic to see his dysfunctional relationship with a law enforcement agency. While Hoover was alive, Nixon demanded that the Bureau enforce law and order at the behest of Americans’ Constitutional rights. The First Amendment right to speech and the Fourth Amendment right to be free from unlawful search and seizure were waylaid, as Nixon demanded investigation and prosecution of political dissidents at all costs. After Hoover’s death, Nixon strong-armed the Bureau into carrying out its Watergate
investigation under his aides’ supervision. Thus, “law and order” became a façade.

In looking at Nixon’s demands upon the Bureau, this dissertation also looks at Hoover’s final days, Hoover’s immediate successor, and the Bureau’s involvement in Watergate.

Watergate historiography is dominated by biographies of Nixon as well as tomes about the media’s role in exposing the president’s illegal doings, with much focus on *Washington Post* reporters Carl Bernstein and Bob Woodward. Watergate histories make the FBI tangential to a plot that revolves around the President. If historians discuss the Bureau in relation to Watergate, they focus on the identity of Bernstein and Woodward’s source, Deep Throat, as FBI Associate Director Mark Felt. This dissertation argues, however, that Watergate was a key moment in the

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9 See Mark Feldstein, “Wallowing in Watergate: Historiography, Methodology, and Mythology in Journalism’s Celebrated Moment,” *American Journalism* 31, no. 4 (2014): 550-570. Feldstein maintains that Watergate historiography falls into one of three categories: the heroic narrative, the villainous narrative, and the minimalist narrative. The heroic narrative views Woodward and Bernstein as reporters who “tenaciously uncovered the evidence implicating the Nixon White House in the Watergate burglary, piercing the administration’s cover-up and thereby forcing reluctant law enforcement authorities to prosecute the most powerful officials in the government.” (Feldstein, 552) The villainous narrative challenges the heroic narrative by claiming that reporters, the CIA, and Deep Throat sought to destroy Nixon’s presidency. Much has been made of Mark Felt’s motives for leaking information to the *Washington Post*. Feldstein maintains that Felt’s influence on the investigation may have been exaggerated after the fact in Woodward and Bernstein’s best-selling book, *All The President’s Men*. Historian Beverly Gage has argued that Felt was hardly the “hero” that popular culture has portrayed him as, and she writes that he “had far more in common with Richard Nixon than with his liberal enemies.” (Feldstein, 561) Feldstein maintains that ambition and revenge led Felt to become a source. Because he had served for years under Hoover, he was angry that Gray had been chosen as director instead of himself. The third type of narrative, the minimalist narrative, downplays the media’s impact in Watergate. Political scientist Edward Jay Epstein ascribed to this view and credited the FBI, federal prosecutors, the grand jury, and Congressional committees with carrying out the investigations that implicated Watergate participants. Historian Stanley Kutler argued that media revelations simply repeated leads that the FBI had already uncovered. He wrote, “media revelations of crime and political misdeeds repeated what was already known to properly constituted investigative authorities . . . carefully timed leaks, not media investigations, provided the first news of Watergate.” (Feldstein, 567)

10 Much of what is known about Felt’s involvement as Deep Throat in the Watergate Investigation stems from his memoir. See Mark Felt and John O’Connor, *A G-Man’s Life: The
Bureau’s history because of the destructive actions of its interim director, L. Patrick Gray.

Hoover’s absence was felt throughout the Watergate investigation, and by the time of Gray’s Senate confirmation hearing, even one of Hoover’s harshest critics publically declared that he believed Hoover was a better director than Gray. This dissertation argues that Nixon’s presidency coincided with and caused a crisis within the FBI. Gray was an incapable successor. Though he is little more than a footnote in FBI historiography, his damage to the Watergate investigation provides reason to reexamine the FBI’s relationship to the presidency. When Gray allowed Nixon to use him and his office, he brought the Bureau as close as it had ever been to functioning as a federal secret police.

Because Hoover had reigned as director for so long, leading the Bureau under eight U.S. presidents, and acquired such mythical status, he largely stood as a barrier between Nixon and his desired political use of the Bureau. Though the president wished to use the FBI to pursue subversives and those whom he believed threatened his presidency, Hoover had the fortitude and standing to refuse. In doing so, he suffered the indignation of Nixon, the ridicule of the Department of Justice, and the defiance of his own agents. Hoover ended his tenure on the brink of being fired and reticent to collect any intelligence; he was anything but the myth of strength perpetuated about him.

Hoover’s replacement, Gray, was inexperienced, blindly loyal to authority, and did not defend the Bureau against Nixon’s interference. He declared his loyalty first to the president and second to the Bureau, thereby complicating the FBI’s investigation into Watergate. Under his 361-day leadership, Gray destroyed Watergate evidence on behalf of the Nixon administration.

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He became a pawn in Nixon’s quest to thwart the FBI’s investigation into his indiscretions. His absence of leadership stirred his number-two man, Mark Felt, to become Carl Bernstein and Bob Woodward’s infamous source, Deep Throat.

The juxtaposition of Hoover’s and Gray’s leadership of the FBI under Nixon illuminates the complexities inherent in the executive branch’s control of a federal law enforcement agency. Such a comparison also underscores the extent to which the FBI is both an extension of the president while also an extension of its leader. Nixon threatened the FBI unlike any president before him. Under both Hoover and Gray, the Bureau faced unprecedented hardship. Yet, Gray allowed for the gross misappropriation of the FBI by Nixon. That Hoover held his own against Nixon in his weakest days is both a testament to his leadership and a departure from the historiography about him.

Chapter 1 of this dissertation examines the Huston Plan, an intelligence collection program imagined by the Nixon Administration. It looks at Hoover’s reluctance to join the plan and his sabotage of it. Chapter 2 examines the events that led Hoover to worry about the American public’s acceptance of his most secretive and most invasive intelligence techniques. Hoover’s vulnerability under Nixon developed over time as a response to a growing chorus of dissenters who voiced their displeasure with the FBI. Chapter 3 looks at criticism emerging from left-leaning academics who convened in 1971 to examine the Bureau at a conference held at Princeton University. These scholars not only examined Hoover’s faults and strengths, but they also studied the legal basis for his intelligence operations, identifying a direct relationship between the FBI and the presidency. Chapter 4 looks at Hoover’s final days in office and the lengths to which the Nixon administration went to fire him. Chapter 5 looks at the appointment

of Gray as the Bureau’s interim director and his interference with the Watergate investigation.

The Bureau’s time under Nixon is extraordinarily unique. The intersection of such powerful and iconic figures—Nixon and Hoover—and then the imbalance of power between Nixon and Hoover’s replacement, Gray, allow a glimpse into the profound effects of a President upon the Bureau. In comparing Hoover and Gray’s responses and actions to Nixon’s demands, a Bureau emerges that is every bit as much the President’s as it is that of an FBI director.
In the early 1970s, J. Edgar Hoover and Richard Nixon believed that one of the greatest security threats facing the United States emanated from the New Left’s aspirations to foment political revolution. The nation’s struggle against the New Left emanated from the radicals’ association with communism. For decades, Hoover’s FBI fought against the Soviet Union’s infiltration within the US homeland. Following World War II, the FBI sought, first and foremost, to squelch Communism; its famed director, J. Edgar Hoover, believed “the mad march of red fascism” could “overthrow the American way of life.” During the mid-twentieth century, the FBI’s crusade against communism evolved from aiding Joseph McCarthy’s Congressionally sponsored witch hunt to quelling anti-war protests of the early 1960s. By the mid 1960s, 

12 Ibid, paragraph 34.
13 Seth Rosenfeld, Subversives: The FBI’s War on Student Radicals And Reagan’s Rise to Power (New York, NY: Picador, 2012), 28, 29. During this time, FBI clerks assembled thousands of index cards that contained intelligence on American citizens’ alleged Communist leanings. Much of the information included Constitutionally-protected First Amendment speech. Rosenfeld writes, “many of these activities [carried out by the Bureau], Hoover knew, were unauthorized, if not outright illegal, but he deemed them necessary to protect the nation from the enemies of democracy.”
14 Ibid, 71. Rosenfeld writes that in 1960, Hoover began to take an interest in the protest activities happening in universities. In a report compiled by the FBI in March 1960 entitled
however, the peaceful protests of hippies and students changed into furious mayhem; in 1966, the Students for a Democratic Society (SDS) publically hailed the slogan “from protest to resistance.” The FBI viewed the SDS and other “radical” groups as a threat; despite a lack of evidence, they believed that Communist governments were sponsoring the unrest. Dotson Rader, a member of SDS, explained his organization’s shift, stating:

The meaninglessness of non-violent, “democratic” methods was becoming clear to us in the spring of 1967. The Civil Rights Movement was dead. Pacifism was dead. Some Leftists—the Trotskyites, Maoists, radical socialists…some of the radicals in SDS, Stokely Carmichael, Rap Brown, Tom Hayden—knew it early. But it took the rest of us awhile to give up the sweet life of the democratic Left for revolt.

“Revolt” would characterize Leftist protest movements, including those launched by SDS, the Weather Underground, and the Black Panther Party, from the mid 1960s into the 1970s and 1980s. These groups were frustrated by their lack of success; the peaceful protests of the antiwar and civil rights movements had failed to bring progress. They believed that only revolution (an overthrow of the current government) would bring about the change they believed the United States needed. By the early 1970s, protesters began resorting to violence to achieve a revolution that their peaceful activism had failed to arouse.

These groups proclaimed a willingness to use violence, sometimes for self-protection and sometimes to attack or unsettle authority and institutions. One protestor, Abbott “Abbie”

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16 Ibid, 59-60.
17 For a while, the leading works about the New Left originated from those who had participated in the movement itself. Major works on student organizations include Allen Matusow’s The Unraveling of America (1984), Todd Gitlin’s The Sixties: Years of Hope, Days of Rage (1987), James Miller’s “Democracy is in the Streets”: From Port Huron to the Siege of Chicago (1987),
Hoffman, an activist and anarchist who co-founded the Youth International Party (also known as the “Yippies”), wrote a manual for revolution entitled *Steal This Book*. In it, he ranted, “the purpose...is not to fuck the system, but destroy it.”\(^{18}\) To bring about the system’s demise, he provided advice on shoplifting, bomb making, and the use of guns. He exhorted readers, saying, “If you see a fugitive’s picture on the post office wall take it home for a souvenir...Soon the FBI will be printing all of our posters for free. Right on, FBI!”\(^{19}\) Hoffman’s behavior typified political activists during this time. Journalist Bryan Burroughs, in his book about New Left revolutionaries, stated:

> There are so many myths about the 1970s-era underground. Mention today that an armed resistance movement sprang up in the months after My Lai, the Manson family, and Woodstock, and the most common response is something along the lines of “Oh, wasn’t that a bunch of hippies protesting the Vietnam War during the sixties?” This couldn’t be more wrong. The radicals of this new underground weren’t hippies, they weren’t

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\(^{18}\) Abbie Hoffman, *Steal This Book*. (New York: Four Walls Eight Windows, 1971, reprinted 1996), 221. In addition to *Steal This Book*, Hoffman’s writing career also included *Fuck the System, Revolution for the Hell of It*, and *Woodstock Nation*.

\(^{19}\) Ibid, pg. 222.
primarily interested in the war, and it wasn’t the 1960s…The young radicals who engaged in bombings and the assassination of policemen during the 1970s and early 1980s were, for the most part, deadly serious, hard-core leftists.\textsuperscript{20}

During Richard Nixon’s first Presidential term, the United States witnessed an explosion of bombs in occupied buildings, plane hijackings, and demands for revolution. Nixon was keenly aware of the surge in political violence. In his memoir, he recounted, “by 1970 the evolutionary cycle of violent dissent spawned an ugly offshoot: the urban underground of political terrorists urging murder and bombing.”\textsuperscript{21}

In the autumn of 1969, Sam Melville—a thirty-five year old activist who became the progenitor of 1970s New Left violence\textsuperscript{22}—exploded a string of bombs across New York City, igniting the Department of Commerce, the RCA Building at Rockefeller Center, the General Motors Building at Fifth Avenue and Fifty-ninth Street, and the headquarters of the Chase Manhattan Bank.\textsuperscript{23} Melville’s string of violence portended more to come. During the 1970s, such bombings became frequent occurrences in New York, Washington D.C., and other major US cities. The pattern included “a rash of bombings followed by a wave of copycat threats, followed by the mass evacuations of skyscraper after skyscraper, leaving thousands of office workers milling about on sidewalks, wondering what had happened.”\textsuperscript{24} This series of explosions alarmed the government; both the FBI and President Nixon believed that the radicals should be

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\textsuperscript{20} Burroughs, 26-27.
\textsuperscript{22} Burroughs, 11. Of Melville, he writes “Melville was the first to take antigovernment violence to a new level, building large bombs and using them to attack symbols of American power. While later groups would augment his tactics with bank robbery, kidnapping, and murder, Melville’s remained the essential blueprint for almost every radical organization of the next decade.”
\textsuperscript{23} Burroughs, pp. 18-19.
\textsuperscript{24} Burroughs, pp. 20.
\end{flushright}
President Nixon feared that political activists were financially supported by Communist regimes like the Soviet Union, China, Cuba, and North Vietnam. Journalist Tim Weiner writes:

Nixon insisted that the CIA and the FBI discover the sources of underground Communist support for American peace groups. Where was the evidence? His intelligence chiefs reported that none existed. Yet Nixon convinced himself that the capitol was besieged by Americans who had formed enemy battalions financed by Moscow and Beijing and Hanoi and Havana. He saw the antiwar movement as the fifth column of international communism.25

Nixon affirmed his belief in the activists’ ties to Communism in his memoir. He recounted, “I was eager to learn whether the foreign support went beyond ideological sympathy. I was sure that it did; the patterns were too clear. But the intelligence community never had a conclusive answer.”26 Because he believed that the activists received international support from Communist nations, he tasked the intelligence community with spying on them. The longer that the FBI and CIA failed to find his suspected international connections, the harder Nixon pushed them to collect more intelligence.

Rather than being motivated by Communism, many of the groups involved in such political violence were driven by racial discrimination within the United States. Burroughs writes, “Every single underground group of the 1970s, with the notable exception of the Puerto Rican FALN, was concerned first and foremost with the struggle of blacks against police brutality, racism, and government oppression.”27 That these New Left groups purported to change race relations and social order garnered the attention of the FBI. In 1969, Hoover testified before Congress that the Black Panthers represented “the greatest threat to the internal

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26 Nixon, pg. 471.
security of the country.” Hoover feared the group’s paramilitarism and politics, and he used the Bureau against them to undermine and stop their efforts.

By the time Richard Nixon assumed the presidency in January of 1969, it seemed to many that the New Left threatened to upend the country. The Washington Post reported:

Demonstrations and bombings rocked campuses, many of them directed against the unending Vietnam War. In one 24-hour period there was 400 bomb threats—if not explosions—in New York City alone. On March 6, 1970, an accidental dynamite explosion in Greenwich Village killed three members of the Students for a Democratic

27 Burroughs, pg. 27.
28 Burroughs, pg. 50. Joseph Peniel writes that the black power organization that has received the most scholarly attention involves the Black Panther Party (BPP). In the 1960s, Black Panthers called for a Marxist Revolution undergirded by organized violence. The group emphasized violence as a means of self-defense against the police, whom they accused of persecuting black citizens. Peniel explains that the violent rhetoric of Black Panthers came about in response to violent conditions in Oakland’s ghettos. He writes, “the Black Panther Party for Self-Defense represented the most visible face of radicalism in the 1960s. Armed with guns, law books, and menacing bravado, the Black Panthers projected a militant swagger that made their threats of starting a violent revolution for black liberation seem plausible despite considerable evidence to the contrary.” (762) He explains that the BPP underwent three phases. First, from 1966 to 1971, the group called for violent revolution. Negative media, violent police clashes, and rival black power factions led the BPP to enter a second stage which included an organized yet unsuccessful political campaign to elect Bobby Seale as mayor of Oakland. The third phase of the BPP consisted solely of a group of members in Oakland. From 1974 to 1982, the group became entangled in drug abuse, leadership disputes, and ethical and legal conflicts. Joseph maintains that violence was “the black power era’s most controversial legacy.” He cites Curtis J. Austin’s Up Against the Wall (2006) as a study into the BPP’s use of violence. Austin argued that violence dominated the BPP’s decision making and led to a forceful response from law enforcement, which felt threatened by the BPP’s rhetoric. Peniel Joseph’s Waiting ‘Til the Midnight Hour (2006) studied the origins of black power and found myriad international influences in the domestic movement. Joseph writes that “activists made practical use of revolutions in Cuba, Africa, and other Third World locations to inform their domestic struggles for citizenship, self-determination, and political power.” Furthermore, he sees the movement as a “larger struggle for radical democracy in postwar America.” Joseph’s observations provide context for why Nixon and Hoover believed that the BPP movement within the United States was receiving aid from Communist governments. BPP members did not hesitate to exploit revolutions happening abroad for their own domestic agenda. This, combined with their desire for a revolution, threatened both Nixon and Hoover’s governmental control. See Peniel Joseph, “The Black Power Movement: A State of the Field,” The Journal of American History, December 2009, 751-776.
Society and led police to a basement bomb factory.\textsuperscript{29}

Though some violence had subsided by 1969-1970, the White House held steadfast to its fears of Communism and its law and order message against radicals of many kinds.\textsuperscript{30} Nixon had campaigned on the promise of eradicating the New Left through the language of “law and order.” This message resonated with the Silent Majority, a populace of conservative, middle class, mostly white voters who could not relate to nor understand the plight of such groups as the Black Panther Party, the Weather Underground, or the Yippies.\textsuperscript{31} As the days and months rolled by, violence fueled by the New Left continued to erupt. In April 1970, after Nixon ordered American troops into Cambodia, student demonstrations continued, culminating in the deaths of four Kent State University students by guardsmen on May 4, 1970.\textsuperscript{32}

The FBI tried to counter these New Left groups but largely met failure. Despite trying, the Bureau’s clean-cut “Hardy Boys” agents could not fit in when they tried to go undercover within the radical organizations. Burroughs writes that agents complained that “Weatherman’s ‘degenerate living habits, their immoral conduct, and their use of drugs’ made it ‘extremely difficult to find informants.’”\textsuperscript{33} The FBI’s inability to penetrate the radical groups frustrated

\textsuperscript{29} Lou Cannon, “The Siege Psychology and How It Grew,” \textit{Washington Post}, July 29, 1973, C1. The article also quoted John D. Ehrlichman, counsel and Assistant to the President for Domestic Affairs. He gave a statement before a Senate Committee investigating Watergate, saying, “Some of these events in 1969 and 1970 included hundreds of bombings of public buildings, a highly organized attempt to shut down the federal government, intensive harassment of political candidates and violent street demonstrations which endangered life and property. Taken as isolated incidents these events were serious. Taken as part of an apparent campaign to force upon the President a foreign policy favorable to the North Vietnamese and their allies, these demonstrations were more than just a garden variety exercise of the First Amendment.”

\textsuperscript{30} Cannon, \textit{Washington Post}.


\textsuperscript{32} Cannon, \textit{Washington Post}.

\textsuperscript{33} Burroughs, 71.
both agents and the White House Administration. Nixon demanded a crack down on student protesters as campus violence reached an all-time high. In the winter of 1968-69, 41 incidents of bombings and arson, including the use of Molotov cocktails, occurred on college campuses; New Left members set fire to ROTC facilities in Delaware, Texas, Berkeley, Oregon, and Washington University in St. Louis; student radicals bombed campus buildings at Georgetown, the University of Michigan, New York University, and four campuses in California. By March of 1970, Nixon ordered Hoover to deal with the New Left, once and for all, before they assassinated him.

To stem the tide of recruits to New Left radical groups, Hoover appealed to those he deemed most likely to become recruits: university students. On September 21, 1970, Hoover addressed a letter to college students across the nation. His correspondence read as a warning—beware the dangers of the New Left or risk becoming mixed up in a subversive movement to overthrow the government. Hoover began, “as a 1970 college student, you belong to the best educated, most sophisticated, most poised generation in our history. The vast majority of you, I am convinced, sincerely love America and want to make it a better country.” He assured readers that there was nothing wrong with student dissent stemming from their unhappiness with national policy. But, he warned, “there is real ground for concern about the extremism which led to violence, lawlessness, and disrespect for the rights of others on many college campuses during the past year.” Over the course of his six-page admonition to students, he outlined eight methods by which extremists would try to “lure” students into their activities. Such efforts entailed everything from encouraging students to abandon respect for their parents to seeing

34 Burroughs, 67.
35 Burroughs, 113.
37 Ibid, pg. 3.
college as an irrelevant “tool of the Establishment.” According to Hoover, such radicals would entice students to abandon their “basic common sense,” brainwashing them into viewing their school and their nation with pessimism. Such negativity represented to Hoover “one of the most insidious of New Left poisons” because in seeing the world through such murkiness, students would forget the role of police officers as community helpers. New Left radicals would convince naïve college students to see police officers as “pigs,” reminding the students that a police officer is “your friend and he needs your support.” Finally, Hoover warned against students seeing works of anarchism or arson as idealistic. The New Left, he argued, would persuade unwitting students to believe that democracy was ineffective in the face of needed social change, leading them to resort to “[hurling] bricks and stones instead of logical argument at those who disagree with your views.” In closing, Hoover reiterated his great hope for the incoming cadre of students, explaining, “Personally, I don’t think the outlook for campus unrest this year is as bleak as some prophets of pessimism proclaim.”

Judged by present standards, Hoover’s letter seems a relic—evidence of a bygone era of dissent between the old government establishment and students, borne out of bitter feelings towards the Vietnam War. His letter, warning students of radical danger, today reads as hyperbolic, paranoid, and curmudgeonly. Yet, Hoover’s viewpoints reflected a wider government outlook towards students and the New Left, a viewpoint that infected the presidency and intelligence agencies in the early 1970s. Such fear of the New Left, manifested in a paranoia

38 Ibid, pg. 4.
39 Ibid.
40 Ibid.
41 Ibid, pg. 5.
42 Ibid, pg. 5.
43 Ibid, pg. 7.
that students, nationwide, would abandon democracy in favor of anarchism and bombs in order to effect change and support their dissent, led not only Hoover but the Nixon Administration to resort to extreme measures in 1970. In an effort to halt the fomentation of student radicalism, the Nixon Administration, the FBI, and the intelligence community sought to quell student protests, gather intelligence on the New Left, and preserve the democratic form of government that they genuinely believed had been called into question. Their quest to contain dissent, however, led them to disregard legal limits. The Nixon Administration, driven by fear and paranoia, briefly authorized forms of intelligence collection that violated protesters’ civil rights. Central to this breach in legality was the FBI. Hoover complicated and ultimately thwarted the Nixon administration’s ability to capture intelligence on students.

As much as Hoover feared the ability of college students to join forces with the New Left, no one feared the young people as much as Nixon. In a Presidential Talking Paper drafted after a meeting with Hoover, Richard Helms (director, Central Intelligence Agency (CIA)), Lt. General Donald V. Bennett (director, Defense Intelligence Agency (DIA)) and Admiral Noel Gayler (Director, National Security Agency (NSA)), Nixon’s cabinet classified the threat posed by students, explaining:

We have moved from the ‘student activism’ which characterized the civil rights movements in the early ‘60s through the ‘protest movements’ which rallied behind the anti-war banner beginning with the March on the Pentagon in 1967 to the ‘revolutionary terrorism’ being perpetrated today by determined professionals. We are now confronted with a new and grave crisis in our country—one which we know too little about. Certainly hundreds, perhaps thousands, of Americans—mostly under 30—are determined to destroy our society. They find in many of the legitimate grievances of our citizenry opportunities for exploitation which never escape the attention of demagogues. They are reaching out for the support—ideological and otherwise—of foreign powers and they are developing their own brand of indigenous revolutionary activism which is as dangerous
as anything which they could important from Cuba, China, or the Soviet Union. Because Nixon believed student radicals threatened his presidency, he resorted to unprecedented measures to equip the intelligence community to gather intelligence against them. He justified such intervention by stressing the connections between student radicals and foreign communism, an association that would forever remain speculation. His plan, approved for a mere five days in 1970, evoked controversy when revealed to the public, and highlighted the dissension between intelligence agencies as well as their willingness to secretly carry out operations behind the President’s back and without his permission.

In 1970, the Nixon administration sought to unite intelligence agencies to collect intelligence on the New Left, even if it meant authorizing illegal activity. A group of agency directors, led by J. Edgar Hoover and the FBI, drafted a plan allowing them to search mail, enter houses, and monitor student groups, based almost entirely upon their First Amendment-protected speech. The plan gave the government the ability to collect intelligence on students for merely expressing viewpoints counter to the Administration; political speech, typically protected by the First Amendment, became fodder for a federal investigation. If the Administration or intelligence agencies decided a person or a group posed a threat (and the meaning of “threat” was diffuse, at best), they had full authority to resort to practically any means necessary to investigate them. The plan became known as the Huston Plan, named for the White House staffer, Tom

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44 Hearing before the Select Committee to Study Governmental Operations with Respect to Intelligence Activities of the United States, Senate, 94th Cong., 1st sess., September 23-25, 1975, 396.

45 The Senate Committee to Study Governmental Operations With Respect to Intelligence Activities investigated Nixon’s actions against student radicals, which became known as the “Huston Plan,” on September 23-25, 1975 as a part of a larger investigation of the intelligence community, known informally as the “Church Committee” after the unit’s head, Senator Frank Church (D-Idaho).
Charles Huston, a young lawyer who coordinated the committee’s drafting of the document. The CIA, FBI, DIA, and NSA approved the plan created by a committee chaired by J. Edgar Hoover. Though he reluctantly signed his approval of the plan, Hoover sought to demolish the plan and five days later, Nixon revoked his authorization of the document. Huston acknowledged multiple times in a memo to the White House that the document authorized illegal activities on the part of the intelligence community. Nonetheless, he justified each and every egregious violation. The plan is noteworthy for its flagrant disregard of civil liberties on behalf of the entire intelligence community.

Most remarkably, the efforts of the Nixon administration to create an interagency intelligence group to collect domestic intelligence led to the formation of the Plumbers, the group of men that carried out Nixon’s dirty work. In June 1972, the Plumbers broke into the Democratic National Headquarters, located in Washington DC’s Watergate complex. The unification of intelligence agencies in the name of domestic intelligence, under the auspices of a famed “Huston Plan,” was the precursor to Watergate. Central to the Huston Plan were J. Edgar

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46 Memo, “Operational Restraints on Intelligence Collection,” written by Tom Huston (exhibit 22.1 in the Huston Plan Senate Hearings) stated: of mail coverage, “covert coverage is illegal and there are serious risks involved. However the advantages to be derived from its use outweigh the risks;” of surreptitious entry, “use of this technique is clearly illegal: it amounts to burglary. It is also highly risky and could result in great embarrassment if exposed. However, it is also the most fruitful tool and can produce the type of intelligence which cannot be obtained in any other fashion. The FBI, in Mr. Hoover’s younger days, used to conduct such operations with great success and with no exposure. The information secured was invaluable;” of development of campus sources: “CIA claims there are no existing restraints on its coverage of over-seas activities of US nationals. However, this coverage has been grossly inadequate since 1965 and an explicit directive to increase coverage is required.” That the CIA noted it was allowed to cultivate such sources overseas did not justify the legality of cultivating such sources domestically. Under the National Security Act of 1947, CIA was authorized to collect intelligence overseas, but there is a strict line separating intelligence collection domestically within the United States versus outside of the United States. See Carl J. Jensen, David H.
Hoover and the FBI; Hoover chaired the committee that ultimately wrote the inter-agency report. The report examined threats posed by the Black Panther Party, antiwar activists, New Left Terrorist groups, and student protest groups. It authorized the intelligence community to work together to search suspects’ mail, surreptitiously enter suspects’ houses and places of work to plant wiretaps, and to cultivate campus sources or informants. Hoover’s refusal to cooperate with the Huston Plan and his eventual dismantling of the entire agreement left a sourness across the Nixon Administration, leading even Nixon himself to question whether or not it was time to effectively “retire” the FBI director, tenured for nearly half a century. It also led Nixon to resort to extra-agency means when gathering his intelligence, which over time, became increasingly political in nature.

**The Huston Plan**

On June 5, 1970, Nixon met with Hoover, Helms and other Intelligence Community (IC) directors. During the meeting, Nixon charged them with the task of collecting better information on domestic dissenters. The increase in attacks by radical leftists worried Nixon. He recorded in his memoir:

> From January 1969 through April 1970 there were, by conservative count, over 40,000 bombings, attempted bombings, and bomb threats—an average of over eighty a day. Over $21 million in property was destroyed. Forty-three people were killed. Of these 40,000 incidents, 64 percent were by bombers whose identity and motive were unknown.

This increase in violent activity stemmed from Nixon’s decision to invade Cambodia in an effort

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47 Senate Hearings, Exhibit 1, pg. 144.
to attack the North Vietnamese Army and the Vietcong.\textsuperscript{49} Nixon knew that his announcement
would incite mayhem on university and college campuses, and, indeed, it did.\textsuperscript{50} Nixon believed
that the shootings at Kent State stemmed from his foreign policy decisions regarding Cambodia.
He described those days following the shootings as “among the darkest of my presidency.”\textsuperscript{51} He
recalled that even Henry Kissinger, Nixon’s National Security Advisory and the strategic
mastermind behind the Cambodian invasion, suffered a blow to his morale after Kent State.\textsuperscript{52}
On May 25, the Weathermen published “A Declaration of a State of War,” promising war
against Nixon’s administration. They stated:

The hundreds and thousands of young people who demonstrated in the Sixties against the
war and for civil rights grew to hundreds of thousands in the past few weeks actively
fighting Nixon’s invasion of Cambodia and the attempted genocide against black people.
The insanity of Amerikan ‘justice’ has added to its list of atrocities six blacks killed in
August, two in Jackson, and four white Kent State students, making thousands more into
revolutionaries.

The parents of “privileged” kids have been saying for years that the revolution was a
game for us. But the war and the racism of this society show that it is too fucked-up. We
will never live peaceably under this system.\textsuperscript{53}

Central to his obsession with New Left groups was his belief that they evinced ties to Communist
governments. Nixon believed that such groups as the Weather Underground and the Black
Panther Party were directly receiving aid and funding from communist governments in an effort

\textsuperscript{49} Henry Kissinger, \textit{Ending the Vietnam War: A History of America’s Involvement In and
\textsuperscript{50} Nixon, 451.
\textsuperscript{51} \textit{Ibid}, 457.
\textsuperscript{52} \textit{Ibid}, 457.
\textsuperscript{53} Bernardine Dohrn, “A Declaration of a State of War,” written May 25, 1970, originally
http://www.lib.berkeley.edu/MRC/pacificaviet/scheertranscript.html.
to overthrow his presidency. He believed it was high time that the intelligence community collected the evidence to prove his hunch. Nixon hired Huston “to do his bidding and instructed him to write a report detailing options for dealing with the New Left.” His recommendations ranged “from the innocuous to the extreme, from doing nothing to violating the civil liberties of American citizens.” Years after the Huston Plan died, the Senate committee investigating his proposal noted that journalist Theodore White posited that the Huston plan would give intelligence agencies enormous power, allowing federal authorities to reach “all the way to every mailbox, every college campus, every telephone, every home.” Indeed, the Huston plan gave presidential authorization not only to the FBI but to the CIA, NSA, and DIA—three agencies whose founding charters permitted them to collect only international intelligence, outside the jurisdiction of the United States—to read mail, tap telephones, and conduct black bag jobs, or robberies, to obtain intelligence in the name of national security. When Congress revealed the plan to the public in its 1975 Senate hearings, the ultimate irony of the Huston Plan

54 The Huston plan stated, “leaders of student protest groups have traveled extensively over the years to communist countries; have openly stated their sympathy with the international communist revolutionary movements in South Vietnam and Cub; and have directed others into activities which support these movements. These individuals must be considered to have potential for recruitment and participation in foreign-directed intelligence agencies.” (See Huston Plan Hearings, Exhibit 1, Special Report Interagency Committee on Intelligence (Ad Hoc), pg. 147.) Interestingly, the report later references a past instance of communist recruitment of students, stating, “While fostering disorder and rebellion through communist parties and fronts is a potent weapon in the communist arsenal, their past success has been evident in clandestine recruitment efforts on campuses during times of unrest. H.A.R. (Kim Philby), Guy Burgess, and Donald Maclean were all students at Cambridge during the depression period of the 1930’s and were in the vanguard of what was then the New Left. Their recruitment and cooperation with Soviet intelligence wreaked havoc on British intelligence and also comprised U.S. security in those sectors where they had authorized access.” (See Huston Report Senate Hearings, pg. 159) Philby, Burgess, and Maclean are infamous for spying for the Soviet Union while working for British defense and intelligence services.

55 Ibid, pg. 1.

56 Ibid, pg. 1.
came to light.

Even though the plan authorized intelligence agencies to carry out such searches in the name of national security, the agencies were already doing everything authorized to them under the plan and continued to do so after the plan fell apart. When Nixon revoked his authorization of the plan five days after authorizing it, the agencies expressed their disappointment and quietly went back to doing everything the Huston Plan had authorized to them, without presidential approval or oversight.\textsuperscript{57}

The Huston Plan, as it came to be known,\textsuperscript{58} led to fallout between Huston and Hoover, and, on a larger scale, foreshadowed the difficulties that would characterize the FBI for the next decade, as the organization succumbed to politicization under the Nixon administration and then spent years trying to divest itself of the repercussions of that relationship.\textsuperscript{59} The Huston Plan signaled the beginning of a tumultuous decade for the Bureau.

One of the clearest and most immediate examples of these tensions occurred in October 1969 when Huston received reports from the FBI regarding plans by the New Mobilization Committee to hold a press conference at the Ambassador Hotel in Washington DC. By November, sources confirmed that the Chicago-based SDS “Weatherman” faction also intended to participate in the demonstrations. Further sources suggested that the Black Panther Party was

\textsuperscript{57} Ibid, pg. 2.
\textsuperscript{58} Ibid, pg. 27. During the question, Senator Huddleston asked Huston, “Were you flattered by the fact that this plan carried your name?” Huston replied, “It was an honor at the time I would have been very happy to do without, particularly since it had been my intention to leave the administration at the end of the second year anyway.”
\textsuperscript{59} Nixon, Ehrlichmann, Box 23, Intelligence Memoranda—Huston, Intelligence Memorandum 1, 29 Oct. 1969.
also planning to travel to Washington. The reports gained notoriety when a “reliable source” suggested that Abbie Hoffman and Jerry Rubin (Yippie Leaders) stated they would attempt to “break into the Justice Department, breaking windows and possibly using Molotov cocktails. While police are busy at Justice, an attempt will be made to blow up the Vietnamese Embassy.”

Early estimates from the FBI suggested that approximately 100,000 demonstrators would travel to Washington DC for the November protests. The number of protesters, combined with the Yippie threats of inciting violence, led the Nixon administration and the FBI to anticipate a possible eruption in the DC protests.

When their predictions for violence failed to come true, Huston found himself defending Hoover to Nixon’s Assistant for Domestic Affairs, John Ehrlichman. In a memo dated November 20, 1969, Huston intimated to Ehrlichman that Hoover was upset at the suggestion from a recent news article that the FBI had performed unsatisfactorily. Countering the news article’s claims that the Bureau had wildly overestimated the amount of protesters, Huston came to Hoover’s defense, writing:

The FBI believes, and I concur, that the assessment was not incorrect. FBI intelligence enabled us to pinpoint the targets of violence in advance, thus enabling the MPD to have sufficient manpower on hand to keep the situation under control. Had we not been aware of the plans to storm the South Vietnamese Embassy, we would have had an international incident on our hands if the effort had been successful.

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60 Nixon, Ehrlichmann, Box 23, Intelligence Memoranda—Huston, Intelligence Memorandum 5, 7 Nov. 1969.
62 Nixon, Ehrlichmann, Box 23, Intelligence Memoranda—Huston, Intelligence Memorandum No. 3, 3 Nov. 1969.
64 Ibid, pg. 1. According to the memo, the news article attacking the Bureau’s performance leading up to the protests was written by Bob Walters for the Washington Evening Star. Specifically upsetting to Hoover was the fact that the article attacked the Bureau’s intelligence
Huston disagreed with the reporter, explaining to Ehrlichman, “It is my opinion that the FBI did a first-rate job in gathering intelligence for the November Mobilization. Their information was accurate, timely, and complete.” Furthermore, he rationalized their overestimates regarding the number of protesters as a result of relying on the practice of counting buses attending the protests, and not the number of protesters on the bus. Finally, Huston proposed that Ehrlichman send Hoover a letter to reassure him of the Administration’s appreciation for the Bureau’s work. He attached a draft of the letter, in which Huston proposed that Ehrlichman say to Hoover, “I wish to call to your attention the fine job which your people in the Domestic Intelligence Division did during the weeks preceding the November Mobilization.”

Though Huston praised Hoover’s work in 1969, the relationship would turn by 1970, when Huston and Hoover found themselves at odds over the Huston Plan. By the time Huston proposed drafting the Huston plan, he met only resistance from Hoover. Huston testified before Congress “it was my opinion that [Hoover] was heading down a course difference from that the President had outlined.” In a memo for Haldeman, Huston wrote in July 1970, “I went into this exercise fearful that CIA would refuse to cooperate. In fact Dick Helms (Director of Central Intelligence) was most cooperative and helpful, and the only stumbling block was Mr. 

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65 Ibid, pg. 3. There was no indication of whether or not Ehrlichman actually sent Huston’s draft letter to Hoover to thank him for his intelligence gathering related to the DC protests. Nevertheless, the letter provides evidence for the importance that Huston placed on cooperation from the Bureau in regards to the Administration’s intelligence gathering.

66 Ibid, pg. 2.

67 Huston Plan, 4.
Huston explained that though the working group of intelligence agency directors, comprised of Hoover, CIA Director Helms, DIA Director Bennett, and NSA Director Gayler approved an official plan to collect domestic intelligence, Hoover refused to go along with the plan. In fact, Hoover’s assistant director William Sullivan testified before the Senate that he recommended that Huston first get the signatures of the CIA, DIA, and NSA directors before sending the draft to Hoover. Huston explained, “Bureau personnel (i.e., Sullivan and Brennan) on the committee felt that if they took the report back to Mr. Hoover, that he would go completely—he would refuse to go along with it, and they felt that, tactically, if they went to him and said, the report has already been approved by the other three Directors, that perhaps he would then acquiesce.” In fact, despite the best strategies of Huston and Sullivan, Hoover continued to resist efforts by the other directors to expand intelligence collection. Huston wrote to Haldeman, “When the working group completed its report, Mr. Hoover refused to go along with a single conclusion drawn or support a single recommendation made.”

The report recommended to Huston that the intelligence agencies “commence” (ironic, as they were already conducting) the illegal opening of mail and surreptitious entries. Hoover objected to the report, believing that any revelations related to the intelligence community’s gathering of such information would only lead to embarrassment for the Bureau and for the

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68 Ibid, Exhibit 2, pg. 189.
69 Ibid, 189. Huston, clearly at his wit’s end with Hoover, wrote a memo to Haldeman suggesting that Nixon handle Hoover accordingly: “Mr. Hoover should be called in privately for a stroking session at which the President explains the decision he had made, thanks Mr. Hoover for his candid advice and past cooperation, and indicates he is counting on Edgar’s cooperation in implementing the new decisions.” (pg. 191)
70 Ibid, pg. 8. Huston testified before the Senate that “[Nixon authorized the Huston report] thinking that he was authorizing these openings, not knowing that his authority was an idle gesture, since these practices had been going on for a long time prior to the request for his
Nixon Administration. The report recommended that the FBI recommence “black bag jobs” or burglaries to acquire intelligence. Huston testified on the subject that “I was told the Bureau had undertaken ‘black bag’ jobs for a number of years—up until 1966. That it had been successful and valuable again, particularly in matters involving espionage. And that they felt this, again, was something given the revolutionary climate, they thought they needed to have the authority to do.” Indeed, “they” referred to the Bureau’s assistant director, William Sullivan. Huston testified before the Senate that he believed Sullivan felt the FBI had become “unduly inhibited” in its intelligence collection on domestic groups. On July 19, 1966, Hoover sent a letter to Cartha DeLoach, his Assistant Director, prohibiting the use of black bag jobs. Whatever restrictions Hoover had placed upon his intelligence unit within the Bureau in regards to the collection of domestic intelligence, the Huston Plan sought to eradicate.

In a bitter memo to Haldeman, Nixon’s chief of staff, Huston described in detail how Hoover had successfully dismantled the Huston Report. Huston explained that Hoover’s lack of support stemmed from two reasons. First, Hoover believed that current Bureau operations were satisfactory and did not require the help of other agencies. Second, he refused to accept any authority. And after he revoked that authority, the practices continued, even though he had revoked it.” (pg. 16)

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71 Ibid, pg. 189.
72 Ibid, 8.
73 Ibid, 8.
74 Ibid, 98. In his memo, Hoover wrote, “I note that requests are still being made by Bureau officials for the use of ‘black bag’ techniques. I have previously indicated that I do not intend to approve any such requests in the nature, and, consequently, no such recommendation should be submitted for approval of such matters. This practice, which includes also surreptitious entrances upon premises of any kind, will not meet with my approval in the future. Very truly yours, John Edgar Hoover.” See Exhibit 33, pg. 276.
75 Ibid, 189.
comments from other agencies about the Bureau’s methods for collecting intelligence. Huston refused to see Hoover’s point of view, explaining to Haldeman that Hoover’s “objections are generally inconsistent and frivolous.” To voice his disagreement, Hoover inserted footnotes into the final report that disagreed with the report’s conclusions. This addition to the final report angered the other agency heads. Huston had to assuage the protests of Admiral Gayler and General Bennett, delicately convincing them to not make a scene regarding Hoover’s changes. In exchange, Huston offered to make their opposition to the footnotes known to President Nixon.

FBI and CIA Disputes

The Huston Plan exposed a harsh reality in the world of the intelligence community: namely, that the FBI had severed all connection with the CIA. In the spring of 1970, Hoover became irate when the CIA refused to tell Hoover “who had leaked information from his organization regarding an investigation into a Czech professor’s disappearance.” Though the Bureau publicly denied the breakdown in communication, the Senate hearings with the Huston plan confirmed the total halt in cooperation. Indeed, Hoover’s own memo confirms the split with the CIA. On a letter from CIA director Helms, Hoover wrote at the end, “This is not satisfactory. I want our Denver Office to have absolutely no contacts with CIA. I want direct liaison here with CIA to be terminated and any contact with CIA in the future to be by letter only. –H.” Hoover’s subordinates in the Bureau believed that the split with the CIA was fatal

76 Ibid, 189.
77 Ibid, 190.
78 Ibid, 190.
80 Senate Testimony, pg. 9 (Huston testifies), 67 (Angleton testifies), and 124 (Brennan testifies).
81 Senate Testimony, Exhibit 47, pg. 347.
to FBI operations. In fact, some of the Bureau personnel went behind Hoover’s back and continued to meet with CIA officials in order to exchange information related to cases.\(^{82}\) Charles Brennan, Former Assistant Director of the FBI’s Domestic Intelligence Division, testified before Congress that he believed the ban on working with the CIA definitely affected the FBI’s ability to collect intelligence. He explained:

I feel the various members of the intelligence community must work together in order to fulfill everybody’s basic intelligence responsibilities, and I felt that the decision by Mr. Hoover to cut off relationship with the CIA was just totally an atrocious decision and was not consistent with what the responsibilities of the intelligence community are. We rely upon and deal with the CIA closely, as they do with us, in the interchange of matters of mutual interest to both of us, and it just did not square with the abilities of each to be able to carry out the responsibilities and perform the functions by saying, ‘discontinue liaison with the CIA.’\(^{83}\)

The breach in communication between CIA and FBI developed over a relatively small disagreement. In 1969, the FBI and CIA looked into a case involving the disappearance of Thomas Riha, a Czech-born associate professor of modern Russian history at the University of Colorado.\(^{84}\) The professor left the university under mysterious circumstances, disappearing and leaving no clues as to his whereabouts. Though his friends and colleagues believed that his disappearance suggested he was dead, the University of Colorado President, Joseph R. Smiley, assured the public he was still very much alive, citing his “reliable sources” in Washington.\(^{85}\) Smiley spoke with such confidence because he had been briefed by a CIA agent as to Riha’s whereabouts. He announced publicly that Riha had not been a victim of foul play.

From that moment forward, Hoover recognized a leak in information and sought to find


\(^{83}\) Senate Testimony, 124.

\(^{84}\) “FBI is Said to Have Cut Direct Liaison with CIA,” 62.

\(^{85}\) *Ibid.*
it; thus began the breakdown between the FBI and the CIA. The CIA initially took an interest in
the case based upon Riha’s Czech citizenship and “wanted to know if there had been foreign
interference.”86 The FBI discovered that the professor was alive and well and simply had chosen
to disappear for personal reasons. When Sam Papich, an FBI agent in the Bureau’s Denver
office, chose to act on his own accord and tell a CIA agent what the Bureau had discovered, his
message led to the breakdown in communication. Papich’s official role was liaison officer
between the CIA and FBI. Unfortunately, when Hoover learned that Papich passed along
information to the CIA about the Bureau’s classified notes on the case, he cut off communication
with the CIA. Papich was devastated. The New York Times reported that Papich “beseeched the
Director in the strongest language to reconsider, pleading that a close relationship between the
two agencies was vital to controlling Communist-bloc intelligence operatives.”87 Hoover refused
to listen. Instead, four months after he severed liaison with the CIA, he “abolished the seven-
man section that maintained contact with the Defense Intelligence Agency, the Office of Naval
Intelligence, Army Intelligence, Air Force Intelligence, the Air Force Office of Special
Investigations, the National Security Agency, the State Department, the Post Office, the
Department of Health, Education and Welfare, the United States Information Agency, the
Bureau of Customs and the Immigration Service.”88 James Jesus Angleton, Chief of
Counterintelligence for the CIA, remarked of the split that Hoover’s command was a “cutting off
of all liaison within the intelligence community with the exception of the White House…over
this one case.”89 The fallout resulting from such a simple case was extraordinary. Yet, it also

86 Ibid.
87 Ibid.
88 Ibid.
89 Senate Testimony, 84
highlighted the need for the Huston Plan. At the time the agency directors came together to draft the Huston Plan, Hoover had eliminated contact with the rest of the agencies. That he would ultimately sabotage the Huston Plan came as no surprise.

The Attorney General Intervenes

As Hoover saw it (and, indeed, as the law reflected), only the FBI had jurisdiction to collect domestic intelligence. Though the CIA, DIA, NSA and military had collected domestic intelligence for years, federal law did not actually give them the authority to do so. Hoover knew this, and after he voiced his disagreement through his ample footnotes, he approached the Attorney General, John Mitchell and briefed him about the creation of the report. Hoover’s assistant director, described Mitchell’s dislike of Huston and the Huston Plan, writing:

Mitchell’s distaste for Huston and for what came to be known as the Huston Plan began when the Ad Hoc Committee was originally formed. I don’t know if it was a deliberate omission or merely an oversight, but Mitchell was never invited to join the committee. As it turned out, Mitchell, Hoover’s nominal boss, had wanted to be a member of that committee in the worst way.

No other sources corroborated whether or not Mitchell truly wanted to be a part of the Huston report planning committee “in the worst way.” Nonetheless, what is certain is that the Attorney General was left out of the discussion entirely until the Huston Report had already been drafted. This deliberate omission of information became a point of contention when the Senate

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90 Sullivan, 214.
91 Ibid, 214.
92 Richard Helms, Director of the CIA, wrote in a private memo of his surprise at finding out that the Attorney General had not been briefed on the plan. He wrote, “During a private meeting with the Attorney General on 27 July 1970, it became clear, to my great surprise, that he had heard nothing whatever about the President’s instructions on “Domestic Intelligence” until that very morning. In other words, the Attorney General had not been told of the meeting at the White House on 5 June 1970 or of the ad hoc committee meetings chaired by the FBI which had followed or about the report which was sent to the President around 1 July, setting forth constraints on domestic intelligence collection. As I understand it, the AG first heard about these
interviewed Huston in 1975. When asked why he never informed Mitchell of the Huston Plan, Huston gave four reasons: 1) he believed the plan dealt not with law enforcement matters, but rather intelligence issues and therefore did not come under the purview of the Attorney General; 93 2) Huston decided that the FBI, as a part of the Justice Department, should be the agency to keep the Attorney General informed of the meetings’ proceedings; 94 3) Huston argued that he wasn’t sure what conclusions the committee would decide upon in regards to the collection of domestic intelligence and therefore, the “thought hadn’t occurred to him to include the AG;” 95 4) finally, and perhaps contradicting himself, Huston admitted that he simply didn’t have any confidence in the Department of Justice. 96 Only in 1976, when answering senators’ pointed questions, did Huston admit that his failure to consult the Attorney General had been a mistake. When asked by Senator Church whether it never occurred to him, when “making recommendations…that violated the law, that you or the White House should confer with the Attorney General before making those recommendations.” Somewhat sheepishly, Huston replied, “No, it didn’t. It should have, but it didn’t.” 97

That Huston failed to consult with the Attorney General ultimately led to the plan’s undoing. After the plan was finalized and Hoover had added his footnotes, he approached Mitchell and told him everything that had been going on between the intelligence agencies and the White House. Mitchell did not respond favorably; he contacted the White House and

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convinced Nixon to recall the plan.\textsuperscript{98} Huston’s failure to tell the Attorney General about his plan not only doomed his plan, but, perhaps most disturbing, it also showed his disregard for the law. Huston would eventually be called to testify before the Senate about his plan because it had unheeded the Constitution, allowing agencies to not only thwart their own legal jurisdiction (which, with the exception of the FBI, were strictly international)\textsuperscript{99} but also to sidestep the Fourth Amendment by searching peoples’ mailboxes, houses, and places of businesses without a warrant. By the time senators called Huston in for questioning, they wondered how he legally justified the Huston Plan. Huston’s explanation pointed to one conclusion: he saw the President as above the law and believed whatever he or the intelligence community needed to do in furtherance of national security was okay. He stated, “it was my opinion at the time that simply the fourth amendment did not apply to the President in the exercise of matters relating to the internal security or national security.”\textsuperscript{100} Huston coordinated the efforts of the intelligence community while ignoring the Attorney General. He quelled any doubts about the plan’s illegality by deciding, simply and unilaterally, that the President was above the law. Yet, his viewpoints had been supported by Nixon, as well as past presidents. Even though federal courts had found domestic wiretaps to be unconstitutional, Huston claimed that until 1972, every President believed that he had “inherent authority” as a part of his Executive Power to carry out wiretaps anyway.\textsuperscript{101} Furthermore, Huston argued that the American public’s viewpoint on the

\textsuperscript{98} Ibid, 24. Senator Baker, a participant in the hearings on the Huston Plan, recalled Mitchell’s anger at the Huston Plan. He stated, “As I recall the testimony of Mitchell in the Watergate hearings, he indicated that he was considerably distressed, if not in fact irate, about these proposals, and as quick as he could he got in touch with the President to put a stop to it.”

\textsuperscript{99} See National Security Act of 1947. The Act provided explicit framework regarding the agencies’ jurisdictions.

\textsuperscript{100} Senate hearing, 20.

\textsuperscript{101} Ibid, 20.
issue supported the right of a President to collect whatever he needed, with the help of the intelligence community.

Huston testified, “it is interesting to me, Senator, that in October 1971, on the Sunday edition of the New York Times, there was a front page article which was obviously planted to attack J. Edgar Hoover, which criticized Mr. Hoover for the fact that he had refused to engage in ‘black bag’ jobs that were necessary in dealing with espionage.”

Indeed, the New York Times article alleged that FBI agents risked their jobs and their personal freedom when they carried out black bag jobs. Under Hoover’s weak leadership and his inability to work with other intelligence agencies, the article argued, the intelligence capabilities of the Bureau had suffered greatly. It stated, “an FBI man might find himself apprehended by the police when he does a ‘bag job’—a surreptitious piece of counterespionage sometimes involving illegal activity.”

The article questioned the Bureau’s intelligence gathering capabilities, wondering if the FBI fell too far on the law enforcement side and not enough on the intelligence gathering side, therefore carrying out acts that would allow it to counter espionage and recruit Soviet defectors as spies. The article stated, “the agents are basically trained in criminal procedures and techniques and think in criminal terms…The subtleties of intelligence work seem to elude them.”

Huston’s point about the attitude of the public towards Hoover and intelligence gathering

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102 Ibid, 22. In the October 10, 1971 New York Times article, “F.B.I. Is Said to Have Cut Direct Liaison With C.I.A.,” the article alleged that intelligence officials worried that Mr. Sullivan’s departure from the FBI, following his “retirement,” would lead to further breakdown in intelligence cooperation between the Bureau and the CIA. The article alleged that intelligence officials believed the FBI was doing a poor job in the area of counterintelligence, or the act of countering Soviet espionage. The article stated, “They argue that Mr. Hoover is so intent on preventing any embarrassment to the FBI or any sullying of his reputation that he avoids the risks of counterespionage work.” See pg. 62.

103 “FBI Said to Have Cut Direct Liaison With CIA,” 62.

104 Ibid.
had changed over the years was both correct and incorrect. The New York Times article eviscerated Hoover for his inability to work with the CIA and for the Bureau’s inability to capture valuable intelligence. The article seemed to have no regard for how and if the Bureau might collect such intelligence legally or illegally—the viewpoint of the article simply criticized Hoover for his inability to make the right call and to allow Sullivan’s Domestic Intelligence Division to carry out the black bag jobs that they wanted, in the name of the national security. Everything about the New York Times article reflected the attitude of Huston during the days of drafting the Huston Plan—national security took precedence and if the CIA or any other intelligence agency wanted to collect information, they could and should. Hoover’s hesitation to cooperate with Huston or to carry out black bag jobs led critics to later wonder what his motives had been in the early 1970s. Had he been ahead of his time, seeing the illegality of the intelligence community’s actions? Had he acted on principle to preserve to the Constitution, to ensure that the Bureau did not violate citizens’ fourth amendment rights to be free from search and seizure?

The record stemming from the Huston Plan reflects that Hoover’s hesitation had far less to do with principle and more to do with his formidable personality; in 1970 and 1971, Hoover found himself in a difficult place. Past actions by the Bureau were finally coming to scrutiny, and yet, he hated the thought of any other agencies infringing upon his domestic intelligence territory. He worked under a President who insisted upon collecting domestic intelligence and refused to do so on Hoover’s own terms. That Nixon demanded Hoover work with other agencies, and that Hoover knew his actions, though sanctioned at the time, could later be reopened to scrutiny, led him to hesitate and ultimately thwart his own Bureau’s mission to
collect information. One week after the *New York Times* Sunday spread criticized Hoover for refusing to work with the CIA, the paper again featured a negative story on him in the following Sunday paper. The story, entitled “Hoover, in an Unusual Letter, Defends Operations of the FBI,” stated that Hoover had written a letter to Princeton professor Duane Lockard to defend the Bureau’s actions. Lockard was set to host a conference at Princeton on the FBI. The Bureau speculated that the conference would severely criticize Hoover and organization’s actions. Such an unprecedented, no-holds-barred event featuring prominent scholars terrified Hoover.

The article provided a litany of recent criticism against the Bureau and Hoover.

In recent months, Representative Hale Boggs, Democrat of Louisiana, has charged that the F.B.I. tapped the telephones of Congressmen; Senator George McGovern, Democrat of South Dakota, has accused Mr. Hoover of attempting to destroy the career of an airline pilot who had been critical of the bureau’s handling of a hijacking, and Senator Edmund S. Muskie, Democrat of Maine, has contended that the bureau conducted widespread surveillance at Earth Day last year. The criticism reaped upon Hoover by the public destroyed his motivation to help Nixon. He was not going to risk his future by carrying out actions to assist the CIA, the agency with which he had stopped liaising. Regarding Hoover’s sabotage of the Huston Plan, Huston himself remained opinionated about Hoover’s motives. He stated, “I did not think his objections were principled…because in many instances he says, not that this is illegal, it should not be done, he says, ‘I do not want to do it, but I do not care if somebody else does it,’ which does not strike me as being a principled objection.” Furthermore, Huston argued that Hoover hated when other

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106 The article stated, “Mr. Hoover pointed out that people associated with the conference—he did not name them—had already said critical things about the bureau so that he had doubts about the conference’s impartiality.” See “Hoover, in Unusual Letter, Defends FBI Operations, A1.”
107 Ibid.
108 Senate hearings, 23.
agencies infringed upon his territory.\textsuperscript{109}

Others involved with the Huston Plan offered a slightly different perspective on Hoover’s motivations regarding the memorandum. Angleton speculated:

I believe that Mr. Hoover’s real concern was that during the Johnson administration, where the Congress was delving into matters pertaining to FBI activities, Mr. Hoover looked to the President to give him support in terms of conducting those operations. And when that support was lacking, Mr. Hoover had no recourse but to gradually eliminate activities which were unfavorable to the Bureau and which in turn risked public confidence in the number one law enforcement agency.\textsuperscript{110}

Huston made clear that the Nixon administration had placed greater emphasis on intelligence gathering and was willing to use the Huston Plan as the imprimatur of authorization for agencies to collect such information. Hoover, however, had witnessed the same enthusiasm for intelligence gathering under Johnson and had later been made to feel like a scapegoat of the administration when the public expressed their disapproval of the intelligence gathering activities. He refused to be moved. His own former Assistant Director of the Domestic Intelligence Division, Charles Brennan, also posited his theory on Hoover’s inability to cooperate with the Huston Plan. He stated:

I think when Hoover reached age 70, of course, he came within the Government’s law which required mandatory retirement at that time. And I believe that was waived by President Johnson, which virtually then called for the Director to be renewed as Director of the FBI on an annual basis.\textsuperscript{111} And I think that Mr. Hoover was very conscious of the

\textsuperscript{109} Ibid, 35.
\textsuperscript{110} Senate Hearing, 69.
\textsuperscript{111} On May 8, 1964, President Lyndon B. Johnson signed Executive Order 11154, titled “Exemption of J. Edgar Hoover From Compulsory Retirement for Age. The order acknowledged that in January 1965, Hoover became “subject to compulsory retirement for age under the provisions of the Civil Service Act” at the age of 70. The order alleged that the public interest demanded that Hoover be exempt from such a requirement. The order stated, “I hereby exempt J. Edgar Hoover from compulsory retirement for age for an indefinite period of time.” Interestingly, and perhaps supporting Brennan’s supposition that Hoover feared his year-by-year reappointment, an executive order holds no legal standing under any following president unless such president wishes to continue the order. Thus, any president after Nixon could have easily
fact that to a degree this put him into a somewhat vulnerable position. I think he then also became very conscious of the fact that any incident, which, within his understanding might prove to be an embarrassment to the Bureau, could reflect questionably on his leadership of the Bureau. And I think that perhaps he felt that such an incident could provide certain individuals with the capacity not to renew his continued role as Director of the FBI. ¹¹²

**The Huston Plan and Sullivan**

Hoover’s opposition to the Huston Plan led to conflict with William Sullivan, the FBI’s head of Domestic Intelligence Division. Sullivan made clear time and again that he disagreed with Hoover’s approach to intelligence collection. In his memoir, Sullivan recalled that he had often served as the point of contact for other intelligence agencies that brought their complaints to him, when they felt like Hoover had isolated their agencies from the Bureau. ¹¹³ He believed that Hoover had acted completely out of line when he inserted his footnotes into the final Huston Report. Though Sullivan noted that Hoover made only “minimal” changes to the report, he stated, “Hoover was in no position to make them.”

Though Huston and Hoover had a terrible relationship, Huston developed a strong relationship with Sullivan, who became the biggest proponent of the Huston Plan. Sullivan and Huston developed a close working relationship. In his testimony before the Senate, Huston stated, “I do not think there was anyone in the Government who I respected more than Mr. Sullivan.” ¹¹⁴ The relationship between Huston and Sullivan ensured that the FBI remained involved with the drafting of the Huston Plan, as Sullivan chaired the working committee of undone Johnson’s executive order and forced Hoover out the door. The New York Times article detailing the split between CIA and FBI mentioned the speculation regarding Hoover’s possible retirement. By the time, Nixon took office, rumors that Hoover would be forced to retire were rampant. That these rumors appeared in the New York Times virtually guarantees that Hoover knew of the negative buzz regarding his long tenure as director.

¹¹² Senate Hearing, 97.
¹¹³ Sullivan, 205.
agency subheads who drafted the version that eventually went to agency directors for approval. At one point, Sullivan wrote optimistically to Huston, justifying the cooperation of the IC by saying, “Individually, those of us in the intelligence community are relatively small and limited. Unified, our own combined potential is magnified and limitless. It is through unity of action that we can tremendously increase our intelligence-gathering potential, and, I am certain, obtain the answers the President wants.”\(^{115}\) This optimism about bringing the intelligence community together to leverage its limitless power would ultimately be the plan’s undoing, as Sullivan lost Hoover’s trust. William Sullivan described Hoover’s intense dislike of Huston in his autobiography, *The Bureau*, stating, “[Hoover] never called [Sullivan] by his right name, and in our conversations, he never referred to him by any other name except ‘that hippie,’ taking his cue from Huston’s two-inch sideburns.”\(^{116}\)

Sullivan recounted that the White House reached out to him about the Huston Report before contacting Hoover. Huston expressed the White House’s disappointment with Bureau intelligence. Sullivan believed that Hoover had begun to shrink back from taking any risks during the 1960s. He explained, “by 1970, [Hoover] was reluctant to allow his agents to break into embassies, tap telephones, or open other people’s mail, even though these were the very investigative techniques to which he owed his publicized successes.”\(^{117}\) More importantly, however, by refusing to approve past illegal techniques, Hoover “put the Domestic Intelligence Division of the FBI out of business.”\(^{118}\) This seemed crucial to Sullivan, as head of the Domestic Intelligence Division. Frustrated by Hoover’s lack of support and feeling like his hands were

\(^{114}\) *Ibid*, 17.


\(^{117}\) *Ibid*, 205.
tied when the issue of intelligence collection arose, Sullivan immediately responded sympathetically when Huston expressed disapproval for the Bureau’s intelligence operations. He wrote, “the Nixon White House wanted the FBI to be more aggressive, not less. Hoover’s refusal to bug, tap, and open mail was the straw that broke the camel’s back. The time had come to apply pressure.”\(^\text{119}\) When Huston contacted Sullivan, he explained that the President was so disappointed in the quality of intelligence received from the Bureau that he had instructed Huston to work with the Bureau to do something different, something more effective.\(^\text{120}\) Furthermore, the White House was well aware that the Bureau’s refusal to cooperate with the CIA and other agencies. Sullivan explained:

> All of these little empires in the intelligence—the FBI, State Department, NSA, and the others—had built fences around themselves. I had never seen anything like it. We wouldn’t share our information with anyone, and not other agency liked to give up anything because Hoover would leak it to the newspapers and use it against them if he could. To me, Huston looked like manna from heaven. A serious, informed analysis of the nature, functions, and objectives of intelligence had never been undertaken in this country. Perhaps, with my help, Huston and the White House could reorganize the entire intelligence community.\(^\text{121}\)

On June 5, 1970, Huston invited Hoover to the White House to discuss the structure of his forthcoming plan. Though Huston had made clear he wanted to create a plan for collecting future intelligence, Hoover only wanted to recount what the Bureau had done in the past. Sullivan remembered, “At the meeting, Huston made it clear that the president was not interested in Hoover’s one-sided version of FBI history. From that moment, Hoover hated Huston.”\(^\text{122}\)

Shortly thereafter, Huston managed to corral an intelligence subcommittee, chaired by Sullivan,

\(^\text{118}\) Ibid, 205.  
\(^\text{119}\) Ibid, 206.  
\(^\text{120}\) Ibid, 206.  
\(^\text{121}\) Ibid, 208.  
\(^\text{122}\) Ibid, 209.
to create the famed Huston Report. Sullivan argued that the report did not reflect the viewpoints of Huston but rather showcased the consensus of agency representatives who were charged with devising a better way to cooperate in the pursuit of domestic intelligence gathering. In his autobiography, Sullivan made no mention of the tactic that he advised to Huston as a measure to get Hoover’s approval—namely that he secured the other three intelligence agency director’s signatures before soliciting Hoover’s signature last. Yet, Sullivan recounted Hoover’s distaste for the report’s draft; he wrote, “it was evident from the beginning that Mr. Hoover was opposed to the entire report.” He argued that Hoover mostly opposed the idea that anyone in the intelligence community had the authority to impose upon the FBI’s jurisdiction in domestic intelligence by carrying out duties previously reserved solely for the Bureau.

Sullivan and Hoover had been at odds regarding FBI intelligence collection since as early as 1967. A *Time* magazine article in 1971 reported, “since 1967, [Hoover and Sullivan] have been at odds about espionage restrictions, ordered by Hoover, that severely limited FBI investigations of spies.” The article chastised Hoover’s departure from controversial tactics like wiretaps and electronic eavesdropping, stating, “civil libertarians have long condemned such tactics; Hoover’s restrictions, however, resulted only from a pragmatic desire to avoid embarrassing incidents and from his belief that American public opinion would not condone

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123 Ibid, 211. Only during the Senate hearing would Huston finally have a chance to answer to the fact that the report ultimately bore his name, despite the fact that it reflected the viewpoints of many people who worked on it. During the hearing, Senator Huddleston asked, “Were you flattered by the fact that this plan carried your name?” Huston replied, “It was an honor at the time I would have been very happy to do without, particularly since it had been my intention to leave the administration at the end of the second year anyway.” (Senate hearing, pg. 27).
124 Ibid, 212.
‘dirty games’ by FBI agents.”¹²⁶ The article portrayed Sullivan as a warrior against Soviet espionage who became concerned about the Bureau’s ability to detect spies under Hoover’s restrictions. Hoover had long had a reputation as a staunch supporter of the Cold War against the Soviet Union. Critics attacked his obsession with the Soviet Union, fixated on an “‘archaic’ anti-Communist preoccupation.”¹²⁷ That he was less of a Cold Warrior than Sullivan became a point of irony; and yet, instead of questioning the motives of a man whose obsession with fighting communism and espionage went beyond the almost comical obsession of J. Edgar Hoover, the news report sided with Sullivan.

Although Attorney General John Mitchell sided with Hoover regarding the Huston Report, he did not allow free reign of the Bureau. Instead, beginning in 1971, he allowed the Justice Department to edit the FBI’s crime reports, a slight that Hoover could not ignore.¹²⁸ Hoover believed that this development came about because “someone within the FBI was giving the Administration a false picture of his operations.”¹²⁹ Indeed, the Nixon Administration believed, based upon what Sullivan told them, that the FBI did not have any effective analytical capability. Huston found that the FBI was good “at collecting raw intelligence data,” but they could not assemble the intelligence into a useful product for policymakers. In other words, the Bureau could not make actionable intelligence.¹³⁰

¹²⁶ The File on J. Edgar Hoover, 1.
¹²⁷ Ibid.
¹²⁸ Ibid.
¹²⁹ Ibid. Hoover’s hunch that someone was informing the Administration of the Bureau’s operations was actually correct. Huston testified in his Senate hearing that Sullivan told him that Hoover was “unduly [inhibiting]” the FBI’s efforts to collection intelligence. See Senate Hearings, 3.
¹³⁰ Senate Hearings, 34. Furthermore, Huston testified, “The FBI’s Intelligence Division is always the last in line for new people, always the last in line for money. There are shortages of people and personnel, and I am, for example convinced that there are vastly inadequate resources
Hoover’s subsequent actions implied that he believed that the “someone” leaking negative information about the Bureau was Sullivan. In late July 1971, Hoover demoted Sullivan from the number three position in the Bureau to number four by creating a new position placed above Sullivan. Hoover also “summoned Sullivan to his office and heatedly berated him for 2 ½ hours…[implying] that Sullivan was insolent and disloyal.”¹³¹ The clear implication that day was that Hoover wanted Sullivan to resign. Against Hoover’s wishes, Sullivan held on. Several weeks later, Hoover wrote Sullivan, “suggesting” that he take two weeks’ vacation. When Sullivan declined the offer, Hoover sent an infamous “blue gem”—a note from the director penned in blue ink—that stated, “Take two weeks. –H.”¹³² While Sullivan was on vacation, Hoover choose his successor, Alex Rosen, the chief of the FBI’s investigative division. By the time Sullivan returned to work, he found Rosen occupying his office.¹³³ On October 1, Sullivan went on sick leave. While he was away, Hoover changed the locks on his office and removed his nameplate. The FBI press office announced that Sullivan had voluntarily retired.¹³⁴ The dispute between Hoover and Sullivan led the public to question whether Hoover had too much authority. The Time article stated, “The Sullivan-Hoover battle was more than simply an internal bureaucratic feud, and more even than a controversy over different approaches to intelligence operations. It raised serious questions about a secretive, enormously powerful Government agency under dictatorial rule, operating on its own, answerable to no authority available in the Bureau to lead with the espionage threat in this country, simply because they do not have the manpower for it.” (pg. 34)

¹³¹ The File on J. Edgar Hoover, 67.
¹³² Ibid, 68.
¹³³ Ibid, 70.
¹³⁴ Ibid, 72.
except the judgments—or whims—of one man.”

The debacle with Sullivan illustrates two important points about the Bureau and Hoover in the early 1970s. First, during the time when the Huston plan was developed, the press and the public came down on the side of Sullivan instead of Hoover, showing the public’s acceptance of intelligence gathering, even by illegal methods. That acceptance would dissipate following Watergate, but at the time of Sullivan’s firing, many questioned whether Hoover had shot himself in the foot. Sullivan was vehemently arguing for the return of controversial tactics in the furtherance of collecting domestic intelligence, and even though the public would, only several years, turn against such acceptance towards the collection, in 1971, they fell staunchly on his side. Even stranger, the public and the press both attacked Hoover for being comically anti-communist, and yet, they believed that he had lost his spirit for collecting intelligence and fighting espionage when he refused to give into Sullivan’s requests for expanded intelligence collection. Even though Hoover remained popular within national polls, he clearly had critics who believed Hoover was no longer fit to serve as director of the FBI. Some critics claimed he was too aggressive and others claimed he was not aggressive enough. Second, Hoover was in a delicate position during the early 1970s. Though he retained his position as director, he was clearly vulnerable in ways he had not been earlier in his career. Brennan’s speculation that Hoover had become so careful about collecting intelligence because he feared that he could easily be fired, despite an Executive Order keeping him in office showed the fine line that Hoover walked in making sure that he kept his job.

**The Politicization of Intelligence**

The Huston Plan and its demise had implications even broader than its effects on Sullivan

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135 The File on J. Edgar Hoover, pg. ?
and Hoover. The plan represented the politicization of intelligence by the Nixon administration.

In addition to using intelligence agencies, Huston also sought to use the Internal Revenue Service (IRS) to monitor New Left Groups. In a memo to Haldeman, Huston wrote, “I am attaching a copy of a report from the IRS On the activities of its ‘Special Service group’ which is supposed to monitor the activities of ideological organizations (for example, Jerry Rubin Fund, Black Panthers, et cetera) and take appropriate action when violations of IRS regulations turn up.”136 Most frightening, Huston recognized that the IRS and intelligence agencies could be used by the administration to go after groups where no basis for criminal prosecution existed. He wrote to Haldeman, “what we cannot do in a courtroom via criminal prosecution to curtail the activities of some of these groups, IRS could do by administrative action. Moreover, valuable intelligence type information could be turned up by IRS as a result of their field audits.”137

When questioned by the Senate committee about his use of the IRS to collect intelligence against New Left groups, Huston denied that he had ever done so; yet, the memoranda declassified for the hearing shows incontrovertibly that Huston had, at the very least, intended to use the IRS as a part of his greater plan.138

When placed into the hot seat of questioning, Huston fell back on the fear the administration felt stemming from the New Left. He argued that he was not going after hippie, antiwar protesters but rather, wanted to stop a growing violence sweeping the country in the name of “radicalism.” He testified:

I really was peripherally interested in the antiwar demonstrations. What I was concerned about was the 40,000 bombings that took place in 1 year. What I was concerned about was the 39 police officers who were killed in sniping…But all I want to say for the record

136 Senate Hearings, 10
137 Ibid, 12.
138 Ibid, 12.
is, I thought we had a serious problem. I was not concerned about people who didn’t like the war. I wasn’t concerned about people who thought Nixon was a louse. I was not concerned about who was going to be the Democratic nominee. I am talking about—we were talking about bombers; we were talking about assassins; we were talking about snipers.\textsuperscript{139}

Later, he backed up his fear with numbers—noting that in 1970, bombings, assassination attempts, and sniping incidents were at an all-time high. May 1970 saw 40,000 bombings and ROTC facilities saw an average of six arsons a day.\textsuperscript{140} Those numbers became a buffer against Huston bearing the brunt of congressional scrutiny for the plan that Senator Church classified as “in violation of the law.”\textsuperscript{141} Huston argued that the intelligence community had manipulated him continually by assuring him they needed the authority to conduct what the Huston Plan would have allowed. Upon finding out later that the CIA had already been doing the things that the Huston Plan authorized, Huston felt duped.\textsuperscript{142} When Huston believed the senators questioning him were trying to place the entire blame for the Huston Plan from construction to (brief) implementation on him, he retaliated:

The impression, Senator, of course, is that I kind of sat down here and created out of whole cloth an entire array of new techniques to exploit and infringe upon the civil liberties of the American people, and that I forced it down Dick Helms’ throat, and I blackjacketed Admiral Gayler, and I really used my heavy weight on all of these poor little professional intelligence people and forced them into coming up with all of this. Now, I think the fact of the matter is that the entire intelligence community, in the summer of

\textsuperscript{139} Ibid, 13 and 18.
\textsuperscript{140} Ibid, 32.
\textsuperscript{141} Ibid, 13.
\textsuperscript{142} Ibid, 40. Huston testified, “But where I think I made my mistake, the biggest mistake I made was, I assumed that the integrity of the people who would be involved in this intelligence-collection operation was such that, although conceptually you could argue that these recommendations were so broad that they could have encompassed—you know, we could have been breaking into 250 million homes in 1970—my judgment was that those types of extraordinary powers would be used only under the narrowest, most limited circumstances, and for that check, I rely upon the integrity of the person who has the authority. What I have learned subsequently is what happens when the person who has that discretion is not Dick Helms, but he is Howard Hunt, and that seems to me to be the risk.”
1970, thought we had a serious crisis in this country. I thought we had a serious crisis in this country. My attitude was that we have got to do something about it. Who knows what to do about it? The professional intelligence community. The professional intelligence community tells me, this is what—you give us these tools; we can solve the problem. I recommended these tools.143

Although he deflected blame in the early proceedings, Huston later recalled his regret at being a part of the plan. His final words, set against the backdrop of the fallout from Watergate, admitted he was naïve at the time of the Huston Report. In retrospect, the plan was illegal. Though Huston argued he had good intentions in setting up the plan, it became a political tool for the Nixon Administration. The plan became, as Senator Schweiker stated, the idea that kept emerging “almost like a phoenix out of the ashes,” to eventually become Nixon’s Plumbers.144

Huston explained his regret, stating:

The risk was that you would get people who would be susceptible to political considerations as opposed to national security considerations, or would construe political considerations to be national security considerations, to move from the kid with a bomb to the kid with a picket sign, and from the kid with the picket sign to the kid with the bumper sticker of the opposing candidate. And you just keep going down the line. I think people start out with the best intentions in the world. I don’t think there was anyone that was involved in this operation who was motivated by a desire to protect the President, to secure his reelection, to embarrass the Democrats, to engage in any partisan political purpose. There was no one who was going to get any medal put on him that said, ‘hero,’ or who was going to be invited as a special guest to the White House Press Club. But we went from this kind of sincere intention, honest intention, to develop a series of justifications and rationalizations based upon this, what I believe to be the basic issue of this distorted view of inherent executive power, and from that, whether it was direct, as Senator Schweiker seems to think it is, or was indirect or inevitable, as I tend to think it is, you went down the road to where you ended up, with these people going into the Watergate.145

The Huston Plan, written in the early days of the Nixon Administration, before Watergate, foreshadowed Nixon’s later trials. During the questioning of Angleton in 1976, Senator

143 Ibid, 17.
144 Ibid, 42.
145 Ibid, 45.
Schweiker asked, “did the Plumber’s unit not do some of the same things, breaking and entry, illegal burglary, that the Huston plan proposed?”146 When Angleton answered affirmatively, Schweiker proclaimed, “So in essence, [the Nixon Administration] went around the back door instead of the front door. Even though the Huston plan was dead I believe it had nine lives.”147

The Huston Plan was a complicated intelligence indiscretion. As Brennan would testify to the Senate in 1975, the FBI never effectively produced any intelligence to show that foreign Communist elements were funding the efforts of the New Left.148 The federal government’s General Auditing Office would later find that only 16 of the 676 cases opened by the Bureau to investigate the New Left were ever referred for prosecution; of those 16 cases, only four resulted in convictions.149 The Huston Plan evoked Hoover’s ego and his reluctance to collect domestic intelligence, even with the direct endorsement of the President. It was borne amid a time of actual peril, as evidenced by the statistics surrounding bombings and campus violence. Yet, the efforts of the intelligence community, both before and after the Huston Plan, to counter domestic violence resulted in few gains. Huston’s plan led to Hoover and Sullivan’s fallout, which elicited public scrutiny of the Bureau. The later seventies showed that Hoover had disregarded the Constitution plenty of times in the name of national security; perhaps he knew his earlier thwarting of the Fourth Amendment would eventually be his undoing, hence, his reluctance to follow along with the Huston Plan, given that he had no guarantees that Nixon would protect him, if the Bureau ever came under public scrutiny.

The Huston Plan also represented the dysfunctional relationship among intelligence

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146 Ibid, 71.
147 Ibid, 71.
148 Ibid, 106.
agencies in the early 1970s. Hoover, despite his waning power, still exercised enormous influence on the intelligence community. Not only did he have the power to halt domestic and international intelligence collaboration among agencies, but, as Huston noted, he had the ability to demolish a plan agreed upon by the intelligence community. Though the Huston Plan has merited a mere footnote or occasional page in histories about Bureau, its importance to understanding the Bureau, and the Nixon administration, during the 1970s should not be understated. Among other things, the Huston Plan, as Nixon’s attempt to authorize the US intelligence community to counter political threats against him, was the precursor to Watergate. And yet, it became so much more complicated. Hoover’s inability or refusal to work with the intelligence community, coupled with the fact that he chaired the drafting of the Huston Plan and then sabotaged it right before his fellow agency directors’ eyes, highlights deeply ingrained issues within the Bureau that took the entire decade to uncover and to sort out before Congress and the public. In short, the Huston Plan was only the beginning of a tumultuous relationship between the Bureau and Nixon.
CHAPTER II
THE FBI AND THE NEW LEFT

Following the demise of the Huston Plan, it seemed that Hoover had reached the height of his insubordination. By allaying the Huston Plan, Hoover had effectively killed a method of intelligence collection hatched by one of the President’s own staffers. At first glance, it appeared that Nixon’s approval should have provided Hoover complete immunity from any public criticism of the plan. Unfortunately for him, it did not. Events following the Huston Plan, involving the Army and the Bureau, underscored the great extent to which Hoover and the FBI were vulnerable to public opinion; when intelligence leaked to the public, Nixon refused to jeopardize his own public support by providing any assistance to intelligence agencies. This chapter argues that throughout Nixon’s first term, Hoover became increasingly reticent to embark upon new intelligence retrieval methods. Hoover witnessed Nixon’s willingness to allow the Army to take the fall for an intelligence program that Nixon had approved of and encouraged. Hoover did not wish for himself or the Bureau to undergo the same criticism. When political activists broke into an FBI office in March of 1971 and stole all of the Bureau’s files in order to leak them to the Washington Post, Hoover’s distrust reached an apex. Subsequently, the flood of FBI files into the general public armed leftist activists and academics with the ammunition needed to launch a full-scale critique of the Bureau and its deficiencies.
That event launched a circular pattern: Nixon would demand increasing amounts of intelligence, Hoover would refuse, and Nixon would resort to other methods to procure the information he needed. During this troubling time, Nixon failed to come to the aid of the Bureau and as a result, Hoover was less and less inspired to come to the aid of the President.

The involvement of the intelligence community in domestic spying came as a surprise to Americans upon the revelation of the Huston Plan through Congressional hearings. In actuality, however, the Johnson and Nixon administrations had earlier gone to great lengths to collect intelligence on radical dissonance using not the intelligence community but the military. The Nixon administration was hardly the first to introduce intelligence gathering on people defined as domestic radicals. In 1971, Senator Sam Ervin (D-North Carolina) initiated Senate hearings on Army surveillance carried out in the late 1960s. Serving as the key witness for the hearings was a former Army intelligence officer, Christopher Pyle. He reported on an operation known as “CONUS Intel,” an acronym for Continental United States Intelligence. An article written about Pyle’s testimony before Congress explained:

Set up originally during the riot-torn mid-’60s to gather information which might be helpful to the Army in quelling civil disturbances, CONUS had arrogated a broad territory of responsibility. Its operatives made investigatory targets of all kinds of people known in the spook trade as “Persons of Interest.” Some were of legitimate interest, like Stokely Carmichael and the Weathermen, but many others were engaged in such perfectly defensible activities as writing antiwar letters to their editors or congressmen, signing petitions, marching in peace demonstrations. Agents trailed bishops and politicians, photographed businessmen and birth control advocates, scribbled notes about ecologists and civil libertarians. Literally millions of dossiers were gathered in this way, and the Army’s response to outside queries about what had been done with this material was not distinguished by either clarity or candor.

Included in the article were specific examples of operations carried out by military intelligence.

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150 ‘Persons of Interest’—Unknown author and publication. From John Elliff’s papers.
151 Persons of Interest, pg. 21.
These actions included monitoring civil rights activist Stokely Carmichael after Martin Luther King’s assassination; spying on a meeting of Catholic priests who opposed the Church’s moratorium on birth control; monitoring the phone conversations of leftist Senator Eugene McCarthy at the 1968 Democratic Convention; tracking the 1968 Poor People’s Campaign “mule marching train from Georgia to Washington, D.C.,” in an effort to find signs of animal abuse; spying on conversations of mourners at Martin Luther King Jr.’s graveside; and reporting on the activities of college students at such events as Moratorium Day in 1969. By the time Nixon became president, he tasked Army agents to “infiltrate groups of potential demonstrators at President Nixon’s inauguration.” The article reported, “long-haired and bearded Army agents were issued liquor money and also marijuana, with instructions to use it and to pass it out to keep their cover.”

The surge in domestic intelligence gathering by the military came in the midst of uproar against the Vietnam War. Intelligence reports compiled by the military reported on demonstrations. Occasionally, the demonstrations turned violent. On the early morning of January 18, 1969, the military reported that the Selective Service National Headquarters was “firebombed, causing major damage to the first floor.” On the evening of Nixon’s inauguration, protesters, including GIs, planned to burn their voter registration cards and draft cards and then host a “counter-inaugural ball” to last all night long. Some of the intelligence reported on benign threats, like a hippie commune of “out-of-town dissidents” staying in

152 Persons of Interest, pg. 22. Moratorium Day included both a massive demonstration and teach-in across the United States as well as a Moratorium March, both intended to protest the federal government’s involvement in the Vietnam War. These events took place in the fall of 1969.

153 Persons of Interest, pg. 23.

154 Military Intelligence Report, John Elliff’s papers, 1.
Washington DC in January 1969. The surveillance was futile, as the young people were “unable to agree on plans for demonstrations.” Also evident in the collected intelligence was an interest on the part of the military in the civil rights movement. On March 12, 1968, the military monitored an event featuring Stokely Carmichael. The military agents’ report discussed Carmichael’s call to arms, writing, “he indicated that Negroes should arm themselves for protection against ‘Whitey,’ and that they should fight in the United States and not in Vietnam.” Despite the Army’s best efforts, and the large scale of their surveillance, its agents “never predicted a riot or witnessed anyone trying to incite one.”

That the military had come under an unprecedented amount of criticism from protesters did not assuage the public’s tolerance of such monitoring. When former army lawyer Christopher Pyle made the military’s actions public in a 1970 Washington Monthly publication, readers were outraged. In its efforts to monitor antiwar protests, the Army had collected an extraordinary amount of intelligence on 25 million individuals. Much of this information resided in a “computerized data bank[s]” housed at Fort Halbird, Md., Alexandria, Va., Fort

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155 Military Intelligence Report, John Elliff’s papers, 1.
156 Military Intelligence Report, John Elliff’s papers, 2.
157 Stokely Carmichael was a black revolutionary, intellectual, and activist originally from Mississippi. He is largely associated with radical and political activism during the 1960s. Carmichael wished to see rural black sharecroppers and the urban poor become leaders in a society “freed from racial inequality and economic justice.” Vehemently antiwar, Carmichael worked alongside Martin Luther King, Jr. In 1966, he joined the Black Power movement and became a Black Panther. From there, he become the leader of a Black United Front in Washington DC, and lived out the end of his life as a Pan-Africanist in Guinea. See Peniel E. Joseph, Stokely: A Life (New York: Basic Civitas, 2014), xi. The FBI targeted Carmichael in several operations, including COINTELPRO.
158 Military Intelligence Report, John Elliff’s papers, pg. 6.
160 Persons of Interest, 25.
Monroe, Va., and Fort Hood, Texas.\textsuperscript{161} Using information gleaned from its own “plainclothes” agents as well as from the CIA and FBI, the military compiled vast reports on Americans. According to Pyle, some of the reports involved legitimate threats, while others did not. Accordingly, “surveillance reports on legitimate, peaceful individuals and organizations went into the bank along with reports on criminals and on organizations and individuals who were indeed worth watching.”\textsuperscript{162} One agent even reported that the military allowed new operatives a wide amount of discretion to make judgments on whether those being monitored were Communists. As a result, he stated, “many persons who are not Communists have been so listed.”\textsuperscript{163}

Pyle became a whistleblower on the army’s CONUS operation because he believed that the United States had created “the intelligence apparatus of a police state.”\textsuperscript{164} His 1970 \textit{Washington Monthly} article described the army’s intelligence abuses.\textsuperscript{165} Though \textit{Washington Monthly} was a somewhat obscure publication, the article went into syndication and was published in fifty-one newspapers across the country, including local papers with a wide

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\textsuperscript{161} Ibid.
\textsuperscript{162} Ibid.
\textsuperscript{163} Ibid.
\textsuperscript{164} Ibid.
\textsuperscript{165} Christopher H. Pyle, CONUS Intelligence, \textit{The Washington Monthly}, Vol. I, No. 12, January 1970. The author’s biography, accompanying the article, described Christopher Pyle as a Ph.D. candidate at Columbia University who had “recently completed two years service as a captain in Army Intelligence.” The article explained that the information included in the article “comes from briefings he received at the headquarters of the U.S. Army Intelligence Command, and from the observations of friends and acquaintances who served in intelligence units throughout the United States and Europe.” Interestingly, none of the information that he released was classified, which allowed him to avoid prosecution while serving in the role of whistleblower. Pyle’s ability to release information would starkly contrast that of Daniel Ellsberg, also a member of the army, who, in 1969 released the highly classified and highly controversial “Pentagon Papers.”
readership like the *Miami Herald* and *The San Francisco Chronicle*. The article’s wide syndication captured the attention of Congress.

Pyle joined the army as a young attorney and taught at the Army Intelligence School from 1966 to 1968. He lectured on the collection of domestic intelligence and its legal boundaries. The more that Pyle looked at the law, however, the less certain he felt that the Army’s actions were legal under the Constitution. During Pyle’s years of teaching, the army was preoccupied with Vietnam and subsequent protests sparked at home by war efforts. It decided to infiltrate civil rights groups and anti-war groups as a means of squelching demonstrations against the Vietnam War, but also, the military was interested in suppressing race riots taking place across the country. In the summer of 1967, when riots took place in Detroit and Newark, the

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166 Interview, Christopher Pyle, August 20, 2015.
168 In July 1967, Detroit became the scene of violent urban disorder, leading to 43 deaths, over 1000 injuries, and 3,800 arrests. Over 1000 buildings were burned to the ground. Professors Joe T. Darden and Richard W. Thomas explained, “during the riot, or ‘rebellion,’ as most black radicals called it, several white police officers deliberately shot three unarmed black men to death in the Algiers Motel. Two of the men were shot while lying or kneeling.” George Romney, the governor of Michigan during the riot, explained his understanding as to why the riots occurred, stating, “What triggered the riot in my opinion, to a considerable extent, that between urban renewal and expressways, poor black people were bulldozed out of their homes. They had no place to go in the suburbs because of suburban restriction. They settled along 12th Street. The concentration of people on 12 Street was too great. So when that incident occurred, it was a spark that ignited the whole area.” See Joe T. Darden and Richard W. Thomas, *Detroit: Race Riots, Racial Conflicts, and Efforts to Bridge the Racial Divide*, East Lansing: Michigan State University Press, 2013, 2-3. Historian Thomas J. Sugrue found that Detroit’s urban riots stemmed from two things: “that capitalism generates economic inequality and that African Americans have disproportionately borne the impact of that inequality.” See Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit*, Princeton: Princeton University Press, 1996, 5. The Report of the National Advisory Commission on Civil Disorders (the Kerner Commission Report) published in 1968 concluded, “what white Americans have never fully understood—but what the Negro can never forget—is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.” (pg. 2). Urban riots also occurred in July 1967 in Newark, New Jersey when a black cab driver was “pulled over and badly beaten by the police [within] sight of the
violence provided a justification for the army intelligence officers to expand their “counterinsurgency” efforts within the United States.\(^{169}\) Pyle visited the army intelligence offices and read unclassified teletypes—reports from the Associated Press regarding demonstrations that were printed instantly, upon receipt of information.\(^{170}\) He discovered that through news reports and, significantly, through the work of their own informants and agents, the army was monitoring not only possible violence but also American citizens’ protected speech. Pyle found they were monitoring all sorts of things, and he was concerned to find it covered forms of communication he understood to be protected by the First Amendment. Pyle began to develop intelligence sources within the Army, recruiting informants from his legal classes. As he taught soldiers the Constitutional bounds of their jobs, he convinced them to tell him about instances where they superseded legal boundaries. At one point, he had 125 Army agents engaged in domestic intelligence collection providing information to him. Pyle began running his own intelligence operation against the Army, using the Army’s own intelligence agents.\(^{171}\) Pyle’s \textit{Washington Monthly} articles were filled with anecdotes provided from Army agents in the field. Pyle approached the Senate Subcommittee on Constitutional Rights, chaired at the time by residents of a large public housing project.” See Nancy Solomon, “40 Years On, Newark Re-Examines Painful Riot Past,” \textit{NPR}, July 14, 2007, accessed at http://www.npr.org/templates/story/story.php?storyId=11966375. Riots ensued. One resident recalled “there was a rain of stones, rocks, Molotov cocktails at the precinct. The flames started flickering down the side of the building, and the police came charging out with night sticks, shields, riot gear, charging the crowd.” Similar to Detroit, Newark had seen racism and lack of opportunities in the housing market and in employment influence the riots’ occurrence. Solomon explained, “After World War II, whites began moving out of Newark to the suburbs in huge numbers, spurred on by new interstate highways, low-interest mortgages and widespread access to college provided by the G.I. Bill. As blacks moved into the Central Ward, they faced severe discrimination in jobs and housing.”\(^{169}\) Joan M. Jensen, “Military Surveillance of Civilians in America,” n.p.\(^{170}\) Interview, Elliff.\(^{171}\) Interview, Pyle.
Senator Sam Ervin. Though Ervin was a staunch segregationist, he was interested in violations of the First and Fourth Amendment and believed that CONUS violated both. He agreed to hold hearings. Pyle left his position in the Army and went to work for Ervin, serving as a staff member for the committee investigating CONUS. While serving on his staff, Pyle drafted many of the questions that Ervin asked the Army representatives in Congressional hearings.

Pyle’s *Washington Monthly* articles provided a cache of information about the Army’s doings. At the time, the general public simply had no idea that the military was collecting information domestically. Pyle described the origins of the program, dating it back to 1965. He wrote, “nearly 1,000 plainclothes investigators, working out of some 300 offices from coast to coast, keep track of political protests of all kinds—from Klan rallies in North Carolina to antiwar speeches at Harvard.” Pyle alleged that when the program began, it was intended “to provide early warning of civil disorders which the Army might be called upon to quell.” The purpose of the program gradually shifted. By 1967, “its scope widened to include the political beliefs and actions of individuals and organizations active in the civil rights, white supremacy, black power, and antiwar movements.” By 1970, the army maintained surveillance on “virtually every activist political group in the country,” to include such peaceful units as the Southern Christian Leadership Conference, Clergy and Laymen United Against the War in

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172 Interview, Elliff.
173 Interview, Pyle.
174 Though Pyle would date the CONUS program back to 1965, the Army had carried out extensive domestic investigations, dating back to World War I. During World War II, the army’s domestic intelligence gathering included information related to Eleanor Roosevelt. Pyle would testify to these origins of Army domestic intelligence gathering when he testified before Ervin’s subcommittee. From Interview, Christopher Pyle, August 20, 2015.
175 Pyle, pg. 4.
176 *Ibid*, pg. 5.
177 *Ibid*, pg. 5.
Vietnam, the American Civil Liberties Union, Women Strike for Peace, and the National Association for the Advancement of Colored People.\textsuperscript{179}

He described the army’s interaction with the FBI and local law enforcement, claiming that military intelligence received the majority of its briefings regarding upcoming protests from the Bureau. The Army distributed their intelligence findings daily and weekly through a “nationwide wire service...[that gave] every major troop command in the United States daily and weekly reports on virtually all political protests occurring anywhere in the nation.”\textsuperscript{180} In addition to the wire reports, the Army published a book known as the “blacklist,” which contained profiles on people and organizations that Army officials believed could one day cause trouble.\textsuperscript{181} He warned, “some time in the near future the Army will link its teletype reporting system to a computerized data bank.”\textsuperscript{182} The computerized system was significant because unlike computer databases housed at the FBI, the Army’s computers “[would] not be restricted to the storage of case histories of persons arrested for (or convicted of) crimes. Rather, it will specialize in files devoted exclusively to descriptions of the lawful political activity of civilians.”\textsuperscript{183} This unprecedented amount of computerized intelligence would be made available to the “FBI, the Secret Service, the Passport Office, the Central Intelligence Agency, the National Security Agency, the Civil Service Commission, the Atomic Energy Commission, the Defense Intelligence Agency, the Navy, and the Air Force.”\textsuperscript{184} To argue in support of its need for such detailed intelligence, the Army likened its intelligence gathering efforts in Malaya and South

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\textsuperscript{178} & Ibid, pg. 5. \\
\textsuperscript{179} & Ibid, pg. 5. \\
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\textsuperscript{182} & Ibid, pg. 6. \\
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Vietnam to break up guerrilla organizations, explaining, “without detailed knowledge of community ‘infrastructure,’…riot-control troops would not be able to enforce curfews or quell violence.”

Indeed, the Army had brought its Vietnam War tactics home. Crucial to the Army’s intelligence gathering was the question of legality. Upon what legal basis could the Army carry out its acts of collection? Pyle authoritatively wrote, “within the United States the Army has no authority to round up suspects the moment civilians take up arms.” That power remained with the FBI and local law enforcement. For the Army to intervene and arrest US citizens, the President would have to declare martial law, a “highly remote circumstance.” When news of the CONUS program reached the public, the Nixon administration justified the Army’s actions using the “inherent powers doctrine,” a legal theory that authorized the President to use “whatever ‘intelligence-gathering operations he believes are necessary to protect the security of the nation’ and that this authority ‘is not dependent upon any grant of legislative authority from Congress, but rather is an inherent power of the President, derived form the Constitution itself.” Pyle, however, argued against the legal basis of the inherent powers doctrine, explaining that federal courts had historically not upheld a president’s power to do whatever he wanted without answering to Congress.

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184 Ibid, pg. 6.
185 Ibid, pg. 8.
186 Ibid, pg. 8.
187 Ibid, pg. 8.
188 Ibid, pg. 9.
189 Pyle referenced *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). In that case, the Supreme Court refused to grant President Truman the authority to seize the production facilities of a steel mill that had gone on strike. Truman argued that the strike interfered with US war efforts in Korea, but the court refused to find that such interference resulted in exigent circumstances necessary to allow a president to impose such unchecked power.

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program violated the First Amendment due to “the chilling effect which knowledge of surveillance has upon the willingness of citizens to exercise their freedoms of speech, press, and association, and their right to petition the government for redress of grievances.”¹⁹⁰ In short, if the program impinged upon people’s ability to feel secure in the ability to express their opinions, radical or distasteful as they might be to the government, then the program violated citizens’ First Amendment rights to free speech. For Pyle, CONUS violated Americans’ right to privacy.¹⁹¹ It also ensured that citizens would think twice before participating in political activity. He wrote, “once citizens come to fear that government agencies will misuse information concerning their political activities, their withdrawal from politics can be expected.”¹⁹² Pyle also worried about worst-case scenarios where the military or other government agencies would abuse intelligence and violate people’s rights. He wrote:

> It is frightening to imagine what could happen if a demagogue in the Martin Dies-Joseph McCarthy tradition were to gain access to the computer the Army seeks now, or if an Otto Otepka in uniform were to leak a copy of the Intelligence Command’s so-called “blacklist” to friends in Congress, or if a General Edwin Walker were to take charge of the Intelligence Command.¹⁹³

Pyle was so concerned about the illegality of CONUS and the dangers it posed that he recommended that Congress hold a hearing to investigate the Army’s intelligence gathering and to look into other intelligence agencies to search for similar violations.

As Pyle’s allegations reached the public, the army responded by creating a 50-man unit

¹⁹⁰ Pyle, pg. 10.
¹⁹¹ Though the Bill of Rights never explicitly defines “privacy” as a fundamental right, the Supreme Court, in *Griswold v. Connecticut*, 381 U.S. 479 (1965) found that the Constitution granted a right to privacy which could be found in the “penumbras” and “emanations,” meaning, essentially, in the shadows, of the Bill of Rights as well as the due process clause of the Fourteenth Amendment.
¹⁹² Pyle, pg. 12.
within the Pentagon to identify Pyle’s leaks and trace the source. Incidentally, Pyle continued his intelligence operation against the Army by developing sources within the Pentagon group. One of his sources, known as “Yellow Pants,” because of the mustard-yellow bellbottoms he donned upon meeting Pyle for the first time, provided Pyle with information related to his leaks. Pyle stayed several steps ahead of the Army’s investigation into his leaks. He also evaded prosecution, a feat that he credits to his ability to keep his head down (he emphatically refused to make the story about himself, focusing instead on the intelligence), his ability to conceal the identity of his sources (to his knowledge, the military never realized the extent to which he had sources within the Army or the identities of such sources), and also the military’s preoccupation at the time with trying to prosecute Daniel Ellsberg for leaking the Pentagon Papers. Pyle remained unscathed.  

In his hearing before Congress, Pyle testified that CONUS had failed miserably, as evidenced by the fact that US Army operatives were tailing Martin Luther King, Jr. when he was assassinated. In addition to learning about the human intelligence that military operatives collected, Congress was also interested in their technical capabilities. The congressional committee evinced great interest in the use of computer technology to obtain and store information about those monitored by the Army. Ervin worried that “breakthroughs in computer technology tend to create the real possibility of ‘a mass surveillance system unprecedented in American history.’” Equally concerning, Ervin worried that the army was handing its material

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194 Interview, Pyle, August 20, 2015.
195 Persons of Interest, pg. 25.
196 Persons of Interest, pg. 26. Pyle recounts that, at the time, the Army was either unaware of the extent of its computer collections or deliberately lied to Congress about the extent of its computer collection capabilities related to intelligence. On one occasion, Senator Ervin sent a letter to the Army General Counsel, asking about its computer at a base in Maryland. The Army
Pyle’s decision to become a whistleblower placed him at the center of the government’s suspicion. Years later, he would recall that upon his public disclosures, the army began targeting him for surveillance, writing “it asked my mailman to monitor my correspondence and put me on President Nixon’s ‘enemies list,’ which meant a punitive tax audit.”

Despite receiving funding for his Ph.D. through the GI Bill, Pyle claimed that the government tried to prove that General Counsel denied the existence of any such computer. Pyle, through his sources, was able to pinpoint the exact location of the computer on the base. He passed along the information to Ervin, who wrote a letter to the Army General Counsel identifying the location of the “nonexistent” computer. The Army General Counsel sent an employee out to locate and destroy the computer. See Interview with Pyle, August 20, 2015.

Persons of Interest, pg. 26. The article provides characteristics of those who might be subject to investigation by military intelligence. On page 27, it lists:
- He has traveled extensively in foreign countries and has been photographed with known Communists.
- He made a recent speech which called for a “New American Revolution.”
- He is a known member of the Society of Friends.
- He has been active in a movement to withdraw American troops from South Vietnam.
- He has embarrassed high government officials (Secretary of the Interior Walter Hickel) and duly elected congressmen (Senator Charles Goodell of New York).
- He attended the funeral of Martin Luther King Jr. and has been observed in the company of such black leaders as Richard Hatcher, the late Whitney Young Jr. and other known “persons of interest.”
- He characterized the U.S. Army actions at Mylai as a “massacre” and furthermore has stated, in the presence of witnesses, that he believes there should be no more wars.
- He has said that the President’s comments on the Manson trial were out of order and should not have been made.
- He was seen talking with radical youth groups at predawn during the 1970 post-Cambodia rally in Washington.
- He maintains an unlisted telephone number.
- His hair and sideburns have become progressively longer over the past two years.
- He surrounds himself at all times with armed and stone-faced men.
- Finally, his general stability is suspect: he has changed his job—and even his residence—four times in the last 10 years.

the Chinese Communists were funding his tuition.\textsuperscript{199}

When news of its CONUS program reached the public, the Army at first refused to comment. It diminished the CONUS program only to “essential elements of information.”\textsuperscript{200} It forbade its agents from discussing any aspect of the program with the press, and its office in the Pentagon “suspended all replies to Congressional inquiries.”\textsuperscript{201} Finally, on January 26, 1970, the Army “confirmed the existence of the nationwide intelligence apparatus,” but claimed that it merely collected political intelligence “in connection with Army civil disturbance responsibilities,” an assertion that Pyle decried as false.\textsuperscript{202} Pyle also found that the Army had not answered truthfully regarding its use of undercover agents, claiming, “for some time there has been a special prohibition against military persons undertaking such activities as undercover operations in the civilian community.”\textsuperscript{203} Pyle replied, “of course, it did not say when the order was issued, or whether it was being obeyed. (It is not.)”\textsuperscript{204} Though the American Civil Liberties Union (ACLU) brought suit against the Secretary of Defense, the Secretary of the Army, the Army Chief of Staff, and the Commanding General of the Intelligence Command for violating political groups’ rights to free speech, a federal judge dismissed the suit, writing, “there is no threat that the Army is going to come in and arrest you.”\textsuperscript{205}

Nixon eventually stepped in and demanded an end to the Army’s collection of domestic intelligence, having overseen the Army’s collection efforts since assuming the presidency in

\textsuperscript{199} Ibid, Pyle, “Please, No More Domestic Spies!”
\textsuperscript{201} Pyle, CONUS Revisited, 50.
\textsuperscript{202} \textit{Ibid}, 50.
\textsuperscript{203} \textit{Ibid}, 50.
\textsuperscript{204} \textit{Ibid}, 50.
\textsuperscript{205} \textit{Ibid}, 54-55.
In a press conference held by the Nixon administration’s press secretary, Ronald Ziegler on April 16, 1971, he stated, “I referred the other day, for example, to the fact that when the President found out recently that under a previous Administration the Army intelligence people were conducting surveillance, that the President immediately ordered that that stop. I said the other day that that has stopped. The Army intelligence has absolutely no responsibility and will not under direct order from the President and the Secretary of Defense engage in that type of activity.” Later, when his administration approached the Army about participating in the Huston Plan, the Army used the Congressional outcry against its CONUS program as justification to decline participation. But, the effects of Pyle’s reveal would reverberate far past the army, beginning in his own social circle. Following his testimony before Congress, Pyle would meet a young professor, John Elliff. Elliff received his PhD from Harvard in 1968 and was teaching at Barnard College, beginning in 1967. Elliff’s research centered around several issues relevant to Pyle’s testimony—first, Elliff was interested in the FBI and the civil rights movement, an issue pushed to the forefront of the discussion by Pyle and his unveiling of the army’s methods against civil rights activists. Secondly, Elliff also had an interest in the tension between national security and civil liberties. Those topics of mutual interest between Pyle and Elliff led to a mutual friendship. Pyle encouraged Elliff to look more closely at the FBI’s domestic intelligence gathering and introduced him to Senator Ervin’s Subcommittee on Constitutional Rights staff.

As Elliff transitioned to a position as professor at Brandeis University, he continued his research into the FBI. Elliff’s interest propelled him to attend Princeton University’s 1971

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207 Interview with Pyle, August 20, 2015.
208 Interview with Elliff.
conference on the FBI and Hoover; it served as the topic of his book, *The Reform of FBI Intelligence Operations*, and led him to serve as the lead Congressional staffer in the mid-1970s Church Committee investigation into the FBI. Both Elliff and Pyle worked for the Church Committee. Years later, Pyle recalled the CIA’s generous cooperation with him during his time on the Church Committee. Even knowing that he had leaked information about the Army, the CIA still issued him a Top Secret Secure Compartmentalized Information clearance, one of the highest clearances available within the government.

Pyle’s work became important because it served as the impetus for intelligence investigations that would follow, particularly into the FBI. Pyle demonstrated, for the first time, that the seal of impenetrability that had long pervaded intelligence agencies could, in fact, be broken. The public reveal of Operation CONUS also led Nixon to order that the Army stop its surveillance of public citizens. Though it took several more years before the FBI answered to Congress in the way that the military did in 1970, the FBI shortly experienced its own leak of information when a group of antiwar activists broke into an FBI office in the middle of the night and took all of its files to pass along to the media.

**Media, Pennsylvania**

Though the Army remained the focus on Congressional debate and public scrutiny through 1970, the attention shifted to the FBI in 1971. That year became significant for the Bureau, as Hoover encountered an unprecedented amount of criticism. New Left activists and the academic community called the “cultism of Hoover” into question and exposed the Bureau’s political agenda. The impetus for this scrutiny originated in the break-in of an FBI field office on the early morning of March 8, 1971.
The story started small. On March 9, the New York Times published a pithy article about a break-in:

The Federal Bureau of Investigation office at Media, near here, was raided early today and Government property removed, according to an FBI spokesman. In an anonymous telephone call to a Philadelphia reporter, a group calling itself the Citizens Commission to Investigate the FBI said it had “removed all the records.”

Days later, more details about the break-in emerged. On March 24, Betty Medsger and Ken W. Clawson, Washington Post staff writers, began to describe the content of files taken from the FBI’s Media office. Although the burglars had sent anonymous copies of the documents to multiple publications, only the Washington Post had any interest in publishing stories about them. Medsger and Clawson wrote, “copies of stolen FBI records sent to The Washington Post described the bureau’s surveillance of campus and black activist organizations at one college as involving the local police chief, the postmaster, letter carriers, campus security officer and a switchboard operator.” The documents, written by FBI agents running operations against New Left activists, encouraged other agents to continue interviewing political dissenters in order to propagate the notion that “there is an FBI agent behind every mailbox.”

The Post article further alleged that FBI surveillance had been directed towards black student groups on university campuses, the Black Panther Party, and leftwing professors.

210 Betty Medsger and Ken W. Clawson, “Stolen Documents Describe FBI Surveillance Activities,” The Washington Post, March 24, 1971, A1. A later article by the New York Times would include a transcript of a memo from Hoover, which read: “Increased campus disorders involving black students pose a definite threat to the nation’s ability and security and indicate a need for increase in both quality and quantity of intelligence information on Black Student Unions and similar groups which are targets for influence and control by violence-prone Black Panther party and other extremists…We must target informants and sources to develop information regarding these groups on a continuing basis to fulfill our responsibilities and to develop such coverage where none exists.” See Fred P. Graham, “FBI Files Tell of Surveillance of Students, Blacks, War Foes,” New York Times, March 25, 1971, A1.
The FBI and the Department of Justice attempted to wage damage control against the spread of documents, as the people who had raided the office continued to copy and mail the stolen files to journalists and congressmen. The burglars identified themselves as the Citizens’ Commission to Investigate the FBI. Attorney General John Mitchell asked that newspapers not publish the contents of the files, citing as justification of his request the notion that “disclosure of this information could endanger the lives or cause other serious harm to persons engaged in investigative activities on behalf of the United States.”

The anonymous activists sent copies of the records to Senator George McGovern (D-South Dakota) and Representative Parren J. Mitchell (D-Maryland). Both of the congressmen turned the documents over to the FBI.

In the coming weeks, the Department of Justice tallied its losses, concluding that the burglars who broke into the Media office took more than 1,000 documents. The documents showed a history of “regular surveillance” against certain groups. They also showed a change in FBI policy that allowed the recruitment of student informants as young as 18 years old.

Also emerging were details about how the burglars managed to get into an otherwise secure FBI office. The FBI’s office in Media, Pennsylvania was known as a “resident agency,” a smaller, regional office tied to the larger Philadelphia office. The Washington Post reported that

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211 Ibid.
212 Ibid, Stolen Documents Describe FBI Surveillance Activities. The article reported, “various FBI codes were on the records, including the identification numbers and names of agents and numerous case numbers and names of persons under surveillance.” See page A11.
213 Ibid, Stolen Documents Describe FBI Surveillance Activities.
215 This change came about following the demise of the Huston Plan. Though Hoover opposed the Huston plan (which included authorization for the FBI to recruit younger campus informants), he apparently liked the idea of having younger student informants, so he changed FBI policy to allow for such collection. The change would emerge in testimony before Congress regarding the Huston Plan.
“the burglars forced open an unused door by pushing aside a file cabinet that normally blocked
the door. They jimmed open the locked file cabinets and ransacked the room.” The FBI
began an investigation into the burglars and increased security at its resident agency offices.

As information from the files seeped into the public, the New York Times reported, “FBI
surveillance of dissenters on the political left has been far more extensive than was generally
known.” Equally disconcerting, the documents released by the Citizens’ Commission to
Investigate the FBI demonstrated that “the subjects of inquiries include obscure persons
marginally suspected of illegal activity,” including investigations into any students, teachers, and
scientists who had visited the Soviet Union for one month or more. The FBI justified such
investigations by saying it wanted to determine if the travelers had been the subjects of any
counterintelligence efforts on the part of the Soviets.

Despite pleas from Attorney General Mitchell and the FBI, the Citizens’ Commission to
Investigate the FBI promised that they would make public “lists of ‘FBI informers and
provocateurs.’” The burglars contacted a Philadelphia paper and provided a statement:

In a few days we will contact a first group of these previously undercover agents and
suggest they cease their repressive actions if they have not already done so. We will then
inform those individuals and organizations against whom these agents were operating.
Following that we will make the names of the first group of agents public.

The members of the Citizens’ Commission to Investigate the FBI remained anonymous, in an
effort to avoid arrest. Indeed, the FBI was going to great lengths to uncover who had broken into
the office. An FBI memorandum to Hoover from his Associate Director Clyde Tolson, dated,

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216 Ibid, “1,000 Papers Lost in FBI Office Theft.”
217 Fred P. Graham, “FBI Files Tell of Surveillance of Students, Blacks, War Foes,” The New
218 Ibid, “FBI Files Tell of Surveillance of Students, Blacks, War Foes.”
June 2, 1971, detailed the contents of a meeting among FBI executives regarding the Media break-in. Tolson wrote, “the importance of the MEDBURG (Break-in of the Media Resident Agency) case was emphasized.\textsuperscript{221} The Philadelphia FBI office was given authority over the investigation, with the warning that “SAC [Special Agent in Charge] Roy K. Moore, on special at Philadelphia, and SAC Jamieson, in Philadelphia, are not to take any leave until the MEDBURG case is solved.”\textsuperscript{222} The FBI began scrutinizing copy machines, trying to locate the machine that the Citizens’ Commission had used to run copies of the FBI files it sent to journalists and congressmen. A report by the FBI in April of 1971 reported that the FBI had focused in on a Xerox machine, with “virtually all machines [being] checked.”\textsuperscript{223} Another report alleged:

After the surfacing of the Xerox copies of the stolen serials, immediate contact was made with Xerox Corporation, Rochester, New York, in order to determine the model Xerox copier utilized. When Xerox definitely determined the Model 660 copier was the one used to reproduce our serials, contact was established with three officials of the Xerox Corporation.\textsuperscript{224}

Despite the Bureau’s best efforts, they could not identify the burglars. The FBI publically contended that the Citizens’ Commission’s selective release of documents “creat[ed] a distorted and unfair picture of overall-all bureau activities.”\textsuperscript{225} Journalists noted that the trickle of documents “created the impression—whether rightly or wrongly—that the bureau is engaged in pervasive surveillance of the political Left, just at a time when the Government is under fire for

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\textsuperscript{220} Ibid, “Group to Publicize FBI’s Informers.”
\textsuperscript{221} FBI Memorandum from Tolson to Hoover, re: The Executives Conference, June 2, 1971, pg. 1, FBI Vault.
\textsuperscript{222} Ibid, FBI Memorandum from Tolson to Hoover, pg. 2.
\textsuperscript{223} Memo from T.E. Bishop to Mohr, re: MEDBURG, April 13, 1971, pg. 1, FBI Vault.
\textsuperscript{224} Memo from A. Rosen to Sullivan, re: MEDBURG, April 15, 1971, pg. 2, FBI Vault.
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alleged overzealous surveillance of political dissenters.”\textsuperscript{226} They struggled to decipher the meaning of the articles. Not knowing anything about the Citizens’ Commission, some chose to remain skeptical of their motives. Fred P. Graham, a reporter for the \textit{New York Times}, described the burglars as “anti-war activists, who were probably amateurs at burglary.” He even posited that they had “deliberately put [the FBI] in a worse light than it deserves.”\textsuperscript{227} As evidence of his contention, he elaborated on an anecdote about a professor, whom the Media documents demonstrated was the target an FBI investigation. The \textit{Washington Post}’s reporter Betty Medsger detailed the surveillance by the FBI against a professor at an Eastern college. Medsger alleged that the FBI surveilled the professor because of his “radical” beliefs.\textsuperscript{228} Yet, the Justice Department, in the same day’s paper, claimed that the FBI had investigated the professor because intelligence suggested he would soon be visited by two fugitives on the FBI’s “ten most wanted” list. The radicals, Katherine E. Power and Susan E. Saxe, were “wanted for murder in the slaying of a Boston policeman during a bank holdup by political radicals last September.”\textsuperscript{229} As Graham noted, no one knew which side to believe—was the FBI justified in investigating a professor associating with known fugitives? Or, was the FBI merely excusing its surveillance of a professor by attempting to tie him to criminals?

The reports surfacing through the Media files painted the FBI in a light similar to that of the Army a year before with CONUS. People worried about the FBI’s presence on college campuses; a \textit{New York Times} article alleged, “There is a new man on campus among the freaks and fraternity men, the athletes and the esthetes, the bookish types and the bomb throwers. He is

\textsuperscript{226} \textit{Ibid}, “FBI: Waiting for the Other Shoe to Drop.”
\textsuperscript{227} \textit{Ibid}, “FBI: Waiting for the Other Shoe to Drop.”
\textsuperscript{228} \textit{Ibid}, “FBI: Waiting for the Other Shoe to Drop.”
\textsuperscript{229} \textit{Ibid}, “FBI: Waiting for the Other Shoe to Drop.”
the spy.” The article compared the FBI to the Army, noting that the Army, bowing to public pressure, had “cut back its civilian watching programs in the United States.” Unlike the Army, the FBI had continued and nurtured its program of locating dissent on college campuses. The attempts at student infiltration sometimes backfired. One of the Media reports alleged that a University of Illinois student outed an FBI agent at a rally, proclaiming to the audience, “There’s someone here I think you should meet. That man there, in the blue jacket, with the camera, works for the FBI.”

The Citizens’ Commission, though remaining anonymous, drafted memos to accompany their release of information, which they sent to the files’ recipients. On May 3, 1971, they wrote:

Just eight weeks ago, all of the files in the desks and files cabinets were liberated from the Media, Pa., office of the FBI. Of these, some 30% were manuals, routine forms, and similar procedural materials. The remainder was as follows:
40% Political surveillance and other investigation of political activity. Of the cases, 2 were right wing, 10 concerned immigrants, and over two hundred were on left or liberal groups.
25% Bank robberies
20% Murder, rape, and interstate theft
7% Draft resistance, including refusal to submit to military induction
7% leaving the military without government permission
1% organized crime, mostly gambling.

In a later letter, the Citizens’ Commission would clarify its intent behind the break-in and dispersal of files. They wrote:

Our purpose is not just to correct the more gross violations of constitutional rights by the FBI within the framework of its present goals and organization. Nor is it to attack personally individual informers, agents, or administrators. It is instead to contribute to the movement for fundamental constructive change in our society, for as we said in our

initial statement, “as long as great economic and political power remains concentrated in the hands of small cliques not subject to democratic control and scrutiny, then repression, intimidation, and entrapment are to be expected.”\textsuperscript{233}

New Left groups immediately embraced the work of the Citizens’ Commission. The War Resisters League, in a 1972 issue of WIN Magazine, published the first compendium of all the political documents taken from the Media office.\textsuperscript{234} The magazine included myriad Bureau materials, pertinent to many sorts of matters, some of which were entirely quirky. An internal bureau memo chided those making hiring decisions, “Please, when interviewing applicants be alert for long hairs, beards, mustaches, pear shaped heads, truck drivers, etc. We are not that hard up yet.”\textsuperscript{235} Apparently, Hoover had a grudge against people with very specific characteristics; a pear-shaped head was enough of an excuse not to hire someone. Hoover also had an obsession with agents’ weight, as reflected in a memo dated January 1, 1971 which advised that “during the months of July, October, January, and April of each year, each Special Agent must be weighed.”\textsuperscript{236} It continued with the caveat from a Special Agent in Charge (SAC), “I expect every Agent and male clerical employee to maintain his weight within the desirable limits at all times.”\textsuperscript{237} Amid the more colorful memos were a host of rather routine and boring communications relating to recruitment programs for agents and educational requirements for new agent hires.

Aside from internal bureau matters, however, were documents that pertained to the Bureau’s work against war protesters. One such memo, entitled “Tear Gas—Aerosol Type

\textsuperscript{233} \textit{Ibid}, 8.
\textsuperscript{234} Noam Chomsky, “Domestic Terrorism: Notes on the State System of Oppression,” \textit{New Political Science} 21, no. 3 (September 1999), 303-324.
\textsuperscript{235} WIN magazine, 20. 2/5/71—Clerical Applicant Routing Slip Not to Be Serialized—Destroy When Purpose Served.
\textsuperscript{236} \textit{Ibid}, 20. 1/4/71—Physical Examination Matters—Weight Standards.
Dispensers,” guided agents on how to use the gas, stating “in general, Special Agents are to follow the same rule concerning the carrying of aerosol type gas dispensers as they follow in carrying their revolvers.” The memo advised that agents should only use tear gas when they encountered physical resistance or when in high crime areas where citizens were likely to interfere with arrest or burnish a weapon. It warned, “investigative personnel should never rely on these devices to subdue assailants armed with a potential lethal weapon.”

The materials also offered evidence of the Bureau’s wiretaps on protesters, including summaries of evidence gleaned from the electronic surveillance. One memo, concerning the Black Panther Party, relayed a string of mundane communications intercepted by the FBI’s bugs. A log read:

During a conversation between SANDRA and RUSSELL, RUSSELL mentioned that there was no heat in the office and that they had no money.
During a conversation between DELORES and RUSSELL, DELORES stated that her baby was due in four months.
RUSSELL reached EILEEN and left a message for her to tell SMITTY to tell MONTAE to be at staff meeting tonight.
A representative of Western Union called for RUSSELL advising that they had a money order to him to pick up.

Many of the memos pertaining to the activists and radicals were mundane. The entirety of one memo clarified the difference between Old Left and New Left activists. Occasionally, however, the memos contained revelations, such as one that stated, “the Director has okayed

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238 Ibid, 23. 10/9/70—Tear Gas—Aerosol Type Dispensers.
239 Ibid, 23. 10/9/70—Tear Gas—Aerosol Type Dispenser.
240 Ibid, 27. 2/4/71—Black Panther Party RM.
241 Ibid, 28. 9/16-70—Security Investigations of Individuals and Organizations. The memo carefully delineated between the Old Left and New Left, explaining, “generally, ‘Old Left’ means the Communist Party and the various splinter and Trotskyite groups which have been in existence for many years…[New Left] is a relatively broad term insofar as newly formed
PSI’s\textsuperscript{242} and SI’s\textsuperscript{243} aged 18 to 21. We have been blocked off from this critical age group in the past. Let us take advantage of this opportunity.” This decision, made by Hoover, came following the dissolution of the Huston Plan. Though the Plan would have allowed the FBI to lower its informant age from 21 to 18, Hoover decided to approve the change in age anyway. He did so despite the Huston Plan’s demise. One memo also specified Bureau protocol upon learning of a New Left demonstration, stating:

When from reviewing underground newspapers, calls from outsiders, complaints or informants we know of a demonstration gathering, educational, or similar event planned by a New Left group, it should be given to SA DAVENPORT who will coordinate this calendar. He will log it with #4 secretary. This will enable us to project ahead what manpower needs we will have and enable us to answer all kinds of queries about the date we know a particular event is scheduled.\textsuperscript{244} In anticipation of possible demonstrations, the Bureau maintained a list of colleges and the number of enrollees within the Philadelphia area as well as instructions for resident agencies supplying the Philadelphia offices with information regarding their informants.\textsuperscript{245}

Subsequently, the Bureau put together a Philadelphia Red Squad to report to the Bureau on anti-war demonstrations in the area. This squad, including an civil disobedience team, was ironically created to monitor such organizations as a “Quaker Action Group.” In 1969, Quakers gathered at the Pentagon to protest the Vietnam War. They read the names of dead of soldiers and handed out flyers stating, “We Mourn Vietnam War Dead”; “Fight War, Fight Hunger,” and “End the War and Rebuild Our Cities.”\textsuperscript{246} FBI agents penned a detailed description of the peaceful demonstration by Quakers.

organizations with leftist or anarchistic connotations [and includes] such matters as SDS, STAG, underground newspapers, communes, commune investigations, the Resistance.”

\textsuperscript{242} PSI stands for “potential security informants.”
\textsuperscript{243} SI stands for “security informants.”
\textsuperscript{244} \textit{Ibid}, 28-29, 9/16/70—New Left Notes—Philadelphia.
\textsuperscript{245} \textit{Ibid}, 29, 9/23/70—Stag.
As the documents discussing Quakers revealed, peaceful activism was no protection against surveillance by the FBI. There were files on individuals who held viewpoints counter to that of the federal government. One such file on a student named Mary Jane Lawhon read, “Subject is believed attending the University of California at Berkeley, and is known to be an inveterate Marxist revolutionist, and a type of person that should be watched as she will probably be very active in revolutionary activities.”\(^{247}\) The agent investigating Lawhorn realized that she was not a threat, writing:

San Francisco indices reflect Subject attended a meeting of the Venceremos Brigade on 7/20/70…during this meeting, there was no discussion of violence or revolution. San Francisco source personally conversed with Subject and received no indication that she was anything other than the average liberal minded student that is common in the Berkeley area.\(^{248}\)

Another memo provided detailed information about Daniel Bennett, a Professor of Philosophy at Swarthmore College. The memo described his wife and children, the family’s house, and the make and model of Bennett’s car. Bennett incited the attention of the FBI for inviting “controversial speakers” to Swarthmore.\(^{249}\) The FBI recruited the Chief Switchboard Operator at Swarthmore College to serve as an informant on Bennett. Though she had “only limited contact with Bennett,” she told the FBI that the professor was “generally regarded as a ‘radical’ and promised to “confidentially furnish pertinent information regarding any long distance telephone calls made or received by Bennett.”\(^{250}\) The Chief of the Swarthmore Police Department also provided information to the FBI about the Bennetts, stating that they hosted a ‘rock festival’ in their backyard for students, that they associated with “hippie types,” and that they stored printing

\(^{247}\) *Ibid*, 37. Memo to Director, FBI from SAC Philadelphia re Jane Lawhorn.
\(^{249}\) *Ibid*, 38. Memo from SA Thomas F. Lewis to SAC, 11/13/70 re: GILROB.
\(^{250}\) *Ibid*, 38. Memo from SA Thomas F. Lewis to SAC.
equipment in their garage, upon which he suspected they published a brochure in support of the Black Panther Party.\textsuperscript{251}

Some of the documents addressed counterintelligence concerns of the Bureau, revealing that the Bureau interviewed American citizens who visited the Soviet Union for a month or more. Bureau leadership explained, “the interviewing agents should discreetly ascertain if any attempts have been made by the Soviet Intelligence Services to recruit the individual for intelligence purposes either in the USSR or after his return to the United States.”\textsuperscript{252}

Finally, the documents evinced widespread surveillance by the FBI against the civil rights movement, the Black Left, and black citizens living in places prone to riots. One memo revealed coverage of Martin Luther King, Jr., though this information would pale in comparison to that released by the FBI to the Church Committee in 1975. The Media document read, “Martin Luther King Jr. will address the 50th Anniversary banquet to be held at the Bellevue Stratford Hotel in Philadelphia.”\textsuperscript{253} Other memos documented the business of the Black Panther Party, demanding that FBI field offices provide the following information on a weekly basis:

1. various organizations planning to participate
2. mode of travel and identities of persons planning to attend
3. identities of organizers and persons who are to head workshops [sic]
4. identities of the leading speakers at the convention
5. agenda of the convention
6. plans for violence or disruptive demonstrations
7. plans to carry weapons or explosive devices
8. convention security precautions to be observed
9. literature regarding the convention

\textsuperscript{251} \textit{Ibid.} WIN Magazine, Memo from SA Thomas F. Lewis to SAC.
\textsuperscript{252} \textit{Ibid, 44.} Memo from SAC, WFO to Director, FBI Re: Barbara Anne Bitzer Soviet Intelligence Services Recruitment of Students.
\textsuperscript{253} \textit{Ibid, 38.} Memo from SAC Philadelphia to Director, FBI, 9/24/65, RE Communist Infiltration of the Women’s International League for Peace and Freedom (WILPF).
10. details concerning available housing

Informants reported on meetings and bank accounts such organizations as the National Black Economic Development Conference and Black/United Liberation Front. Other reports instructed Special Agents to develop informants in ghetto areas. One memo, addressed to “All Headquarters Agents,” stated:

It is essential that this office develop a large number of additional racial informants at this time and that we continue to add and develop racial informants and exploit their potential during the months ahead...whether or not a riot does occur, the Bureau holds us responsible to keep the Bureau, the Department and the White House advised in advance of each demonstration.

The memo further encouraged agents to develop both white and black informants in the ghetto neighborhoods in order to collect information on extremist organizations operating in the area, as well as information related to gangs. Bookstores were suspect until proven otherwise; a memo instructed agents to “visit Afro-American type bookstores for the purpose of determining if militant extremist literature is available therein, and if so to identify the owners, operators, and clientele of such stores.”

The memos show the Bureau’s paranoia that black extremists would go into poorer neighborhoods and develop a following among its inhabitants, inciting race riots. Pages of documents analyzed “incidents” involving violence between blacks and local police. Detailed information appeared in a training bulletin for police officers concerning the events leading to violence. Although the Bureau did not condone the police officers’ actions, a memo

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256 Ibid, 52. Memo to All Headquarters Agents from SAC, 2/26/68, re: Racial Informants.
257 Ibid, 53. Memo to All Agents from SAC, 8/12/68, re: Racial Informants.
noted that the information was relevant to Bureau agents engaged in training local police on riot control. Finally, the Bureau’s fear of college students and civil rights coalesced in a series of memos ordering surveillance of black student groups on university campuses. One such memo, written by Hoover, proclaimed:

Increased campus disorders involving black students pose a definite threat to the Nation’s stability and security and indicate a need for increase in both quality and quantity of intelligence information on Black Student Unions (BSU) and similar groups which are targets for influence and control by violence-prone Black Panther Party (BPP) and other extremists. The distribution of the BPP and other black extremists groups on campuses clearly indicate that campuses are targets of extremists…We must target informants and sources to develop information regarding these groups on a continuing basis to fulfill our responsibilities and to develop such coverage where non exists. ²⁵⁸

The Philadelphia Office of the FBI proceeded to list all the Black Student Unions currently under surveillance; the list included thirteen institutions within the city. Memos directed to Hoover listed attendees at Black Student Congress meetings, which the Bureau found “related to the new Civil Rights Laws of interest to the students. No indications of violence or civil disturbances proposed by the students.”²⁵⁹ The agents, in their memos, clearly indicated that informants did not see the Black Student Union groups as violent; they served no threat of militant-type activity. One memo described an arts and crafts festival hosted by a BSU featuring products made by grade school-aged black children. The information bore not an ounce of intelligence utility.

²⁵⁸ Ibid, 70. Memo to SAC, Albany from Director, FBI, 11/4/70, re: Black Student Groups on College Campuses Racial Matters Buded [sic]: 12/4/70.
uncovered by the Citizens’ Commission to Investigate the FBI.\textsuperscript{260} The burglars were never

\textsuperscript{259} Ibid., 71. Airtel to Director, FBI from SAC, Philadelphia re: Black Student Groups on College Campuses, 12/2/70.

\textsuperscript{260} This information would later become important during a Senate investigation, known as the Church Committee, in 1975. Senators conducted thorough investigations of FBI operations uncovered by the Media documents, including COINTELPRO, or “Counterintelligence Program.” Many of Hoover’s worst indiscretions were revealed before the Church Committee. The historiography surrounding COINTELPRO is voluminous. Nelson Blackstock’s and Cathy Perkus’s \textit{COINTELPRO: The FBI’s Secret War on Political Freedom} argues that the FBI effectively harassed left-wing political groups and carried out unlawful covert actions similar to Watergate years before Nixon’s impeachment. In the introduction, Noam Chomsky traces the origin of COINTELPRO back to the FBI’s earlier Palmer Raids as well as the Alien and Seditions Act and the explosion of a bomb in Chicago’s Haymarket Square in 1886. See Nelson Blackstock and Cathy Perkus, \textit{COINTELPRO: The FBI’s Secret War On Political Freedom} (New York, Monad Press, 1975). In support of Perkus’s thesis, Kenneth O’Reilly’s \textit{Hoover and the Un-Americans: The FBI, HUAC, and the Red Menace} claims the FBI’s impact on Cold War political attitudes, through such means as propaganda, was “more [important] than the efforts of any other anticommunist group.” See Kenneth O’Reilly, \textit{Hoover and the UnAmericans: The FBI, HUAC, and the Red Menace}, Philadelphia, PA: Temple University Press, 1983. O’Reilly’s tendency to chastise “pseudo” liberals who did not effectively argue for protection of alleged communists’ rights emerges as a central theme in William W. Keller’s \textit{The Liberals and J. Edgar Hoover}. Keller argues that the liberals turned over power, during the Second Red Scare, to Hoover, thinking he was a better alternative to McCarthy. Rather than create a well-regulated investigative agency, the Bureau soon exceeded the limits of liberals’ comfort. Though liberals initially supported the FBI’s investigation of the Ku Klux Klan, they became increasingly uneasy with the Bureau when it began spying on King. Keller posits that liberals, in creating the FBI, originally envisioned a bureau of domestic intelligence. Despite the Bureau’s distaste for all forms of radicalism, either left or right, O’Reilly argues that the agency digressed into a political police unit and later into an independent security state within a state. Thus, the FBI became the liberals’ worst nightmare, largely thanks to their earlier support of Hoover. Additionally, Keller notes the Bureau’s aversion all forms of radicalism, whether the radicalism stemmed from white hate groups or left-wing subversives. See William W. Keller, \textit{The Liberals and J. Edgar Hoover} (Princeton, NJ: Princeton University Press, 1989).

From the 1950s to the early 1970s, the FBI used covert operations against widely divergent voices such as Ku Klux Klan, the Students for a Democratic Society, and Martin Luther King, Jr. Sociologist David Cunningham’s \textit{There’s Something Happening Here: The New Left, The Klan, and FBI Counterintelligence} asks why the Bureau’s COINTELPRO-related activities extended to such a wide array of disparate political groups and finds that the FBI’s repression of such groups can only be understood within the organizational context of the Bureau. Cunningham maintains that local FBI field offices routinely reported to FBI Headquarters any issues related to subversive groups within their jurisdiction; each jurisdiction faced different subversive groups.
caught, and the FBI closed the case in 1976, once the statute of limitations expired.\textsuperscript{261} In 2014, the burglars went public in a book written by \textit{Washington Post} journalist Betty Medsger, who published many of their Media documents in 1971. The group of eight, comprised of anti-war activists, worried that the FBI’s power had grown too large. Led by William Davidon, a physics professor at Haverford College, the group believed, and wanted to prove to the general public, that the FBI was infringing upon people’s constitutional rights, particularly their right to dissent and express free speech.\textsuperscript{262} The Citizens’ Commission would find that there were “two FBI’s—the public FBI Americans revered as their protector from crime, arbiter of values, and defender of citizens’ liberties, and the secret FBI.”\textsuperscript{263} Regarding the “secret” FBI, Medsger wrote:

This FBI, known until the Media burglary only to people inside the bureau, usurped citizens’ liberties, treated black citizens as if they were a danger to society, and used deception, disinformation, and violence as tools to harass, damage, and—most important—silence people whose political opinions the director opposed.\textsuperscript{264}

The Citizens’ Commission’s act of civil disobedience no doubt served as an important act of resistance against the overreach of the intelligence community and specifically Hoover. Medsger proclaimed the importance of the activists’ burglary, writing, “this historic act of resistance—perhaps the most powerful single act of nonviolent resistance in American history—ignited the first public debate on the proper role of intelligence agencies in a democratic

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\begin{footnotesize}
\textsuperscript{262} \textit{Ibid}, 3.
\textsuperscript{263} \textit{Ibid}, 7.
\textsuperscript{264} \textit{Ibid}, 7.
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Medsgar, however, had the benefit of history and forty years’ worth of insight regarding the importance of the burglars’ act. In 1971, the meaning behind the disclosure of FBI files was more diffuse. Because Americans had never before had such solid confirmation of the FBI’s intelligence gathering capabilities, this was the first time that they came face to face with FBI documents, and not merely FBI critics, confirming the reach of FBI operations. Historian Richard Gid Powers wrote of the significance of the break-in, stating:

Hoover’s power to conduct secret operations...depended on the absolute freedom he had won from any inquiry into the internal operations of the Bureau...except for a remarkably few breaches of security...Hoover had been able to pick and choose what the public would learn about the Bureau. He had never suffered the indignity of having an outside, unsympathetic investigator look into what he had been doing, what the Bureau had become, and what it looked like from the inside...On the night of March 8, 1971, that changed forever.

Though the Media break-in is significant because of the burglary and because of the attention it brought to the Bureau’s operations, its significance is somewhat misunderstood. In 1971, Elliff would write about the Media break-in that “disclosures like the Media documents and the Earth Day report” are distorted because they enter an analytical vacuum.”

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265 Ibid, 8.
267 The first Earth Day in 1970 inspired paranoia on the part of Richard Nixon, who demanded that the FBI provide surveillance for the event. The final FBI report found nothing in the way of dangerous attendees, but stated, “there’s a bunch of girls with flowers in their hair, and they’re wearing only three garments, no bras...They were a little drunk, [there was] a little pot, maybe a little love out under in the bushes, but these girls sat in the grass patting their dogs, and it was a very benign affair.” See Becky Oskin, “How President Nixon Spied on the First Earth Day,” NBC News.com, http://science.nbcnews.com/_news/2013/04/22/17864785-how-president-nixon-spied-on-the-first-earth-day?lite.

Senator Edmund Muskie (D-Maine), who attended the rally, publicized the FBI’s surveillance in April of 1971. He testified before Congress that the Earth Day report “raises far-reaching questions over the present surveillance operations of the FBI.” In his testimony, he worried that the Bureau’s monitoring of political speech was unlimited. He proposed that
sudden, people went from knowing very little about the Bureau, aside from the information dispersed through the FBI’s public affairs department, to knowing intimate details about the FBI’s investigations, based upon documents procured and distributed by the Citizens’ Commission. Though the spotlight shifted to Hoover and his “thirst” for power, Elliff saliently noted in the months following the Media break-in that the operations run by the FBI highlighted another problem—namely, the relationship between the presidency and the Bureau. He wrote, “Bureau officials see another, perhaps more fundamental, issue emerging today. The FBI is an intelligence arm of the President; and the foundation for the Bureau’s domestic intelligence role rests primarily on a conception of inherent Executive power.”

Though it was easy to point fingers at Hoover, and indeed, he certainly served as the point man approving these decisions, some saw the Media documents as indicative of a larger problem. Even in 1971, Elliff intimated that the Nixon administration (and, logically, previous administrations like that of Lyndon B. Johnson) had authorized such operations in the first place. The Huston Plan and subsequent reveals of FBI operations in the years to follow would certainly support Elliff’s contention. Thus, the release of FBI files from the Media office represented not just the overreach of the Bureau into constitutionally protected free speech but also the attempts by a President to control and silence dissent through the use of intelligence apparatuses.

When the Citizens’ Commission broke into the FBI Media office, the event became a watershed moment in the Bureau’s history. Throughout Hoover’s tenure as director, he had Congress create a Domestic Intelligence Review Board to supervise the activities of intelligence agencies. Though his request would be denied, his suspicion towards the Bureau would continue to grow throughout the country as more allegations towards Hoover and the FBI became known. See “Congressional Record—Senate, April 14, 1971, “FBI Surveillance,” Archives and Special Collections Library, Muskie Archive.

carefully overseen the Bureau’s public relations, only authorizing the release of information that made the FBI look good. The Media break-in represented a turning point, as the burglars managed to procure and place classified information into the *Washington Post*. The public’s outrage when confronted with the documents worried Hoover. Americans no longer provided carte blanche approval for the Bureau’s investigations. The continued threat from the New Left and Nixon’s immense hatred of the radicals placed Hoover in a tough position. As he carried on his fight against radicalism, he now faced the judgment of his fellow citizens.

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269 Elliff, Draft Paper, pg. 3.
CHAPTER III
THE FBI UNDER SCRUTINY

After news of the Media break-in by the Citizen’s Commission to Investigate the FBI became public, the Bureau responded in kind. On April 23, 1971, the Bureau replied with a “Fact Sheet on the FBI” where it responded to allegations arising from the leaked files, stating, “It appears that through a careful choice of the bits and pieces of documents released, the Citizens Commission is contriving to create the impression that the FBI is exceeding the bounds of its constituted authority.”

Though the Bureau admitted “no agency should be immune to criticism,” it alleged the Media allegations went “beyond that which is factual and constructive and erupt into emotional outbursts which ignore reason.” That the Bureau would even respond to such charges, however, signaled that times had changed. The Bureau worried about having to shape public opinion in the face of so much criticism, admitting, “some critics are even questioning the need for such an agency.” The FBI refuted allegations that it conducted surveillance of private citizens, that it investigated members of academe based upon their political beliefs, and more broadly, that it had become an American Gestapo.

Despite the Bureau’s best efforts, it was too late to halt the wave of scrutiny. Though the

\[^{270}\text{Fact Sheet on the FBI, April 23, 1971, 1.}\]
\[^{271}\text{Ibid.}\]
\[^{272}\text{Ibid.}\]
\[^{273}\text{Ibid., 2-4.}\]
Media break-in signaled the newly-realized vulnerability of the Bureau to peace activists and FBI critics, the fruits of Media would only ripen under the careful scrutiny of a group of scholars and congressmen, who, upon seeing the evidence of indiscretion carried out by the Bureau in the Media documents, began to question the legal authority and activities of the agency. The work of these critical academics and journalists bypassed the public spectacle surrounding the release of Media documents and paved the way for later Congressional hearings about the FBI in the mid-1970s. The path to those Congressional hearings, however, was arduous and took years to develop.

Unlike the frenzy surrounding the release of the Media documents, Congress and scholars sought to examine the origins and legal basis for FBI authority, interviewing people at the Department of Justice and searching for legal precedent. They wanted to do more than merely lambast Hoover for his insatiable control; these findings by Congress and scholars showed that permission for FBI actions far exceeded Hoover’s public authority, and pointed directly to the Attorney General and the President.

One such scholar, John Elliff, a young professor at Brandeis University, spent much of 1970 and 1971 researching and writing about the Bureau.\textsuperscript{274} His work examined the basis for legal actions of the Bureau and assessed blame on the Department of Justice and the President, finding them equally, if not more, responsible for the Bureau’s actions by their explicit approval of the scope of its operations. Elliff eventually joined his research with that of other researchers at the end of 1971 when Princeton University’s Woodrow Wilson School for Public Affairs

hosted the first-ever academic conference examining the FBI. Elliff took what he learned during his year of research and writing and continued to study the Bureau. In 1975, he took nearly half a decade of research and become the leading staff member on Congress’s Church Committee investigation of the FBI. The Media break-ins, and the subsequent scrutiny that followed in 1971, directly influenced the attitude of the Church Committee later that decade. The Princeton conference, attended by political scientists, lawyers, historians, journalists, and former government employees, set the tone for a decade’s worth of examination of the Bureau. Many of the findings stemming from that conference informed the Congressional reformers who would, in a few short years, oversee change at the Bureau.

Back in 1971, however, Elliff was still attempting to answer the simple question: Where had the Bureau obtained the legal authority to carry out the actions described in the Media documents? To gain a better understanding of the FBI, Elliff began by interviewing officials of the Justice Department. The documents released from the Citizen’s Commission had indeed angered the public and made them feel like Hoover had far exceeded the bounds of his constitutional limits. And yet, few people truly understood the legal authority of the Bureau; they could not answer with certainty exactly how the Bureau had exceeded legal limits. To better understand how the Bureau justified its actions, Elliff interviewed Department of Justice officials and visited the presidential archive of Franklin Delano Roosevelt, discovering surprisingly that the Bureau’s legal authority had precedents in World War II presidential directives.

Also central to Elliff’s findings was the discovery of a competing intelligence analysis unit run by the Department of Justice. One of the first distinctions that Elliff made was the
intersection of the FBI’s Domestic Intelligence Division, headed by William Sullivan, and the Department of Justice’s (DOJ) Interdivisional Intelligence and Information Unit Civil Disturbance Group (IDIU). The DOJ’s unit was overseen by then Deputy Attorney General Richard Kliendienst, although Elliff discovered that many of DOJ’s units, including the Criminal, Internal Security, Civil Rights Divisions, and Community Relations Service also participated.\(^{275}\) The intelligence task unit originated in 1969 when the Justice Department created a “Panther Task Force” to deal with the Black Panther Party. This task force quickly expanded to include investigations into “all radicals.”\(^{276}\) Elliff surmised at the time that both the Black Panther Party and the Weather Underground may have been surveilled under the DOJ task force. That DOJ had set up its own intelligence division to investigate radicals was significant; it allowed the department to do the work of the FBI, possibly running its own intelligence surveillance operations against radicals that would potentially lead to prosecution. Elliff wondered about the FBI’s role within the investigations.

In looking at the FBI’s legal authority, Elliff discovered that its power to investigate dissent stemmed from very old sources. He found that the Bureau was operating under old executive authorities dating back to World War II; in 1936 and 1939, President Roosevelt gave the FBI informal, and later, formal authority to collect information related to subversive activities.\(^{277}\) On September 6, 1939, Hoover issued a memorandum to all law enforcement officials, proffering an order issued by President Roosevelt, which read:

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\(^{275}\) John Elliff, Memorandum to Workshop on Problems of Dissenters and Demonstrators, re: Justice Department Domestic Intelligence, 1970, 1.

\(^{276}\) Ibid.

\(^{277}\) Elliff would also acknowledge that FBI authority to investigate subversives also resided in the Federal Employee Security Program and the Internal Security Act of 1950, which authorized the
I request all police officers, sheriffs, and all other law enforcement officers in the United States promptly to turn over to the nearest representative of the Federal Bureau of Investigation any information obtained by them related to espionage, counterespionage, sabotage, subversive activities and violations of the neutrality laws. In authorizing the FBI to collect information about subversive activities, President Roosevelt laid the foundation for the Bureau to investigate communists during the Cold War and much later, during years of Vietnam War protests, any “radicals” deemed subversive. That a huge amount of the FBI’s legal authority stemmed from World War II executive authority was surprising to Elliff. So much had changed in the years since Roosevelt’s presidency, and yet, the Bureau retained authority from its 1930s work on Nazi sabotage.

Later presidents yielded additional authority to the FBI by authorizing the Bureau to gather intelligence related to civil disorders. President Johnson encouraged Hoover and the FBI authority to analyze patterns of crime related to urban riots in 1967. When the 1967 Kerner Commission expressed concern that the FBI did not have authority to investigate the riots, Johnson responded, “the FBI was acting under his ‘standing instructions,’ apparently issued in 1964 when the FBI investigated the Harlem riots and prepared a report on that summer’s disorders for the White House.” Interestingly, Johnson also justified FBI action based upon military law; federal law allowed the President discretionary power to use armed forces to

FBI to gather information for use by the Attorney General in prosecuting “subversive” groups. The FBI also had authority to investigate violations of federal law related to the antiriot act. Prior to his order in September 1939, President Roosevelt assigned all work related to espionage, counterespionage, and sabotage to the FBI, the Military Intelligence Division of the War Department, and the office of Naval Intelligence of the Navy Department. The memo read, “no investigations should be conducted by any investigative agency of the Government into matters involving actually or potentially any espionage, counter-espionage, or sabotage, except by the three agencies mentioned above.” See FDR, Confidential Memo for Cabinet Officers, 6/26/39.

278 J. Edgar Hoover, Memorandum, “To All Law Officials,” September 6, 1939. Prior to his order in September 1939, President Roosevelt assigned all work related to espionage, counterespionage, and sabotage to the FBI, the Military Intelligence Division of the War Department, and the office of Naval Intelligence of the Navy Department. The memo read, “no investigations should be conducted by any investigative agency of the Government into matters involving actually or potentially any espionage, counter-espionage, or sabotage, except by the three agencies mentioned above.” See FDR, Confidential Memo for Cabinet Officers, 6/26/39.

279 John T. Elliff, Memorandum, to Workshop on Problems of Dissenters and Demonstrators, re: Justice Department Domestic Intelligence, pg. 2.

280 Ibid.
protect states against domestic violence in certain circumstances. Elliff found that under such reasoning and legal authority, “FBI investigations could be justified as necessary to assist the President in exercising his discretion.”

Urban riots during Johnson’s term as president not only enhanced the Bureau’s authority but also supplemented the Department of Justice’s intelligence gathering capabilities. Elliff wrote, “the Kerner Commission Report urged every police department to establish an intelligence unit staffed with full-time personnel.” After the police departments assembled intelligence on possible violent outbreaks, “data from cities across the country was [sic] being fed into a computer to help determine what federal response, if any, was required to cope with civil disorders.”

Even during the 1960s, an issue emerged regarding the role of FBI investigations. Back then, it appeared that there were two Bureaus—one which ran criminal investigations and one which ran intelligence. Elliff explained that “experts” on the FBI had considered splitting the Bureau into two entities, writing, “this would ease the problem of the FBI agent skilled at catching kidnappers (operations) but wholly untrained to make political distinctions between a revolutionary terrorist and a fuzzy peace dissenter (intelligence).” Even that characterization of the Bureau as two working units, however, was problematic. Elliff noted that, in theory, the Bureau should not be dealing with the political issues related to intelligence gathering (i.e., monitoring groups of people based upon their political beliefs), and should instead leave the political business to the Department of Justice. Yet, what should have worked in theory simply was not working in practice. Elliff wrote:

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281 Ibid.
282 Ibid.

Perhaps the problem is that the Divisions [of DOJ] are staffed by lawyers and that the Internal Security Division [of FBI], which logically should be the source of guidance and evaluation for intelligence operations, is moribund. In organizational terms, what may be developing is a conflict between the FBI’s Domestic Intelligence Division and the non-FBI intelligence evaluation and analysis agencies that are tied to the Department’s executives. In short, Hoover listens to Sullivan; Kliendienst [then Attorney General] listens to [Justice Department official Jim] Devine.\textsuperscript{284}

In other words, both the FBI and the Justice Department were running their own separate intelligence gathering operations, and worse, the FBI was not carrying anything close to its share of the load. Although the FBI officially reported to the Attorney General, the hierarchy simply failed to work. Even in 1971, Elliff presciently worried about the politicization of intelligence by the Department of Justice, noting that under previous Attorneys General, removing intelligence-gathering authority from Hoover in the 1920s had been a good thing. He surmised, however, that “under Mitchell and Kliendienst it may be a bad thing, since intelligence can be more easily used by Department executives for their own political aims.”\textsuperscript{285} Elliff stressed, above all, a need to produce standards for FBI intelligence operations and analysis. He wrote, “there is no reason to let the Justice Department become a domestic CIA, free from public and legislative scrutiny or immune from judicial review.”\textsuperscript{286} This desire to regulate the FBI’s intelligence operations through guidelines served as a central theme for Bureau over the next decade. Time and again, Elliff, the Church Committee, Congress, and new Attorneys General would revisit exactly how to prescribe through law what the Bureau could and could not do.

After assessing the executive authority allowing the Bureau to conduct intelligence, Elliff approached attorneys in the Department of Justice to inquire about their understanding of the

\begin{footnotes}
\item[283] Ibid, 3.
\item[284] Ibid, 3.
\item[285] Ibid, 3.
\item[286] Ibid, 3.
\end{footnotes}
Bureau. He spoke with Kevin Maroney, Deputy Assistant Attorney General of the Internal Security Division, in July of 1971. Maroney explained the origins of the IDIU, DOJ’s intelligence gathering apparatus. Maroney explained that the IDIU was originally created to address “urban ghetto riots.” Eventually, the IDIU expanded to also include intelligence functions related to political demonstrations and terrorist activities, specifically bombings. Maroney confirmed that DOJ was primarily interested in political demonstrations or acts of violence fueled by leftist ideology. In addition to collecting their own information, the IDIU also received reports from the FBI, though Maroney complained about the FBI’s reluctance to collect some forms of intelligence. He explained to Elliff that the Bureau acted slowly when asked to investigate persons on university campuses, such as students or professors. Maroney noted, “usually, he could pick up the phone and ask to have an Agent interview or check out someone. But if the subject was a student or faculty member, or involved the campus, he would have to make the request by written memorandum.” The FBI’s reticence to investigate students tested the Department of Justice’s patience. Maroney summarized the issue, stating, “the FBI is torn between its reluctance to be criticized, and pressure to get intelligence.” Despite such pressure, it failed to complete its intelligence gathering tasks to the satisfaction of Justice. The Justice Department, however, refused to sit around and wait.

Elliff also interviewed Nathaniel Kossack, formerly Deputy Assistant Attorney General for the Criminal Justice Division. Kossack justified the origins of the IDIU, stating that the Justice Department “did not rely on the FBI for intelligence analysis because Bureau channels

288 Ibid.
289 Ibid.
290 Ibid.
were too slow.” During the time of the Johnson administration, Kossack explained that attorneys in the Justice Department believed civil disorders related to race problems would be short lived; they never anticipated that the problems would continue for as long as they did. No one ever guessed that the program would continue under subsequent presidents. Kossack believed that the “most important element” of the Justice Department’s intelligence scheme was its ability to place an Assistant U.S. Attorney in each U.S. Attorney’s Office. Chief to that Assistant Attorney General’s role was a directive to provide intelligence to the IDIU. Kossack explained that none of this intelligence gathering ever filtered through the Bureau. Kossack apparently justified the need for the Department’s intelligence gathering to Elliff. Elliff’s notes include an explanation:

Kossack believed intelligence was absolutely necessary to cope with demonstrations without over or under-reacting. Before the Inauguration protest, they had complete intelligence as to who would be where. Before the Poor People’s Campaign, they had CRS intelligence which was often obtained openly.

Kossack admitted that the successful work of the IDIU “laid the foundation for [Attorney General] Ramsey Clark’s instructions to the FBI to amp up its intelligence gathering. He, like Maroney, explained that the FBI was “always reluctant, careful, cautious about its intelligence memoranda and reports. It wanted to avoid saying things that would be embarrassing.” It would take an Attorney General demanding that the FBI increase its intelligence-gathering capabilities for it to actually do so. Though Hoover contended that the Department of Justice (DOJ) approved all of the Bureau’s intelligence gathering capabilities, the reality was more

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291 Ibid.
292 Ibid.
293 Ibid.
294 Ibid, 2.
complicated.\textsuperscript{295} Not only did Justice approve such actions as wiretapping by the FBI, but, according to Kossack, it demanded that the FBI carry out such intelligence gathering in the first place. His assertion made the Bureau sound like a victim of DOJ’s investigatory whims. And yet, he also acknowledged that the Bureau’s domestic intelligence gathering, carried out by the Domestic Intelligence Division under Sullivan, had less supervision, “largely because the FBI’s activity is not tied to prosecutive decisions by the lawyers.”\textsuperscript{296}

Elliff’s interviews with attorneys at the Department of Justice served as evidence of the Bureau’s frayed and tense relationship with the office. DOJ had the ability not merely to approve but to demand that the FBI increase its intelligence gathering capabilities. Such insight into the workings of DOJ and the FBI reflects a more complicated relationship between the two entities than the Media documents initially revealed. Hoover and the FBI bore the brunt of criticism for the Media documents, and indeed, the Bureau was carrying out highly controversial acts, investigating people without reasonable suspicion and for constitutionally-protected reasons. Yet, the interviews with Kossack and Maroney illuminated a different dimension of the problem, namely that the Department of Justice was so hungry for intelligence on political dissenters that it set up its own intelligence-gathering unit. When DOJ’s intelligence gathering unit proved successful, DOJ forced the Bureau to expand the work of the Domestic Intelligence Division under Sullivan. Whatever Hoover’s feelings might have been towards the issue of intelligence collection, particularly related to political activists, he found himself in a difficult position with a Department of Justice eager to receive intelligence and an Internal Security Division head, Sullivan, equally eager to provide it.

\textsuperscript{295} See “Fact Sheet on the FBI,” April 23, 1971.
\textsuperscript{296} John T. Elliff, Interview with Nathaniel Kossack, July 15, 1971, 2.
Congress Looks at the FBI

Perhaps one of the more damaging things the Bureau did to itself was to send agents to monitor an Earth Day Rally attended by Senator Edmund Muskie (D-Maine). In April of 1971, Muskie issued a press release about the Bureau’s surveillance at the April 1970 gathering. He asked, “If anti-pollution rallies are a subject of intelligence concern, is anything immune? Is there any citizen involved in politics who is not a potential subject for an FBI dossier?”297 When Muskie discovered that the FBI had written a report about his participation in the rally, he was outraged. He penned a letter to Nixon stating, “I have recently read an FBI intelligence report written by an agent assigned to cover the Earth Day Rally in Washington last year. Among those whose political actions were reported…was myself.”298

The report also detailed activities of the Students for a Democratic Society and the Progressive Labor Party. It portrayed them as dangerous organizations worthy of government surveillance; Muskie was furious with the gross mischaracterization. The FBI dispersed its report to other intelligence agencies and police departments across the country, urging them to beware of environmental radicals.299 Muskie refused to believe that the Bureau had any legitimate reason for monitoring the event. He publically questioned the Bureau’s intent:

What possible legitimate use could this report serve? Why does the FBI need to know who attended and what was said at Earth Day rallies across the nation? Even if our intelligence agencies believed that Earth Day might turn into a threat to our national security or a scene of violence requiring Federal troops, that would not justify a report on the rallies afterwards—when it was clear that no threat to our government did occur.300

Muskie was so angered by the FBI’s actions that he called for the creation of a Congressional

298 Edmund Muskie, Letter to President Nixon, April 14, 1971, pg. 1.
300 Ibid.
entity, the Domestic Intelligence Review Board, to investigate the FBI. He justified its creation, explaining:

I believe our government has reached a critical juncture in its intelligence activities. There is no justification for any part of the Federal intelligence community surreptitiously observing and reporting on legitimate political events which do not affect our national security or which do not involve a potential crime.\(^{301}\)

Muskie alleged that the report that detailed his own involvement at the rally was merely one of forty to sixty FBI reports on Earth Day rallies.\(^{302}\) Such extensive surveillance signaled to him that the FBI had far overreached its constitutional limits, leading him to ask, “if there was widespread surveillance over Earth Day last year, is there any political activity in the country which the FBI doesn’t consider a legitimate subject for watching?”\(^{303}\)

Because there was no violence at the Earth Day Rally, or even a threat of violence, Muskie argued that the FBI should not have had any presence there. He alleged that until Congress carried out a full investigation of the intelligence community, there was no telling the extent to which the FBI and other intelligence agencies had spied on political activists. He wrote, “All of us will live with the uneasiness that our actions and words, plus unsubstantiated or inaccurate reports about our lives and characters, are filling a secret file in Washington. That uneasiness is intolerable in a free society.”\(^{304}\) He compared the United States to a totalitarian government, arguing that surveillance of such magnitude was the work of dictators, not democracy. He voiced his concerns about the “chilling” of free speech. Most of all, he worried about the fear prevalent among those with political beliefs antithetical to the current administration.

\(^{301}\) Ibid.
\(^{302}\) Ibid.
\(^{303}\) Ibid.
\(^{304}\) Ibid.
Just a few months later, Senator Ervin urged a ban on the use of federal funds to support the Subversive Activities Control Board, a group established by an act of Congress in the 1950s to detect Communists. When Ervin proposed eliminating the board, his action signaled a new era for the government—a shift away from its obsession with Communists to a growing unease surrounding the implications of labeling an American citizen a “subversive.” Fresh from hearings on the Army’s CONUS program, Ervin believed that the Subversive Activities Control Board allowed for persecution of citizens with unfavorable political beliefs. He wrote, “it does not take much to realize that this Army view of ‘civil disturbance subversives’ inevitably might include every single citizen in the United States who expressed a view on these great issues of our time so long as that view differed from what the Army thought was the proper “American” position.”

He listed egregious examples of people who had been mistakenly labeled subversives, stating:

In one city, it meant every person who had a peace symbol on his car. In another, every black person seen walking on the highway in a suspicious manner. It included those who signed petitions, those who gave speeches, those who listened to speeches, those filed lawsuits, those who bought or merely read certain newspapers. Only in the rarest case was there some indication—but never proof—that the person had engaged in some violent or otherwise illegal act. In the greatest majority of cases these citizens were only exercising their constitutionally guaranteed right of free speech. Their only sin—but it was sin enough—was to disagree with the Administration.

Who were these people? There were not only the names we have come to learn from television and the newspapers. They included church groups, ministers, college professors, students, labor unions, the Quakers, the Unitarians, Methodists, Jews, the NAACP, the Urban League, the John Birch Society, movie stars, poets, philosophers, Senators, Congressmen, mayors, city councilmen, human rights commissions, reporters, housewives, high school students, taxi drivers.

And, of course, it included the ordinary American citizen, whose only crime was to express his views in public, and sometimes even in private, on these great public issues.

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304 Ibid, 2.
that divide our country.\textsuperscript{306}

Ervin’s calls to limit the scope of the intelligence community resonated within Congress. Soon, other members began to call for an investigation of the intelligence community and the FBI.

Senator Gaylord Nelson (D-Wisconsin), the founder of Earth Day and a cosponsor of the 1970 rally, also introduced legislation to allow a special commission to investigate the FBI, CIA, and Army. Nelson questioned the Justice Department’s reading of FDR’s executive authorization allowing the FBI to combat subversives.\textsuperscript{307} In his mind, the Army’s CONUS and the FBI’s Earth Day Rally surveillance showed that Justice had widely interpreted wartime legislation beyond its original intent. He wrote:

To my mind the Justice Department’s reading of President Roosevelt’s 1940 memorandum to his Attorney General is fallacious. There is no justification for extensive government snooping into domestic political activities based on this 1940 order. In the first paragraph of his order, President Roosevelt recognized the danger of widespread government spying when he agreed with the Supreme Court that it was ‘also right in its opinion that under ordinary and normal circumstances wire-tapping by government agents should not be carried on for the excellent reason that it is almost bound to lead to abuse of civil rights.’\textsuperscript{308}

Nelson believed Roosevelt’s wartime approach to national security applied only to that time. He did not believe the government should be using wartime legislation thirty years later to authorize Bureau actions.

The Congressional scrutiny towards the Bureau marked a turning point in the FBI’s popularity. Although none of the proposed Congressional investigations into the Bureau would

\textsuperscript{306} Senator Ervin, “Proposed Amendments to H.R. 9272,” 4.

\textsuperscript{307} In his statement, Nelson wrote, “Much of the justification for the current expansion of the government’s power to gather information about its citizens and tuck it away in computers without full public knowledge or Congressional authorization is based upon the Justice Department’s interpretation of a 1940 Presidential order authorizing the use of wiretaps against ‘persons suspected of subversive activities.’” See Statement by Senator Gaylord Nelson, pg. 5.

\textsuperscript{308} Statement by Senator Gaylord Nelson, no date, pg. 5.
materialize at the time, the multiple calls for such scrutiny were a turning point. Indeed, members of Congress were turning on the Bureau and calling upon others in Congress to do the same. It was one thing to have liberal activists such as those involved in the break-in of the Media office question what the Bureau was doing; it was another thing entirely to have Congress scrutinizing and threatening limits to the Bureau’s power. That Hoover might finally answer to Congress about his actions seemed inevitable.

**The Justice Department**

In the midst of the investigation into the Army’s CONUS operation, Senator Ervin also requested from Assistant Attorney General Robert Mardian a description of the Justice Department’s intelligence gathering operations. In response, Mardian turned over past letters exchanged between DOJ staff and the Attorney General. The collections of letters began with correspondence from John Doar, one of the Justice Department’s great civil rights attorneys, and Attorney General Ramsey Clark. In his letter to Clarke, Doar explained, “You asked me to determine the available facilities for keeping abreast of information we receive about organizations and individuals who may or may not be a force to be taken into account in evaluating the causes of civil disorders in urban areas.”

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309 John Doar was a lawyer from northern Wisconsin who led the federal government’s efforts to desegregate the South through his work for the U.S. Department of Justice. He was chief counsel for the team that made the case for the impeachment of President Richard Nixon. In addition to escorting James Meredith through the University of Mississippi campus during the school’s integration, Doar also stood between a standoff between civil rights protesters and police in Jackson, Mississippi. Doar prosecuted many civil rights cases in the South during the 1960s. See Roy Reed, “John Doar, Federal Laywer on Front Lines Against Segregation, Dies at 92,” *New York Times*, November 11, 2014, accessed at http://www.nytimes.com/2014/11/12/us/john-doar-federal-lawyer-in-battle-against-segregation-dies-at-92.html?_r=0.

the Department of Justice, explaining, “no one has a broad, complete knowledge of all the groups and individuals that are active in the urban areas.”

Protests and alliances between activists could harm urban areas and lead to ghetto riots. Doar believed that the DOJ needed a single intelligence unit to analyze the FBI’s intelligence regarding activist groups, since the Bureau was incapable of providing the analysis that DOJ wanted. Doar supported the creation of such a unit within the DOJ, and in his letter he described precisely how the unit might function. He proposed that the intelligence unit, created in the Justice Department, would better analyze intelligence than the FBI. Upon creation, the unit became familiar with radical literature, leading to a catalogue of all the organizations. Written on myriad index cards, the intelligence unit included information pertaining to a group’s “finances, its organizational structure, its program, its ideology, and its relations with other groups.” Interestingly, Doar saw the supervisor’s role in overseeing this index as a position that would allow for “imagination and initiative” in developing the source material on organizations functioning in urban areas. Doar’s passion for civil rights is apparent in his recommendations to Attorney General Clark, with this description of a supervisor. He wrote:

He must also like and respect Negroes as individuals, be in tune with them and have a feeling of sympathy and understanding for their situation. Beyond all this, he had to be dedicated to law enforcement and believe that unlawful activities of individuals, groups, or organizations, who organize, instigate or participate actively during a riot will do serious damage to the chance for progress by Negro Americans.

Doar was the “top civil rights attorney” at the Justice Department. His involvement in creating this intelligence unit provides an interesting supplement to his historical legacy, as he helped to

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311 Ibid, IDIU Memorandum, September 27, 1967.
312 Ibid.
313 Ibid.
314 Ibid.
collect intelligence on activists that the FBI could not assemble. When he died in 2014, obituaries praised his “extensive work fighting discrimination and working for racial equality during the 1960s and 70s” and his stature as a “figure of trust for black students and leaders” during the 1960s. Doar was heroic in his involvement with the Civil Rights movement. In 1962, he escorted James Meredith, the first African American to attend the University of Mississippi, to his classes. He protected Meredith amid a riot that resulted in the deaths of three people. He also served as the lead prosecutor in the murders of James Chaney, Michael Schwerner, and Andrew Goodman. His work resulted in a guilty verdict for white defendants, handed down from an all-white jury. During his career, he both furthered civil rights and set up an intelligence unit within the DOJ to monitor political activists. These apparently contradictory priorities illustrate the difficulties faced by government in the 1960s, that even those fighting most arduously for civil rights would find a need to monitor political speech. Yet, his method of securing such civil rights risked chilling the exercise of First Amendment rights of activist groups that also sought to secure civil rights for themselves and others. Any chill in speech, however, was unintended by Doar or the Justice Department. Rather, Doar sought to help the Justice Department conduct intelligence analysis that the Bureau was incapable of providing. Using raw information collected by the FBI, the Justice Department, under Doar’s leadership, hoped to process the data into useful information in order to prevent any future urban riots.

Doar’s plan reflected the mission of the Department’s Community Relations Service

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which had been established to conciliate racial conflicts between civil rights groups and white segregationists in the South. The CRS hoped to use its mediation skills to resolve urban conflicts between blacks and the police that could lead to violence. CRS officials could benefit from knowing more about the black community groups with whom they would try to work. It was as much an idealistic “hope” as it was fear that led Justice Department officials to seek domestic “political intelligence.” Another rationale was the Attorney General’s need for good information and analysis to advise the President whether the dispatch of federal troops was needed to control civil disorders.317

Part of the problem leading the Justice Department to establish an intelligence unit in the first place stemmed from the FBI’s inability to produce good intelligence analysis, particularly related to African Americans. Because the Bureau did not have many black agents, their ability to run operations and gather information in heavily populated black urban areas was compromised. Doar noted that his proposed unit would take raw FBI intelligence and analyze or make sense of it. A later letter from Attorney General Ramsey Clark to several of his assistant attorney generals confirmed that the Bureau’s intelligence was not useful to the DOJ. Clarke wrote:

> It is imperative that the Department seek and obtain the most comprehensive intelligence possible regarding organized or other purposeful stimulation of domestic dissention, civil disorders, and riots. To carry out these responsibilities we must take the full use of, and constantly endeavor to increase and refine, the intelligence available to us, both from internal and external sources, concerning organizations and individuals throughout this country who may play a role either in instigating or spreading disorders or in preventing or checking them. However, we do not now adequately use such intelligence or develop and implement methods of improving intelligence. Thus, we do not have any systematic means at present of compiling and analyzing the voluminous information about various

persons or organizations furnished to us by the FBI, and we make very little effort to obtain information elsewhere.\textsuperscript{318}

Furthermore, Clarke elaborated upon Doar’s earlier proposal to create an intelligence unit in the first place, explaining that such a division would analyze the FBI’s reports. Sullivan’s complaints, voiced during the controversy surrounding the Huston Plan, that the Bureau was not creating good intelligence were confirmed by the Justice Department’s creation of IDIU. In the late 1960s, the Bureau simply was not providing good intelligence. The Justice Department felt ill equipped to carry out its functions related to civil disorders based upon FBI intelligence alone. The dysfunction evident in the relationship between the FBI and Justice spoke to the need for greater intelligence, and yet, the intelligence came at the cost of chilling the exercise of citizens’ First Amendment rights to express whatever political beliefs they desired. In short, the Bureau was in a bind. It was damned if it did create the intelligence that the Department of Justice demanded, as it gathered such intelligence using questionable means (demonstrated in the Media files), and it was damned if it did not, as the Department of Justice would simply set up its own intelligence analysis unit, thereby supplementing if not replacing the Bureau. Hoover found himself in a difficult place.

A memorandum to Attorney General Clark spelled out the mission of the IDIU. It explained first the need for such a unit, stating, “more than 150 FBI memoranda and reports relating to this area of interest are received in the Department on an average day. Each of these memoranda and investigative reports would have to be reviewed and the important information abstracted on index cards which would be prepared in three sets so as to constitute a master index on individuals, or organizations, and by cities.\textsuperscript{319}

The letter went on to explain that the intelligence unit would be responsible for gathering facts

about organizations and individuals planning to participate in civil disturbances, evaluating and recording information related to such possible disturbances, preparing intelligence summaries, and reporting to the Attorney General about any such plans while providing recommendations for how his office might proceed in handling any disorder. In short, the Justice Department recommended a plan to eliminate any need for Bureau intelligence analysis. Rather, it would simply take raw, collected data and make sense of it on its own.

On December 18, 1967, Attorney General Clark sent a letter to his assistant attorneys general establishing the Justice Department’s intelligence unit. He wrote, “I have determined to establish a permanent unit, staffed with full-time personnel, to take over and extend the activities of the so-called Summer Project of the past two years. The new organization shall be known as the Interdivision Information Unit.”320 The plan to create an intelligence division within the Justice Department had become a reality.

While the Department of Justice continued to operate its Interdivision Intelligence Unit well into the 1970s, the Bureau bore immense amounts of public criticism from liberals who believed that Hoover and his salacious need for power had turned the United States into a totalitarian state. In May of 1971, the New Republic wrote,

[The FBI] is the nearest thing America has to a secret police. During the past 50 years Presidents and Congresses of both parties have given the FBI and its director ever-wider responsibilities, powers and discretion. Yet no matter where their sympathies lie, few will deny that the Bureau is undergoing the most serious and sustained attack in its history…Practically every politician in Washington more liberal than a right-wing Republican feels that the FBI has him under constant surveillance, and that the director has a dossier filled with all his peccadillos. The Bureau’s competitor agencies, such as the CIA, the IRS, the Secret Service, military intelligence, and state and local police

forces have also had much reason over the past 25 years to develop a healthy respect for and jealousy of the power, effectiveness, and political strength of the Bureau. There are hints and rumors that even Mr. Hoover’s superiors in the Justice Department are looking for a graceful way to ease him into retirement. Against this background, it was only natural that the recent outrage over the revelations of Army political spying should have so quickly shifted and broadened to focus on the FBI and its activities. Without at all minimizing the seriousness of the Army’s spying, it was short-lived, amateurish, small potatoes compared to what the FBI has been doing for decades.\footnote{\textit{FBI Inspection}, \textit{The New Republic}, May 29, 1971, pg. 9-10.}

The Bureau bore the brunt of the criticism, despite everything happening in the Department of Justice and in the Nixon Administration. \textit{The New Republic}, along with congressmen and activists, called for a congressional investigation of the FBI. No one, however, pointed fingers at the Justice Department for encouraging the collection and analysis of such intelligence in the first place.

\textbf{Scholars and the FBI}

As talk of Congressional investigations waned, the Bureau faced an investigation by liberal academics at a conference hosted by Princeton University in the fall of 1971. These scholars had been captivated by the release of the Media documents. Several were starting to respond by writing pieces critiquing the work of the Bureau. Central to their critiques was the message that Hoover was getting older and would soon be replaced. They pondered what sort of person might replace him. One such scholar, H.H. Wilson, wrote an article for the \textit{The Nation} entitled “The FBI Today: The Case For Effective Control.” Wilson wrote:

One may assume that even J. Edgar Hoover is mortal and that therefore before very long there will be an opportunity to appoint a new director of the Federal Bureau of Investigation. This means that, for the first time since 1924, we have an urgent reason for thorough public discussion and debate on the role of the Bureau itself, effective methods of controlling and supervising its operations, and the qualifications to be looked for in a new director.\footnote{H.H. Wilson, “The FBI Today: The Case for Effective Control,” \textit{The Nation}, February 8, 1971, 169.}
Like many of the more liberal scholars inspired to take a look at the Bureau, Wilson saw the FBI as a “secret police” agency that challenged democracy. He asserted a need for balance between “police agencies and security procedures that do not jeopardize essential political freedoms, or infringe on such freedoms as little as possible.”

To achieve equilibrium, he recommended that the FBI undergo a review by an independent authority.

While the country waited for Congress to formally convene the sort of hearing called for by Senators Muskie and Nelson, the academic community converged to hold its own review in the form of a conference taking place at Princeton University in October 1971. The Committee for Public Justice and the Woodrow Wilson School hosted the event. Burke Marshall, deputy Dean of the Yale Law School, Duane Lockard, chairman of the Princeton Politics Department, and Norman Dorsen, Professor of Law at New York University Law School organized the proceedings.


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323. Ibid.

324. Interestingly, his recommendations for why the Bureau should be examined belied his misunderstanding of the relationship between the FBI and the Justice Department. Wilson wrote, “In theory the subordinate of the attorney general, Hoover in practice has been virtually free of control by the attorney general, or by Congress. As the Times noted, ‘a bureaucratic autocracy unchecked by Congress and unsupervised by the Executive has no place in a self-governing society.’…It is also essential that direct supervision of the Bureau’s activities be restored to the attorney general.” Ibid, 170. Wilson perpetuated a myth, common at the time, that Hoover was all-powerful and that other entities within the government, particularly the Attorney General, bowed to his will. The existence of the IDIU proved that the relationship between the Bureau and Justice was much more complicated.

alleged that the Bureau spent $30,000 each year on a new limousine for Hoover. He was
appalled by the size of the Bureau in relation to the secrecy of its budget, stating:

If the FBI were a small agency or if its activities were non-controversial, the budgetary
short cuts and special treatment would be understandable if not totally acceptable. But
the Bureau is big and growing bigger. The $334 million it received for the 1971 fiscal
year makes it nearly as large in terms of budget and personnel as the Department of State.
And this figure is almost double the FBI budget of just four years ago. By the end of
fiscal 1972 there will be a programmed 8,900 special agents, an increase of 30 per cent
over the number just three years ago.\textsuperscript{327}

Other presenters focused on the Bureau’s obsession with its image. One presenter noted:

This fixation on image has spawned serious problems. For one thing the public has been
lulled into a false sense of security. For another, the mass acceptance of the mythology
has created a megalomania in the leadership, reflected in internal aberrations. The
cardinal sin in the FBI is anything that detracts from the image. It is called,
“embarrassment to the Bureau.”\textsuperscript{328}

As a part of maintaining the image of the Bureau, Hoover limited the number of minority agents.

The typical profile of an agent was described as such:

The two largest blocs were Protestants from southern and Midwestern universities and
Irish Catholics from Fordham, Boston College, and similar sectarian institutions. The Ivy
League had only token representation. The Mormon complement far exceeded its
population ratio. As a group, the agents were what is now called Middle American—
firmly anti-Communist, politically conservative, illiberal regarding subcultures and
minorities and slightly anti-intellectual.\textsuperscript{329}

Not included in that description of Bureau agents were minorities, whom the presenter alleged
were given at best token acknowledgement. The panelist contended that until the early sixties,
black agents did not attend the mandatory agents’ training at the FBI Academy in Quantico,
Virginia. They were agents in name only, lacking the credentials of their peers. Additionally,

\textsuperscript{326} Pat Watters and Stephen Gillers, eds. \textit{Investigating the FBI: A Tough, Fair Look At The
\textsuperscript{327} Ibid.
\textsuperscript{328} Ibid, 88.
\textsuperscript{329} Ibid, 96.
women were prohibited from becoming anything more than typists. Though a twenty-eight year old lawyer, Sandra Rothenberg, attempted to obtain a position as agent in 1970, the Bureau refused to consider her application, explaining that “women were unacceptable because of the ‘hazardous nature’ and ‘strenuous physical exertion’ involved.”

Conference attendees also discussed the Bureau’s refusal to work with the CIA, noting:

After the Bay of Pigs, [Hoover] spread the word around official Washington that the FBI should take over the bumbling CIA. At Langley, Hoover was known as ‘that cop,’ while at 9th and Pennsylvania the CIA Director Richard Helms is disparaged as ‘Princeton Ought-Ought’ and his brain trust as ‘high-domed theoreticians.’

Most of all, the conference questioned Hoover’s ability to direct the FBI. Investigative journalist Fred J. Cook examined Hoover’s reluctance to investigate the Mafia, stating:

J. Edgar Hoover and the FBI on the one hand, and the Mafia on the other, grew and prospered together, neither causing the other the slightest anguish. This has been the great, most obvious and most inexplicable failure of the FBI. For decades the Bureau and its Director made no move to combat the underworld crime cartels; in fact, Hoover himself insisted that the menace didn’t even exist, that the Mafia was a figment of journalistic imagination.

As conference attendees waged discussions about the Bureau following presentations, Pincus took an opportunity to attack Hoover. His attack perpetuated the image of Hoover as uncontrollable and unanswerable to anyone within government. He stated:

Both Mr. Hoover and the Bureau are political forces unto themselves. And the fact that they’ve become that is attributable in part to Mr. Hoover. He has done extraordinary things with the assets he’s had. Some of these, people would approve of. Some of them people would not. And a great many things he’s done, only a few people know of. But another reason Hoover, with the agency, has risen to his present position of power is that Presidents have left him alone. Attorneys General have left him alone. Congress has left him alone. And, I should add, the press, in most cases, has left him alone—except when he helped them achieve some notoriety.

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330 Ibid, 98.
331 Ibid, 117.
332 Ibid, 140.
I think these overseer groups, particularly the government in Washington, have permitted Hoover to reach his unique position—and the Bureau with him—out of both myth and practical political fear.

I don’t think you can judge his power or his lack of power without feeling the impact the Bureau itself has through threat of action. Politicians have drawn back from attacking the Bureau for years. It is very much like the telephone tapping business; everybody seems to be fearful of what Mr. Hoover may know. And what Mr. Hoover may know is not an abstract fear. Mr. Hoover, on occasion, does pass around information—personal information, damaging information—about his enemies. He does it when he feels it would do him the most good.  

Pincus perpetuated the myth of Hoover as all-seeing, all powerful, and consumed with his ability to maneuver Washington players, including the President, like chess pieces. This was the Hoover that the liberals feared.

Only political scientist Elliff, who had been interviewing attorneys at the Department of Justice, followed the line of power extending from Hoover towards its ultimate progenitors, the President and the Attorney General. Significantly, Elliff saw in 1971 what others would take several more years to discern. Rather than being the all-powerful living legend, Hoover was one power-hungry figure in a pool of power-hungry bureaucrats, acting according to the intelligence needs of Presidents. In his conference paper, Elliff wrote:

Over the years…succeeding Presidents and Attorneys General have placed increasingly greater responsibility on the Bureau to obtain information they think they need….If fault is to be found, it would not be sought in the Bureau and its former or current Director, but 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 direction, guidance, and control.  

Elliff’s solution to the problem was simple—“a firm, constitutional foundation should be established for domestic intelligence.” Former Attorneys General, however, placed blame on Hoover for his immense authority over intelligence gathering. Former Attorney General Francis

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Biddle had noted the great power Hoover had amassed throughout his nearly half-century reign over the FBI. Elliff wrote of Biddle’s concern, stating:

Although Biddle believed this delegation of power to Hoover was “justified by the record,” he raised a disturbing question about “the future use of this great machine of detection, with its ten million personal files, its reputation grown sacrosanct…its obvious possibilities of misusing the power it has won. When Hoover resigns or retires or dies, what will happen—can the same freedom be given to another man, the virtual freedom from control? I do not believe it can.”

Despite Biddle’s “concern” for the FBI’s amassment of power, his office bore the ultimate responsibility for the Bureau’s authority. Elliff noted:

The FBI is an intelligence arm of the President. The primary foundation for the Bureau’s domestic intelligence role is inherent executive power. Only recently have Congress and the courts begun to explore the ramifications of that power and to require the Justice Department to articulate a constitutional rationale.

The legal justification for the Justice Department’s intelligence delegation to the Bureau was shaky. In support of President Nixon’s authority to order Hoover to collect intelligence, the Justice Department cited Totten v. United States, a Civil War case brought by the estate of William A. Lloyd, a Union spy hired by President Lincoln. In the dicta of the court’s decision was an acknowledgement of a President’s authority to hire spies. The court wrote:

“We have no difficulty as to the authority of the President in the matter. He was undoubtedly authorized during the war, as commander-in-chief of the armies of the United States, to employ secret agents to enter the rebel lines and obtain information respecting the strength, resources, and movements of the enemy…”

That language, the Justice Department argued, allowed for the FBI’s collection regarding political dissidents. In addition to seeking authority from a Civil War case, the Justice Department also sought to use In re Neagle, another nineteenth century case which found that the

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335 Ibid, 287.
336 Ibid, 256.
337 U.S. v. Totten, 92 U.S. 105 (1875).
Attorney General had the authority to appoint U.S. marshals to guard members of the Supreme Court, as authority for the Executive Branch to render whatever means necessary to collect any needed intelligence. Referring to *Neagle*, Elliff wrote:

Department executives have asserted that the government may collect any information which is “legitimately related to the statutory or constitutional authority of the Executive branch to enforce the laws.” In effect this view gives the President the constitutional power to authorize intelligence coverage of any subject upon which he needs information for carrying out his governmental responsibilities.

Thus, in the early 1970s, the legal authority for the Bureau’s intelligence collection seemed at best antiquated. At worst, it was premised upon the whims of the Justice Department, acting under a president intent upon collecting information related to political dissidents. Elliff cited a statement from Attorney General John Mitchell, which allowed for the FBI and Department of Justice to gather intelligence about organizations “simply because they are expressing—by means of a demonstration—their disagreement with government policies.” The statement read:

Accurate and complete information is essential for the planning necessary to achieve peaceful demonstrations and for dealing with disorders. It is not only important to know how many are coming at a particular time, but who they might be and why they are coming. This kind of relevant information is freely available to anyone; it is only necessary to collect it in one place and, having collected it, to evaluate it in order to make value judgments and to formulate a plan of action. To provide the concerned departments and agencies with reliable information there has been established within the Department of Justice an Interdivisional Information Unit (IDIU) and an Intelligence Evaluation Committee. Whenever the information indicates a large demonstration may occur, all intelligence concerning that potential demonstration is reviewed by the Intelligence Evaluation Committee…[which] weighs all of the available information and reports its conclusions regarding the potential for disorder to the Attorney General.

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339 *In re Neagle*, 135 U.S. 1 (1890).
340 Watters, 262.
342 *Ibid*, 263.
The Justice Department based the authority of its intelligence collection upon the premise that such information was “freely available to anyone.” That premise was false. Using raw information collected by the Bureau through wiretap surveillance and the use of informants, the Justice Department analyzed and produced its own intelligence. Not for a second, however, was such information publicly available to everyone. Elliff’s presentation at the Princeton conference would highlight the complexity of issues pertaining to the Bureau. Certainly, the Media documents had illuminated the extent of the Bureau’s illegal intelligence gathering capabilities. As Attorney General Francis Biddle had voiced years prior, Hoover had amassed a great deal of power related to intelligence collection. Yet, Elliff’s presentation pushed the narrative surrounding the Bureau’s flaws beyond an *ad hominem* attack on Hoover and followed the string of authority straight to the Attorney General and the President. That the Bureau had amassed so much power in the first place could be attributed to previous administrations’ thirst for information in the face of first, war (hearkening back to President Roosevelt’s delegation of intelligence authority to the Bureau during World War II), and later, political dissidence and urban unrest (seen under Johnson and Nixon’s request for intelligence related to protesters and the black community). For Elliff, a critique of the Bureau constituted a critique of the Executive Branch.

Though the Princeton conference had invited Hoover to attend, or to send a FBI representative on his behalf, he declined. In a long-winded, seven-page letter, Hoover declined the invitation, stating:

> We acknowledge and appreciate your invitation to “defend,” but we are declining in view of our serious doubt that any worthwhile purpose could be served by an FBI representative attending an inquiry casting him in the role of defendant before even the first fact is brought out, and condemned by the “judges” before trial begins. It simply is
asking too much that any FBI representative appear personally under those circumstances.\textsuperscript{343}

Perhaps Hoover should have attended, as he would have found support in Elliff’s presentation for his contention that, “Our investigative duties are not of our own choosing. They were delivered to us, with the requirement that we take all necessary action, by laws passed by the Congress and by rules and regulations laid down by the President and the Attorney General.”\textsuperscript{344}

Hoover believed that the Princeton Conference was a “kangaroo court,” and expressed his opinion in a letter to Nixon’s Assistant for Domestic Affairs, John Ehrlichman.\textsuperscript{345} Despite his absence, perhaps he would have been surprised to find that the discussion of the Princeton conference, in addition to critiquing his performance, also at times focused on the extent to which Hoover carried out the wishes of his bosses, the Attorney General and the President.

**United States v. United States District Court (Keith)**

Though the FBI, Department of Justice, and the Nixon Administration justified their intelligence gathering activities based upon presidential directives issued by President Roosevelt during World War II, the days of relying upon such legal relics were coming to a close. In February of 1972, the Supreme Court heard a case that examined whether the Attorney General could authorize warrantless wiretaps in domestic cases related to national security. The case, officially known as *United States v. United States District Court* and popularly known as the “Keith” case, asked the courts to rule on the Executive Branch’s ability to use national security as justification for warrantless wiretaps of domestic subjects. The case brought into question everything that the FBI and the Attorney General’s office had been doing in relation to

\textsuperscript{343} Hoover letter to Duane Lockard, October 7, 1971, Elliff Papers, 1.
\textsuperscript{344} Hoover letter to Duane Lockard, October 7, 1971, Elliff Papers, 2.
intelligence collection of leftwing radicals. Justice Powell, writing the final opinion, stated that the case “involves the delicate question of the President’s power, acting through the Attorney General, to authorize electronic surveillance in internal security matters without prior judicial approval.”

The facts of the case were absurd. Legal proceedings involved the prosecution of Lawrence “Pun” Plamondon, John Sinclair, and John Waterhouse Forrest, three members of the White Panther Party who had bombed a CIA recruitment office in Ann Arbor, Michigan in 1968. Prior to the bombing, the three defendants lived in a commune in Ann Arbor, engaging in a hippie lifestyle where they “dropped acid, smoked pot and ate hallucinogenic mushrooms while listening to the MC5, The Doors, and Iggy and the Stooges.”

Inspired by a newspaper article featuring Huey P. Newton, a leader of the Black Panther Party, the defendants decided to form a White Panther Party to advocate for black rights. Sinclair defined his party’s mission in 1968, writing:

Our program is Cultural Revolution through a total assault on the culture, which makes us use every tool, every energy and any media we can get our collective hands on....Our culture, our art, the music, newspapers, books, posters, our clothing, our homes, the way we walk and talk, the way our hair grows, the way we smoke dope and fuck and eat and sleep—it is all one message, and the message is FREEDOM!...We demand total freedom for everybody! And we will not be stopped until we get it...ROCK AND ROLL music is the spearhead of our attack because it is so effective and so much fun...With our music and our economic genius we plunder the unsuspecting straight world for money and the means to carry out our program, and revolutionize its children at the same time.

345 Hoover letter to Ehrlichman, Ehrlichman Box 23, J. Edgar Hoover, Company President, pg. 10, Nixon Presidential Library.
348 Morrison, 4.
Not surprisingly, their rhetoric caught the attention of the federal government, and particularly the FBI, which added Plamondon to its “Ten Most Wanted” list.\textsuperscript{350} To escape prosecution, Plamondon went underground and travelled the world, spending time with exiled Black Panther Party members. His journey took him to Canada, Germany, Italy, and Algeria.\textsuperscript{351}

When Plamondon’s case went to trial, his attorneys requested that the prosecution turn over all evidence, including electronic wiretaps. Attorney General John Mitchell rebuffed such attempts, explaining, “Plamondon has participated in conversations which were overheard by Government agents who were monitoring wiretaps which were being employed to gather intelligence information deemed necessary to protect the nation from attempts of domestic organizations to attack and subvert the existing structure of the Government.”\textsuperscript{352} Mitchell himself had authorized the wiretaps without seeking the approval of any court. He argued that his authority alone was sufficient to justify such intelligence collection, and he refused to turn over the content of the wiretaps to the defense.\textsuperscript{353}

The district court, presided over by Judge Keith, found in favor of the defendants, arguing that in domestic situations, there was no exemption from the Fourth Amendment’s requirement of a warrant.\textsuperscript{354} The Sixth Circuit affirmed the lower court’s ruling, writing “in dealing with the threat of domestic subversion, the Executive Branch of our government…is

\textsuperscript{350} Ibid, 6.
\textsuperscript{351} Ibid, 5.
\textsuperscript{352} Ibid, 8.
\textsuperscript{353} Ibid, 8. Later, Forrest’s attorney would explain his theory for how the government procured the wiretaps used to convict his client. He stated, “I believe [the surveillance] was a National Security Agency intercept from when Pun Plamondon was in Algeria with [Black Panther leader] Eldridge Cleaver, who was also on the run. They were calling Huey Newton at the Black Panther headquarters in Oakland. And…if we’d have had a taint hearing, I think we would have lost [because the conversations had nothing to do with the Ann Arbor bombing].
subject to the limitations of the Fourth Amendment...when undertaking searches and seizures for oral communications by wire.”

When the government appealed, the Supreme Court granted certiori and affirmed the decisions of the lower courts. Justice Powell stated:

We conclude that the Government’s concerns do not justify departure in this case from the customary Fourth Amendment requirement of judicial approval prior to initiation of a search or surveillance. Although some added burden will be imposed upon the Attorney General, this inconvenience is justified in a free society to protect constitutional values. Nor do we think the Government’s domestic surveillance powers will be impaired to any significant degree. A prior warrant establishes presumptive validity of the surveillance and will minimize the burden of justification in post-surveillance judicial review. By no means of least importance will be the reassurance of the public generally that indiscriminate wiretapping and bugging of law-abiding citizens cannot occur.

Thus, the government’s justification for its warrantless collection of intelligence, through electronic surveillance, crumbled. After the Keith decision, the Executive Branch had no legal grounds upon which to claim executive privilege for indiscriminate and warrantless collection of domestic intelligence. It could no longer evade the constitution in the name of national security, and the Attorney General could no longer order the FBI to carry out collection without a warrant. Alternatively, the FBI could no longer hide behind the all-powerful authority of the Justice Department, as Keith stripped such power, making clear that any such intelligence actions would be illegal. The Keith case, perhaps as much as anything that happened up to that point, signified that the tide was changing for the FBI and for the Nixon Administration.

The Media break-in became a turning point for the FBI. For liberals it confirmed the extent to which the FBI was conducting illegal surveillance of political dissent. It would take

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355 United States v. United States District Court, 444 F.2d 651, 667 (6th Cir. 1971).
357 Interestingly, though the Keith decision prohibited warrantless intelligence surveillance within the United States, the case also established a precedent affirming warrantless collection of
members of Congress, scholars such as those at the Princeton conference, and the Supreme Court’s decision in *Keith* to unravel the Bureau and the Executive Branch’s tangled web of self-made legal justifications, paving the way for a broader attack against the FBI’s intelligence efforts. By eliminating the legal premises upon which the Bureau and the Executive Branch carried out their intelligence gathering actions, those scholars and the courts allowed for change sought by activists such as the Media burglars. The sweeping change, however, came at a cost, most of all for Hoover. Following the Princeton conference and the deluge of liberal criticism against Hoover, Nixon resented the scrutiny that Hoover’s actions directed towards him. He began to plot Hoover’s retirement. Thus, what should have been a happy ending for the Bureau, seen in the decision of *Keith*, instead, culminated in a new and unprecedented tension between the Bureau and the President. At stake would be the legacy of Hoover and the directorship he had closely guarded for nearly half a century.

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foreign intelligence. This distinction was later clarified by the creation of the Foreign Intelligence Surveillance Act (FISA) in 1978.
CHAPTER IV

HOOVER’S RETIREMENT

After the Huston plan fell apart, Nixon’s staff began to wonder whether it was time to replace Hoover with a new FBI director. On April 12, 1971, White House advisor Pat Buchanan wrote to John Dean, Nixon’s White House Counsel, requesting some insight into the repercussions of firing Hoover. He wrote:

Can you tell me offhand the status of the Director of the FBI—is he, now an appointive figure, who can be shifted out by the party in power. [sic] In other words, were we to replace Hoover now—could the Democrats waltz in and throw our guy out and put their guy in—in 19 months?  

Four days later, Dean replied:

The Director now serves at the pleasure of the Attorney General. He is appointed by the Attorney General and, therefore, can be removed by the Attorney General. Effective as of the day in which the present incumbent Director ceases to serve as Director, the Director of the FBI will be appointed by the President by and with the advice and consent of the Senate.  

Dean confirmed Buchanan’s fear of Democrats replacing Hoover with their own nominee. He stated that if Nixon replaced Hoover and the Democrats later came to power, they could replace

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358 Letter, Pat Buchanan to John Dean, 4/12/71—John Dean’s Files, White House Special Files Staff Member and Office Files, “Hoover Retirement,” Box 41, Richard Nixon Library.  
359 Letter, John Dean to Pat Buchanan, 4/16/71—John Dean’s Files, White House Special Files Staff Member and Office Files, “Hoover Retirement,” Box 41, Richard Nixon Library.
him with one of their own. Inherent in his answer was an assumption that subsequent directors, appointed at the will of the president, would become partisan appointees. Hoover’s ability to withstand his tenure under both Democratic and Republican presidents would become a thing of the past.

Dean was familiar with the status of Hoover’s job, as he had earlier answered a similar question from John Ehrlichman, Nixon’s counsel and Assistant to the President for Domestic Affairs. In a memo written in December 1970, Dean outlined the legal basis for Hoover’s job, referring to the Executive Order signed by former President Johnson, which allowed Hoover to retain his position even after he attained the age of mandatory retirement as prescribed by federal law. Dean concluded that although Johnson had signed an Executive Order on Hoover’s behalf, subsequent presidents could elect to follow or not follow the order. Dean wrote, “In brief, the Director of the FBI continues to serve at the pleasure of the President, despite his exceeding the 70 year old retirement requirement.

It is interesting to note the contrast in Dean’s responses to Ehrlichman and Buchanan. With Ehrlichman, Dean tied Hoover’s tenure to the will of President Nixon—as he read the law, Hoover continued to serve only at the President’s behest. With Buchanan, however, Dean, without legal explanation, placed the responsibility for Hoover solely with the Attorney General. Comparing the two documents, it

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360 Ibid, Letter, John Dean to Pat Buchanan.
361 Memorandum, John Dean to John Ehrlichman, 12/16/70—John Dean’s Files, White House Special Files Staff Member and Office Files, “Hoover Retirement,” Box 41, Richard Nixon Library.
362 Ibid, Memorandum, John Dean to John Ehrlichman. Ehrlichman explained the legal reasoning behind his conclusion, citing to Section 8335 of Title 5 of the United States Code, which “requires that a government employee who becomes 70 years of age and completes 15 years of service shall be automatically retired.” He continued, stating that the automatic retirement provision does not apply if the President specifically exempts individuals, hence the power of an executive order to keep Hoover in office as long as the President allows.
seems that Dean wished to pass along responsibility for Hoover from the White House to the Department of Justice. Although Hoover was appointed as Director in 1924 by the Attorney General, Congress had revised the future procedure for appointing an FBI director which would give the President sole responsibility to do so, effective upon Hoover’s retirement. Yet, Dean still used political leverage as an excuse for keeping Hoover in office, explaining that any of Hoover’s replacements could be easily replaced once Democrats took office.

By October of 1971, White House memorandum regarding Hoover’s retirement was sent directly to Nixon. On October 27, 1971, Ehrlichman sent a memo to Nixon that included an attachment drafted by the Attorney General John Mitchell containing a script to fire Hoover; the attachment came at the President’s request. The script read:

Edgar, as you can imagine I’ve been giving your situation a great deal of thought. I am absolutely delighted that you have weathered the attacks upon you and the Bureau so well. The Princeton symposium, the various articles and stories that have run have only scratched you in minor ways.

In thinking through your future I have concluded that you must stay as Director of the Bureau through November of 1972. I hope you will agree to do so because I think it’s very unrealistic to even contemplate your replacement in the meantime. Anyone who is selected as your replacement would immediately become a political issue, would undergo a bruising confirmation process and both he and the Bureau would be hurt in the process.

This next year is going to be a highly political year. We must figure out some way to keep the FBI out of the political crossfire. I have concluded that the best way to do this is for you to say right now, publicly, that you have decided to serve one more year, until

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363 Letter, John Dean to Carl Shipley, Republican National Committee, May 24, 1971-- John Dean’s Files, White House Special Files Staff Member and Office Files, “Hoover Retirement,” Box 41, Richard Nixon Library. Dean wrote, “in 1968 Congress passed a law which will become effective upon Mr. Hoover’s leaving office, which provides that all future Directors be appointed by the President and confirmed by the Senate instead of the existing procedure whereby the Director is appointed by the Attorney General.”

364 Memorandum, John Ehrlichman to The President re Director of the FBI, 10/27/71—John Ehrlichman’s Files, White House Special Files Staff Member and Office Files, “J. Edgar Hoover, Company President,” Box 23, Richard Nixon Library.
just after the inauguration in January of 1973, and that then you will retire on “senior status”. You would obviously be available to the Bureau and the government as a special consultant, and could provide for an orderly transition for the new Director.

The timing would permit whoever is elected President in November to announce your replacement, thereby taking your replacement’s identity out of the political campaign.

Between now and November you can be thinking about who a replacement might be. If we can agree on a replacement we can keep it a secret, and begin to prepare the way for the new man. Obviously, if I am reelected, your replacement would be someone who would carry on your tradition. On the other hand, if the Democrats were to prevail in November of 1972, the Bureau would be subject to some Director that neither of us would like.

I sincerely think that it is in our mutual best interests and in the best interest of the Bureau. I’ve sifted through every conceivable alternative and option and I know that you should and must do it this way.365

The script sought to conciliate Hoover, lauding him for weathering Bureau criticism. Yet, Nixon’s order that Hoover retire was undeniable. On Nixon’s orders, Hoover would have to step down and train his replacement. It was a bold suggestion sure to elicit an angry response from the director.

Ehrlichman apparently did not find the script helpful. Upon noting the attachment in his memo to President Nixon, he remarked that none of Mitchell’s suggestions were “particularly novel.”366 The script went to great lengths to appease Hoover, allowing him to stay on until the election. Perhaps the reason for Nixon’s reluctance to fire Hoover before the upcoming election had something to do with Hoover’s popularity among the public. Though Hoover was indeed attracting his fair share of criticism from reporters and liberals, the general public, by and large,

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366 Memorandum, John Ehrlichman to The President re Director of the FBI, 10/27/71—John Ehrlichman’s Files, White House Special Files Staff Member and Office Files, “J. Edgar Hoover, Company President,” Box 23, Richard Nixon Library.
still believed he was a good director, as evidenced by Gallop polls taken in 1970, which found 71 percent of those polled viewed the Bureau “highly favorably.”

And yet, despite public affirmation, the attacks against Hoover were mounting. By October 1971, the White House, particularly Ehrlichman, worried that Hoover could not withstand impending criticism. In another memorandum to President Nixon, (issued at Nixon’s request), Ehrlichman noted several upcoming issues related to the FBI. He worried that William Sullivan, recently fired by Hoover, would retaliate by “[blasting] Hoover”—his “inspired attacks in the media [could] literally destroy Hoover.” He also attached a memo written by one of Nixon’s staffers, G. Gordon Liddy, who had been a former FBI agent.

In twelve pages, Liddy provided a background to the FBI and berated Hoover’s decline in leadership. His opening sentence, “the FBI was born in another age,” sought to immediately

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367 On August 9, 1970, the New York Times published an article, “Poll Finds FBI Losing Support.” The article contended that public esteem regarding the Bureau had fallen since 1965 among young people, yet still remained relatively high. The article stated, “During this five-year period the FBI has frequently come under fire from liberal groups as a bulwark of the ‘establishment.’” In 1965, 84 percent of those polled viewed the Bureau highly favorably; by 1970, only 71 percent gave the Bureau such a rating. Still, the poll found that the FBI was better regarded than the Pentagon, which only 28 percent gave a “highly favorable” rating. The FBI would retain its relatively high rating through 1971, when a May 1971 poll “showed a 71 percent ‘excellent’ rating for Hoover’s governance.” See Kevin Gotham, “A Study in American Agitation: J. Edgar Hoover’s Symbolic Construction of the Communist Menace,” Mid-American Review of Sociology, 16, no. 2 (1992): 57-70. To be sure, those who disapproved of Hoover wanted to see him gone immediately. An anonymous letter sent to Nixon’s secretary, Rose Mary Woods, asked, “Don’t you think the President should take some steps to assure the American public that Mr. Hoover is subject to the control of the Attorney General and the President? The incidents reported in the press on a regular basis apparently cannot be controverted. This indicates that some serious reconsideration should be given to the extended term in office of Mr. Hoover.” Later, the letter-writer remarked, “There must be a way that Mr. Hoover can be terminated with dignity and acclaim for the work that he did in the 1930s.” See Letter, Anonymous to Rose Mary Woods, Special Files Staff Member President’s Personal Files, “J. Edgar Hoover,” Box 28, Richard Nixon Library.
establish the antiquation of the Bureau, having been under the leadership of one man for 47 years. He gave a history of the bureau, which came to prominence after World War I, having been established in 1908. In the early days, Liddy maintained that it was “incompetent and corrupt,” until Hoover was appointed by Attorney General Harlan F. Fiske to serve as the fifth director of the FBI. In the early days of his tenure, Liddy maintained that Hoover did a fine job as director, using technology to fight crime. The FBI hired young lawyers and accountants as Special Agents, and “by the late 1930’s, skill and dedication brought success and with success spread the fame of Hoover and his ‘G-men.’” Yet, even in the early days, Hoover’s ego stood in the way of agents becoming overly successful in their own right. Liddy wrote about one such agent, Melvin Purvis, who fought against the gangster and bank robber John Dillinger. In the mid 1930’s, Purvis became more famous than Hoover, with children’s cereal boxes containing “Junior G-Man” badges modeled after Purvis. Hoover could not stand the amount of attention Purvis received. Liddy wrote, “Hoover crushed [Purvis]. FBI history was rewritten, giving the credit to agent Samuel P. Crowley. Years later, Purvis died a suicide.”

Hoover’s great successes within the Bureau, however, overshadowed any excessive power he wielded during those days. Unlike the sabotage carried out by Germans within the United States during World War I, the country saw “not one successful act of enemy sabotage
carried out” within its borders. Clearly, Hoover did something right, as the FBI flourished during World War II. Following its success during the war, the FBI shifted its focus to communism and the burgeoning Cold War. Though Liddy maintained, “the cold war was made to order for Hoover and the FBI,” the Bureau also saw its personnel languish in the late 1940s as “the cult of Hoover had begun to flower,” and many of its best agents left for other career opportunities. Liddy nonetheless argued that during this time, agents still “knew in their hearts ‘We’re Number One,’” over other government services, such as the U.S. Marines. Liddy believed that the moment when things started to go wrong for the Bureau occurred in the early 1950s with the emergence of the “Bureau clerk.” He wrote, “these were young men without the education prerequisites brought in to the Identification Division for the most part as clerks and sent off to earn an accounting degree from such dubious institutions as Southeastern University in Washington, D.C.” Hoover appointed these men, with their dubious degrees, as Special Agents, giving them a salary they could not demand in the private sector. Liddy wrote, “They became true believers in the cult of Hoover. Jealous of the more competent professionals, and unwilling to disagree with Hoover on anything, as they rose administratively by currying favor through flattery, the Bureau started to decline.”

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375 Ibid, 3.
376 Ibid.
377 Ibid.
378 Ibid.
379 Ibid.
380 Ibid, 4.
By the time he wrote the memo in 1971, Liddy wrote that agents could no longer say “We’re Number One.” Because Hoover became so concerned with his image and the “cultism” of the Bureau, he had stifled all outside criticism. Liddy found that the greatest decline took place in the Domestic Intelligence Division, echoing Sullivan and Brennan’s perspective of the Bureau. Any agents who dared to speak out against Hoover (i.e., Sullivan) were “forced out or relegated to posts where their skills cannot be exploited.” It was as if Hoover was applying on a larger scale the tactics he used against Melvin Purvis in the 1930s. Any staffer who threatened Hoover faced punishment.

Hoover’s behavior not only infiltrated the FBI, but bled outside of his organization as well. Liddy described Hoover’s deteriorating relationships with those in the Department of Justice and the White House, writing:

Hoover refers openly to Assistant Attorney General Robert Mardian as (inaccurately) ‘that Lebanese Jew.’ He has reportedly threatened the President. Recently there have been articles in The Washington Post, The New York Times, Time, and Life, which indicate that officials and/or former officials at the highest level of the FBI are now divulging to the press the serious shortcomings of Hoover and the Bureau.

Despite his apparently vicious attempts at hanging on to his directorship, Hoover also knew that his tenure was coming to an end. Liddy alleged that Hoover told Clyde Tolson, his second-in-command Associate Director of the FBI, that he knew, no matter who won the election in the 1972, he was done. Liddy concluded, “J. Edgar Hoover should be replaced as Director of the FBI. The question is when?”

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381 Ibid, 5.
382 Ibid.
383 Ibid.
384 Ibid, 6.
385 Ibid. Citing a quote from Tennyson, Liddy wrote, “The old order changeth, yielding place to new / And God fulfills himself in many ways / Lest one good custom should corrupt the world.”
Liddy discussed the timing of when Nixon should “remove” Hoover. He warned that his removal should not look as if it were inspired by partisan politics. Time and again, he compared the appointment of an FBI director to the confirmation of a Supreme Court appointment, stressing its importance. He noted that 1972 would see trials for both the Berrigan brothers and Daniel Ellsberg. He worried that removing Hoover from his position as director could bolster the defense of the Berrigans and Ellsberg, as he believed they would use Hoover’s indiscretions as a defense in their trials. He stated, “the most compelling reason against taking action in 1972 is the probability that issue-starved Democrats can be counted upon to exploit the matter even to the point of irresponsibility.”

Despite his many reasons supporting removing Hoover from his directorship, Liddy also had several reasons for Nixon to wait. First, he argued that Hoover could “make good on his threat against the President.” He admitted, however, that he did not know the “nature of the threat” and therefore could not provide analysis on the nature of the risk. Sullivan corroborated the notion that Hoover had something blackmail-worthy on Nixon. He wrote in his autobiography that Nixon and a friend had taken two trips to Hong Kong in 1966 and 1968 while Nixon was working for John Mitchell’s law firm. While there, Nixon struck up a friendship with a Chinese woman named Marianna Liu. Sullivan wrote that an FBI legal attaché office in Hong Kong found out about Nixon’s friendship with the woman and passed along the information to Hoover. Sullivan wrote, “our men were always on the lookout for anything they could dig up on the personal lives of public figures to send to Hoover, and even though Nixon was a private


387 *Ibid*. 
citizen at that time, he was still very much a public figure." According to Sullivan, Hoover “gleefully” accepted the intelligence on Nixon and then went to the future president to present it to him directly. Sullivan argued that Hoover used this tactic frequently against politicians. Once he had disgraceful information on politicians, he would show them his intelligence, tell them that he knew there was no truth to the allegations and promise never to let the information see the light of day. A year after Nixon became president, Ms. Liu and her Chinese husband immigrated to the United States. A newspaper article explained that Ms. Liu’s immigration “had been given top priority.” The article featured a photo of her shaking hands with President Nixon.

Aside from possible blackmail scenarios, Liddy also believed that firing Hoover would not win Nixon any votes from the left. Furthermore, he worried that Nixon would alienate some of his supporters, who liked Hoover as director. Also tricky was the fact that firing Hoover would make it necessary to find a suitable replacement who would satisfy both the left and the right.

After providing a terse list of reasons against Hoover’s immediate removal, Liddy recited a laundry list of reasons to fire him immediately. Central to his reasoning was Sullivan. By the time Liddy wrote his memo to Nixon in October 1971, Hoover had fired Sullivan. Sullivan, angry as ever, decided to go to the press and leak information about the Bureau. According to Liddy, the negative information Sullivan provided to the press about the FBI was “accurate,

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392 Memorandum to Bud Krogh from Gordon Liddy, 7.
substantive, and damaging.” He cited a recent Washington Post article that had alleged Sullivan took enough Bureau records with him after he left the FBI to publish an entire book. He downplayed the amount of upheaval that would exist within the Bureau upon Hoover’s firing, reasoning that with the exception of a few old cronies, most of the agents would embrace, and even welcome, a new director. He argued that the damage risked by keeping Hoover would outweigh any possible risks by letting him go, concluding by saying, “Hoover is in his 55th year with the Department of Justice. Even his secretary dates from the first world war. There is no dishonor, express or implied in asking a man in such circumstances to give up the burden of office.”

Liddy, in addition to being a former agent with the FBI, had insider’s access to information about the bureau through Sullivan. In his autobiography, Liddy bragged about his ability to go around Hoover by speaking directly to Sullivan in order to carry out the President’s wishes for better intelligence. In August of 1971, Liddy wrote a memo to the White House summarizing a conversation he had with Sullivan. Around that time, Nixon was worried about leaks to the press, particularly regarding the Pentagon Papers, which had been leaked recently to the Soviet Embassy, prior to their publication in the New York Times. Nixon and Liddy believed that the FBI was not giving a sufficient amount of attention to the source of the Pentagon Paper’s leak, Daniel Ellsberg. Sullivan, ever the eager Bureau employee, shared with Liddy about Hoover’s decision to cut ties with the CIA. He also demonstrated the extent of Hoover’s vindictiveness by sharing with Liddy that the “top FBI expert on Soviet espionage”

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Ibid.
Ibid.
Ibid., 10.
Liddy, 146.
was currently reassigned to chasing non-Soviet fugitives after making the mistake of leaving a safe drawer open in his office. \textsuperscript{397} Liddy described Sullivan as “very insecure in his position, almost frightened. He gave the impression of a man doing his utmost to do his duty as he saw it, but under attack from above and below.” \textsuperscript{398} Sullivan asked Liddy to have lunch with Charles Brennan, his Assistant Director for Domestic Intelligence. Brennan conveyed to Liddy that Hoover wished to remove both himself and Sullivan, having threatened to reassign them. Liddy was irate to learn that the Bureau was not investigating the Ellsberg leak in the elevated status of “Bureau Special” and also was not pursuing leads on any other major leaks. Brennan believed that in order for the FBI to pursue the intelligence leaks for which Nixon sought sources, Nixon would have to specifically order him to do so.\textsuperscript{399}

Liddy also spoke to those working with the FBI in the Department of Justice to determine their stance on the work of the Bureau. Mardian, Assistant Attorney General, saw Liddy’s memo about his conversation with Brennan and Sullivan. He confided to Liddy about a special study of the Bureau conducted by the Directors of the CIA, DIA, NSA, and the Secret Service that highlighted “the serious deterioration of the FBI capability and performance.” \textsuperscript{400} According to Mardian, Hoover had gone so far as to threaten President Nixon. When the Assistant Attorney General Richard Kleindienst said that he would welcome a Congressional investigation of the FBI, Hoover allegedly called him and said that if such an investigation took place, he would “have to tell all that I know about this matter.” \textsuperscript{401} Liddy writes, “Mardian stated that he knows what Hoover was referring to and recognized the implied threat to the President in the

\begin{footnotesize}
\begin{enumerate}
\item \textit{Ibid}, 152.
\item \textit{Ibid}, 152-153.
\item \textit{Ibid}, 154.
\item \textit{Ibid}, 156.
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According to Mardian, the President recognized the threat inherent in Hoover’s remark. That rumors abounded within the Nixon White House about Hoover and his potential threats against Hoover is certain; that Hoover actually had anything on Nixon is less than certain. Historical documents do not corroborate exactly what, if anything, that Hoover had on Nixon. Nonetheless, the talk about Hoover and his declining bureau, coupled with Nixon’s insatiable need for control of domestic intelligence led him to discuss with his staff whether or not to fire Hoover. Though he had received memos from Ehrlichman and Liddy discussing how and whether to fire Hoover, he still wrestled with what he should do, and what decision would cost him the least amount of strife.

Nixon’s White House Tape Log records two discussions about Hoover’s tenure. Once again, supporting the notion that in October of 1971, the discussion about Hoover’s tenure reached an apex, there is recorded conversation between Nixon, Attorney General John Mitchell, Domestic Affairs counsel John D. Ehrlichman, and Stephen B. Bull in the Oval Office. Mitchell approached Nixon about a series of tapes that were housed in Mardian’s safe. The tapes contained information related to the White House’s background investigations, wiretapping done on Kissinger’s staff, and wiretaps conducted on newspaper reporters. According to Mitchell, Sullivan gave those tapes to Mardian before Hoover fired him.  

In July 1971, Sullivan knew that Hoover would likely fire him, and he wanted to give the Nixon administration leverage against the ailing director. To do so, Sullivan contacted Mardian, expressing an urgency to pass along the FBI’s tapes. Sullivan had overseen a series of secret wiretaps on Nixon’s staff and on newspaper reporters. Nixon demanded that Hoover conduct the

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taps; Hoover assigned the covert operation to Sullivan, who retained all records. Sullivan worried that Hoover’s past behavior strongly suggested he would use the tapes from the wiretap to blackmail Nixon; as an angry employee on his way out, Sullivan saw a chance for revenge.

An FBI report detailing an interview with Mardian reflected this reasoning, explaining, “Mr. Hoover had used wiretap information to blackmail other Presidents of the United States and [Sullivan] was afraid that he could blackmail Mr. Nixon with this information.”

Mardian recounted that Sullivan sent Charles Brennan, Assistant Director of the FBI, to his office “with an ‘old beat up’ satchel, as best he could recall olive drab in color.” The satchel bore Sullivan’s initials and contained the tapes procured from the wiretap. After Hoover fired Sullivan, he discovered, to his great shock and dismay, that all of the tapes from the wiretaps were missing.

An FBI report stated:

> Following departure of former Assistant to the Director William C. Sullivan, it was discovered that all records he had maintained in his office concerning special highly sensitive coverage the Bureau maintained at request of the White House were missing. Due to the extremely sensitive nature of these records, Sullivan maintained the only copy of all records concerning this coverage. It was subsequently established beyond a reasonable doubt that prior to his departure, Sullivan turned all of these records over to Robert C. Mardian, Assistant Attorney General, Internal Security Division of the Department. Maridan allegedly destroyed these records.

And yet, though FBI personnel believed at the time that Mardian had destroyed the records of the tapes, White House records suggest otherwise. The tapes continued to sit in

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403 White House Tape, 10-8-71, Conversation No. 587-3.
404 FBI Memo, Interview with Robert Mardian, May 11, 1973. A separate FBI report would postulate that Sullivan oversaw the wiretaps. The report stated, “this project was very tightly held in the FBI and only a very few persons were even remotely aware of it. The project was personally handled by Former Assistant to the Director William C. Sullivan.” See FBI Memo re: New York Times and Washington Post Articles Concerning Alleged Wiretaps on Newsmen, February 26, 1973.
406 FBI Memo, Re Sensitive Coverage Placed at Request of the White House, October 20, 1971.
Mardian’s safe at the Department of Justice. Attorney General Mitchell worried that Hoover, who was “tearing the place up over there trying to get at ‘em”\textsuperscript{407} would figure out they were in Mardian’s office and “[blow] the safe.”\textsuperscript{408} Ehrlichman acknowledged that Hoover only wanted to get at the tapes because they covered illegal conduct and because without having his own copies of the tapes, he had no leverage with Mitchell. According to Ehrlichman, Hoover had his own copies of the tapes, but Sullivan sneaked them out and gave them to the Attorney General. Nixon was none too happy to hear that the tapes resided in the Department of Justice. He stated, “Mardian’s in Justice, you’ve gotta get them out of there. Do we have them in my hands, then?” Mitchell assured him that he could get the copy of the tapes into the President’s hands.\textsuperscript{409}

The tapes contained information related to wiretaps carried out by the FBI and Nixon. Even though Hoover had drawn the line at participating in the Huston Plan, he had no hesitation in helping the President directly to collect intelligence on his own cabinet and staff. Rumblings of these wiretaps surfaced as early as 1969. In a press conference on June 19, 1969, a journalist asked Nixon about “controversy” surrounding Hoover and his collection of electronic surveillance.\textsuperscript{410} At the time, journalists had no reason to suspect the extent of Nixon’s involvement in intelligence collection; instead, they placed the majority of their suspicion on Hoover, as evidenced by the journalist asking Nixon whether Hoover “enjoy[ed] your complete confidence,” and whether Nixon had any plans to relieve Hoover of his position.\textsuperscript{411} Nixon assured the press that “Mr. Hoover does enjoy my complete confidence, and there has been no

\textsuperscript{407} White House Tape, 10-8-71.  
\textsuperscript{408} Ibid.  
\textsuperscript{409} Ibid.  
\textsuperscript{410} Press Conference No. 6 Transcript, June 19, 1969, J. Bruce Whelihan’s Files, “FBI and Wiretapping,” Box 2, Richard Nixon Library.  
\textsuperscript{411} Ibid, Press Conference No. 6 Transcript, 5.
discussion with regard to his tenure as far as the future is concerned.”

Then, Nixon began a spin on the facts, assuring the press that Hoover had sought the approval of the attorney general when carrying out electronic surveillance, forgetting to add that Nixon had originated the idea of the taps and encouraged them profusely. Nixon then proclaimed his administration’s great respect for civil liberties, explaining, “as far as this Administration is concerned, our attitude toward electronic surveillance is that it should be used very sparingly, very carefully, having in mind the rights of those who might be involved, but very effectively to protect the internal and external security of the United States.”

Despite his assurances, Nixon was lying. His administration was using wiretaps as no other president before him. No one in the Nixon administration was immune from Nixon’s suspicion or his attempts at investigation. By April of 1971, the chatter regarding the wiretaps became louder. By then, journalists had gotten wind of Hoover possibly tapping the telephones of members of Congress. In yet another press conference, this time with the White House Press Secretary Ron Ziegler, a journalist asked, “does the President believe that the FBI should tap telephones of Members of the House or any Member of the House and Senate?” Ziegler denied that the White House had authorized any phone tappings in Congress. A few days later, Ziegler would clarify, “I can tell you this: that the President’s view on this is quite clear; snooping or surveillance of private citizens is totally repugnant to the President and to this Administration.” He was lying. Two days later, the New York Times ran a front-page story

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412 Ibid.
413 Ibid, 6.
415 Press Conference Transcript, April 14, 1971, 8.
entitled, “FBI Said to Bug a House Member.” The article claimed that the FBI sent an informer to Representative John Dowdy’s Capitol Hill office with “a hidden tape recorder strapped to his back.” In addition to recording conversations, the informant also monitored and recorded phone conversations with the congressman. Though the article noted that, technically, the Bureau had not placed recording devices on the congressman, as all the recording devices resided on or with the informant, it nevertheless signaled an unprecedented move at attacking corruption within the government. Even worse, the Department of Justice had lied about the Bureau’s involvement in investigations of congressmen. The New York Times article noted, “these steps by the bureau do contradict recent statements by officials of the Department of Justice that the bureau has never engaged in electronic surveillance of Congressmen, even in investigating specific illegal acts.”

By the time Ziegler attended his morning press conference, journalists barraged him with questions about the New York Times article. One proclaimed, “we have been told consistently by this Administration that the FBI has not been doing this…Did [the claims in the article regarding the FBI] happen and, if it didn’t, how do we reconcile that with the consistent denials of Mr. Kleindienst [the Assistant Attorney General] and others that that has not happened?” Ziegler played dumb, claiming he had not seen the article and knew nothing about it claims. Furthermore, he reiterated the party line, saying that the White House’s policy was against any wiretaps of congressmen and senators. At that point, the press had nowhere to go but to point

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417 Ibid, Smith, 1.
418 Ibid, Smith, 16.
419 Press Conference Transcript, April 16, 1971, J. Bruce Whelihan’s Files, “FBI and Wiretapping,” Box 2, pg. 4.
fingers at the Bureau. One of the journalists stated, “My question, Ron, went not to the story itself, but to the apparent conflicts between the actions of the FBI and the stated policy of the Administration. My question was, has the President initiated any kind of investigation?”\textsuperscript{420} Another journalist said, “Ron, there have been times in the history of this country when the FBI was doing things that even the Justice Department didn’t know about. Could it be that these things are going on now without being in accordance with your policy?”\textsuperscript{421} The implication at this point was that the FBI had been acting as a rogue agency, carrying out dirty work behind the Nixon’s administration’s back. That Hoover would do such a thing, coupled with the constant denials by the Nixon Administration of having anything to do with the Bureau’s behavior, led journalists to believe that Nixon needed to reign Hoover in and let him go. Ziegler danced a careful jig in his replies. Admitting the Administration’s guilt would have instantly shifted attention from the Bureau to the White House. And yet, placing the blame fully on the FBI and buying into the implications of the journalists would have evoked the wrath and possible retaliation of Hoover. So, Ziegler continued to deny everything. He stated, “It is not an investigation of the Federal Bureau of Investigation by this Administration. If I would suggest that, I think it would suggest that I am concurring in many of the charges that have been made against the Federal Bureau of Investigation.”\textsuperscript{422}

It would not be long before the President himself would come to the defense of the FBI, as news of the wiretaps called into question the FBI’s seemingly unrestrained power. On May 1, 1971, in a press conference, Nixon fielded a question from a journalist who asked whether or not the United States was becoming a police state, thanks to the FBI. Nixon underplayed public

\textsuperscript{421} \textit{Ibid}, 7.
concern, stating, “all of this hysteria—and it is hysteria, and much of it, of course, is political
demagoguery to the effect that the FBI is tapping my telephone and the rest—simply doesn’t
serve the public purpose.” He justified the wiretaps conducted by the FBI, explaining that
they were approved by the Attorney General and were only used in limited instances to prevent
violence or to stop an overthrow of the government. Moreover, he assured the journalists,
“This is not a police state. I have been to police states. I know what they are….This isn’t a
police state and isn’t going to become one.”

Nixon had plenty of reasons, however, to be worried. Though the information regarding
the taps would remain a secret for a couple more years, eventually news of the taps would reach
the public, including the identities of those under suspicion. On February 27, 1973, Time
released a story alleging the that the White House ordered the FBI to tap the telephones of six or
seven journalists and to also tap the phones of “a number of white house [sic] aides” to
determine the source of leaks to the press. According to the article, “Hoover initially balked at
the White House directive to install the wiretaps, but was ordered by Mitchell to follow it.” In
the coming months, more details would emerge, along with the identities of those tapped by the
FBI. One of the persons was William Safire, a Nixon speechwriter. The FBI installed the taps
sometime between May 1969 and February 1971, with a total of “13 ‘national security’

423 Ibid, Press Conference No. 16 Transcript, May 1, 1971, J. Bruce Whelihan’s Files, “FBI and
Wiretapping,” Box 2, pg. 7, Richard Nixon Presidential Library.
425 Ibid, 8.
427 Ibid, Time Wiretap.
surveillances on administration officials authorized by Nixon.”

Along with Safire, the Nixon administration solicited names from Henry A. Kissinger, Nixon’s national security advisor, and built a list of White House employees suspected of leaks. The program was ultimately coordinated by Kissinger, Hoover, and Mitchell, as they compiled a list of names on which to apply the taps; Mitchell signed each and every one of the seventeen forms allowing the FBI to conduct the electronic surveillance. In addition to the 13 White House employees, the FBI also installed wiretaps on at least four journalists, including two New York Times reporters. The article stated, “logs of the overheard conversations compiled by the FBI were sent routinely to Kissinger’s office.”

Most of the White House employees monitored did not divulge any classified or sensitive information to journalists, though the article noted “at least three of the government officials were found to be ‘Blabbermouths’ and were eventually eased out of their positions.” When interviewed about why he might have been targeted for the taps, Safire admitted that he had seen classified information related to national security. Nonetheless, he was outraged upon learning about the taps and came out swinging in an article he penned for the Washington Star. He disparaged his colleagues who were wiretapped and excused the behavior by saying “men who deal in secret matters [have] to expect constant surveillance.”

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security betray a certain lack of understanding about our national traditions." Safire, however, saved the majority of his wrath for Nixon. He ranted:

For myself, I cannot go along with this fraternal silence of the suspicious 17. I did not knock myself loose for Nixon in 1959 and 1960, and then cast my lot with him through the long arid comeback years of 1965 through 1968, to have him—or some lizard-lidded paranoid acting in his name without his approval—eavesdrop on my conversations. “National security,” my eye—during the 37 days in July and August of 1969 that some agent in earphones was illegally (as the Supreme Court later found) listening to my every word, I was writing the (sh!) President’s message and speech on welfare reform. Informants from the White House substantiated Safire’s claim that Nixon had no business suspecting him for security leaks. An article from the New York Times alleged that Nixon began the taps in an effort to pursue leaks related to a “secret bombing in Cambodia in 1969 and details of the American negotiating position at the Strategic Arms Limitation Talks With the Soviet Union.” That Nixon had superseded his original intent for the electronic surveillance was evident in the selection of such targets as Safire.

On an autumn day in October, when Nixon met with members of his staff to discuss Hoover’s retirement, he knew that a lot was at stake with the existence of tapes stemming from the wiretaps. Because Sullivan had stolen the tapes from the FBI, Hoover no longer had his own leverage in the event that word leaked about the wiretaps. Nixon was at an advantage, and he planned to keep it that way. In his memoir, Nixon recalled the conversation with Mitchell about Hoover and the tapes. He explained that Mardian had warned that Hoover would likely use the

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433 Ibid, “When the Bugs Hit Home.”
434 Ibid, “When the Bugs Hit Home.”
436 Luckily for Hoover, the most substantial pieces of information regarding the leaks (i.e., the targets of electronic surveillance) did not leak to the press until 1973, well after his May 1972 death.
tapes’ evidence of wiretaps on the seventeen individuals with as “blackmail leverage in order to retain his position at the Bureau.”\textsuperscript{437} Nixon later alleged, “I did not believe that he would ever do such a thing. There had long been rumors that Hoover kept his position because of threats and subtle blackmail of various Presidents, but I had always regarded them with skepticism.”\textsuperscript{438} That the tapes ended up with Mardian came from a direct order on behalf of Nixon. He wrote, “Sullivan had the FBI’s copies of the wiretap reports, so I told Mardian to get them from him so that all copies would be kept at the White House…That was the last I heard of any supposed threat from Hoover. I never said anything to him about it.”\textsuperscript{439}

Though Nixon’s memoir recorded his involvement and interest in Hoover and the tapes as relatively benign, the recordings of Nixon’s conversations in the Oval Office revealed a man concerned with Hoover’s possible next moves. Nixon and Mitchell, in a plan to get Hoover to stop searching for the tapes, agreed to tell him that the tapes resided at both the Department of Justice and at the White House, to which Mitchell remarked, “[telling him that] will turn him off.”\textsuperscript{440} Yet, as Mitchell thought about it, he realized that more needed to be done. He explained to Nixon that “I’ve got to get [Hoover] straightened out which may lead to a hell of a confrontation.”\textsuperscript{441} His urgency, however, stemmed from the fact that Hoover had cut Mardian off from all Bureau investigations. Mitchell wondered aloud if Nixon should get rid of Hoover or simply “bear down on him.”\textsuperscript{442} Nixon answered, mumbling about Hoover offering to resign if he felt like it would help Nixon get reelected. He stated, “[Hoover] says I know whenever you—

\textsuperscript{438} \textit{Ibid}, 596.
\textsuperscript{439} \textit{Ibid}, 597.
\textsuperscript{440} White House Tape Transcript, 3.
\textsuperscript{441} \textit{Ibid}.
\textsuperscript{442} \textit{Ibid}.
you’ve gotta get re-elected [unintelligible]. If you think that my presence is going to be really harmful, he says, I will resign. That’s a pretty, pretty nice way of saying I don’t think I am harmful.”

Then President Nixon revealed his own feelings on the matter, exclaiming:

Nixon: Uh, as of the moment that is true that he oughta resign, for a lot of reasons he oughta resign, in my view is he oughta resign while he’s on top, before he becomes an issue in the current, the least of it is he’s too old.

Mitchell: He’s getting senile, actually.

Nixon: He should get the hell out of there. Now it may be, which I kind of doubt, I don’t know, maybe, maybe I could just call him in and talk him into resigning…if I fired Hoover, if you think we’ve got an uprising and a riot now [unintelligible] would be terrific Edgar Hoover has got to go. If he does go, he’s got to go of his own volition—that’s what we get down to, and that’s why we’re in a hell of a problem. And at the present time, I don’t think, John, I think he’ll stay until he’s 100 years old. I think he loves it…I’m willing to fight him, but I don’t. You see, I think we’ve got to avoid the situation where he—he could leave with a blast that is [unintelligible]. I don’t think he will. I think he’s so damn patriotic and he knows very well that [unintelligible]…I sorta, I went all ‘round with him…Just couldn’t run the risks with the election.

After Nixon’s rants about whether or not to let Hoover go, Ehrlichman brought the discussion back to Sullivan, reminding everyone that time was ticking and that Sullivan had a lot of

442 Ibid, 4.
443 Ibid, 4.
444 Sullivan’s memoir supports the notion that in his final years as FBI director, Hoover was ailing. Each morning, Hoover would ride to work at the Department of Justice (then the location of FBI headquarters). Along the way, his limo would stop by the house of his associate director and close friend, Clyde Tolson, to pick him up as well. Sullivan wrote, For all practical purposes I acted as Hoover’s number two man because by 1970 Clyde Tolson was very ill, having suffered from strokes that left him physically disabled. Each morning as Hoover’s automobile pulled up and parked inside the Justice Department Building’s courtyard, two old and sick men would get out. Hoover would be the first to leave the car and he would walk as quickly as he could to the building. Behind him, shuffling along, was the pathetic figure of Clyde Tolson, no longer able to keep up with the other half of what we called the ‘unipersonality.’” See Sullivan, pg. 222. He continued, providing even greater detail into Hoover’s daily routine, writing, “Hoover himself was seventy-five and ailing. Each day he would nap for about four hours and he had a full-time medical staff that supplied him with the medicines he needed to keep going.” See Sullivan, pg. 222.
445 White House Tape, 4.
information that he would leak to the press. Clearly, the problems with Hoover were mounting, and the White House did not quite know how to proceed forward.

Several weeks later, after reading Liddy’s memo analyzing Hoover, Nixon and Ehrlichman resumed their discussion of Hoover’s retirement. On October 25, 1971, Nixon’s recordings captured a conversation between the President and Ehrlichman regarding whether Nixon should heed Liddy’s advice. Upon reading Liddy’s memo, Nixon first asked why he had ever worked in the Bureau in the first place. Interestingly, Nixon himself had first applied to be an agent in the FBI in 1937 and did not receive a job offer. Ehrlichman explained that Liddy had been Hoover’s ghostwriter, crafting the director’s speeches. He left when he became “disillusioned.” Nixon was extremely impressed with Liddy’s insight into Hoover. He remarked to Ehrlichman, “His analysis of Hoover from a psychological standpoint is tremendously perceptive. We may have on our hands here a man who will pull down the temple with him, including me.” After reading the entire piece, Nixon concluded that Liddy’s

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446 According to an exhibit at the Nixon Presidential Library, Nixon submitted an application to become an agent and never heard anything from the Bureau. Years later, once he became friends with Hoover, he would inquire as to why he had not been a suitable agent. Hoover pulled his file and found that Nixon had been recommended for an agent position, but the application became lost in the red tape of Human Resources, and no one ever contacted Nixon in order to advance him to the next stage of hiring.

447 Liddy’s memoir tells a different story. After chronicling his success as an agent, he wrote, “in the fall of 1961, I learned that while things were going well for me at the Bureau, there was trouble at home.” He and his wife were “barely making ends meet financially;” his wife was at home caring for three children under the age of three, and one day, she greeted him at the front door upon his arrival home to announce that she was, once again, pregnant. He stated, “the knowledge that Fran would soon have to cope with four children under four years old on little money and less help from me because of the time-demands of my work led us to some basic rethinking…about my job.” Luckily, Liddy’s father offered him a job as an associate at his newly enlarged law firm, along with a $2000 raise and a loan for a down payment on a house. Liddy took the offer and left the Bureau. See Liddy, pg. 96-99.

448 White House Tapes, October 25, 1971, 4.
analysis made a far greater case for not doing anything to Hoover.\textsuperscript{449} Nixon worried that Hoover would “piss on” anyone that Nixon appointed as a new director, mentioning a man by the name of Pat Gray as a possible successor to Hoover.\textsuperscript{450} What befuddled Nixon most of all, based upon his comments that day to Ehrlichman, were Hoover’s remarks that he knew he would be replaced following the 1972 election, and yet, much to Nixon’s chagrin, Hoover refused to resign. Nixon worried about the effects of having to deal with an “inefficient FBI” over the next year. Nixon remarked, “[Hoover] just, he has to realize that he can’t stay forever.”\textsuperscript{451}

After remarking that Hoover could not stay in the position, Nixon swung back to talk about forcing Hoover to resign, stating, “I think I could get Hoover to resign if I put it to him directly that without it he’s going to be hurt politically.”\textsuperscript{452} Based upon his tapes, Nixon vacillated on what to do about Hoover. One minute, he seemed confident that firing Hoover would lead to him losing the 1972 presidential election; the next, he seemed certain that he could force Hoover to resign and that his decision would be the end it.

During the course of the conversation, Nixon wove his way back to a discussion of Sullivan, whose ability to reveal Bureau revelations clearly worried the White House. Ehrlichman reminded Nixon of Sullivan’s importance to the White House, stating, “Sullivan was the man who executed all of your instructions for the secret taps.”\textsuperscript{453} To Nixon, the bottom line came down to this: “Will he rat on us?”, he asked Ehrlichman candidly.\textsuperscript{454} Ehrlichman replied,

\textsuperscript{449} Ibid.

\textsuperscript{450} Incidentally, Nixon would appoint Pat Gray, known formally as L. Patrick Gray, as Interim Director of the FBI, following Hoover’s death in May of 1972.

\textsuperscript{451} Ibid, 7.

\textsuperscript{452} Ibid, 9.

\textsuperscript{453} Ibid, 11.

\textsuperscript{454} Ibid, 12.
“it depends on how he’s treated.” He reminded Nixon that Sullivan had inside information on the Nixon administration, saying, “Sullivan has delivered the papers to [AAG] Mardian that are unbelievable what I’ve got up in my safe.” Nixon wanted to know what his Administration could do to appease Sullivan; Ehrlichman responded that Sullivan merely wanted to be vindicated, after having been fired by Hoover. And yet, Ehrlichman noted that doing anything for Sullivan would offend Hoover, something that he and Nixon were clearly opposed to doing. The discussions of how to “help” Sullivan never went anywhere.

Later that day, Nixon again rehearsed his script for firing Hoover, telling Ehrlichman:

I’d like to think about the proposition of my saying, ‘Edgar, I think what you should do, that you should get out now, because I don’t want to be in the position of trying to pick a successor now. I think you should say this is a matter which should be handled by whoever is the next President in the next election and I do not want to be an issue and so I have submitted my resignation effective then.

Storms converged around Hoover. Not only was Nixon brainstorming ways to remove him from his directorship, but he also had the upcoming Princeton conference to worry about. For the first time ever, Princeton planned to host a conference in October 1971 to provide an academic critique of the FBI. Nixon worried about the effects of the conference on his administration’s reputation. Ehrlichman talked up the importance of the conference, stating, “this Princeton thing is gonna get into the folklore and it’s gonna become a part of the givens. It’s gonna be a part of the, of the established findings.” True to form, Nixon worried about the political leanings of the conference attendees, stating, “They told me that—well, it’s a very leftish group.”

Ehrlichman agreed, stating, “Oh, it is, it’s stacked, just stacked.” Ever the political strategist,
Nixon proclaimed, “[So we let a man be crucified by a stacked jury.]”\textsuperscript{460} Ehrlichman agreed. He said, “I think if his resignation were in hand you could afford to defend him. And I think you can afford to do a lot of things for him as a lame duck as you get into the campaign which will be appreciated by his friends and will be virtually uncriticizable.”\textsuperscript{461}

For the remainder of the conversation, Nixon and Ehrlichman continued to ponder aloud how to coerce Hoover to resign his directorship. By forcing Hoover to make the move of announcing his resignation, Nixon avoided a controversial confirmation hearing, which he professed had “a lot of merit.”\textsuperscript{462} Nixon rehearsed another possible conversation with Hoover, stating:

But I think what he could, I really think a lot, it makes a lot of sense, he says I’m resigning at the end of this year—this is my last year and I’ve, uh, talked to the President and submit...I wanna, because of the Bureau, I will not have the Bureau become an issue in the campaign. I’ve noted it, and I, and I, I think what I will do is just call him in and say, ‘Edgar, I think you ought to resign and, and, January 1\textsuperscript{st}, 1973.’”\textsuperscript{463}

Nixon and Ehrlichman tossed around names to serve as possible replacements to Hoover, noting with disdain any liberal leanings among the discussed candidates.\textsuperscript{464} One thing was certain—Nixon wanted a new Director with contacts in Congress and public relations savvy; he refused to entertain the idea that “a cop should run the Bureau.”\textsuperscript{465}

Despite the time, energy, and attention spent by Nixon on the issue of Hoover’s resignation, he never forced him to retire. Nixon recalled in his memoirs a conversation with Mitchell. As Attorney General, Mitchell should have been the person to force Hoover’s resignation.
departure, since Hoover had been hired by the Attorney General to serve as director in the first place. Yet, Mitchell balked at the idea of having to fire Hoover, telling Nixon, “Mr. President, both you and I know that Edgar Hoover isn’t about to listen to anyone other than the President of the United States when it comes to this question.”\footnote{Ibid, 23.} Nixon agreed. He wrote, “I decided to invite Hoover to have breakfast with me at the White House and to raise the subject with him then.”\footnote{Nixon, 598.} The breakfast, however, did not turn out as Nixon hoped it would. Hoover arrived, bringing his best behavior. Nixon notes, “at our breakfast, Hoover was as alert, articulate, and decisive as I had ever seen him. It was obvious that he was trying to demonstrate that despite his age he was still physically, mentally, and emotionally equipped to carry on.”\footnote{Ibid.} Nixon discussed the recent negative attacks on Hoover, particularly referring to those in Congress and at the Princeton conference. Nixon recalled:

> I tried to point out as gently and subtly as I could that as an astute politician he must recognize that the attacks were going to mount in number and intensity in the years ahead. It would be a great tragedy if he ended his career while under sustained attack from his long-time critics instead of in the glow of national respect that he so rightly deserved.\footnote{Ibid.}

But, Hoover refused to take the hint. He responded heartily to Nixon, stating:

> More than anything else, I want to see you re-elected in 1972. If you feel that my staying on as head of the Bureau hurts your chances for re-election, just let me know. As far as these present attacks are concerned, and the ones that are planned for the future, they don’t make any difference to me. I think you know that the tougher the attacks get, the tougher I get.\footnote{Ibid.}

Nixon brusquely recalled, “it was obvious that he was not going to take the initiative in offering

\footnote{Ibid, 23.}
\footnote{Nixon, 598.}
\footnote{Ibid.}
\footnote{Ibid.}
\footnote{Ibid.}
\footnote{Ibid.}
his resignation."\(^{471}\)  The obvious question, then, was why Nixon never asserted his power as President and fired Hoover. Nixon wanted Hoover gone and plotted ways to remove Hoover from his position. Nixon later explained his decision, proffering, “my personal feelings played a part in my decision [not to fire Hoover], but equally important was my conclusion that Hoover’s resignation before the election would raise more political problems than it would solve."\(^{472}\)

As to Nixon’s “personal feelings,” he proclaimed, “I would never desert a great man, and an old and loyal friend, just because he was coming under attack."\(^{473}\) Nixon certainly had his own interests at heart—he was worried about his reelection and also worried that Hoover’s continued notoriety as a “folk hero”\(^{474}\) would make any decision by his administration to sack him publically unpopular. And yet, the historical record also supports Nixon’s claims that his relationship with Hoover were important to him. Boxes of correspondence between Nixon and Hoover confirm a relationship that burgeoned from 1949 to the mid 1960s. The two initially connected over the counterintelligence case involving Alger Hiss; Nixon, as a “cold warrior” in the height of the Cold War attracted attention and respect from Hoover, who was consumed at the time with locating and prosecuting Communists. Nixon’s reticence to stand up to Hoover is less perplexing, seen in the context of their decades-long friendship. Hundreds of letters, notecards, and intelligence memos from Hoover to Nixon confirm that their relationship was once much more than the one-dimensional schema evident by the 1970s. They vacationed at each other’s houses. Hoover knew Nixon’s wife, Patricia, and his daughters. They sent each other birthday cards, hospital “get-well” flowers, and intelligence on their respective units—the

\(^{471}\) Ibid.
\(^{472}\) Ibid, 599.
\(^{473}\) Ibid, 599.
\(^{474}\) Ibid, 597.
Contributions by the FBI, Hoover, and Congress, for Nixon. Nixon was more than his political, conniving persona; likewise, Hoover was more than the egotistical, power-hungry caricature that the media portrayed him to be. The correspondence reflects who they were as people, and as friends.

Though Hoover apparently knew the gavel was about to fall on his tenure, he outlived the threat of his directorship coming to an end at the hand of Nixon. Instead, Hoover died in his sleep one morning before work, on May 2, 1972, still director of the FBI. He fulfilled Nixon’s prediction that Hoover would remain director of the FBI until his end, and indeed, his death signaled the end of a long era—48 years, to be exact—for the FBI. His death immediately resolved many outstanding issues for Nixon; no longer would Nixon have to plot and scheme with his staff about how to get Hoover out of office without hurting his presidential campaign.

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475 See Pre-Presidential Papers, “Special Files: J. Edgar Hoover, 1949-1961,” Box 19; and “Special Files: Hoover (cont’d),” Box 20; Nixon Presidential Library.
476 After Hoover’s body was discovered, news of his death spread fast across the government, and within hours, the FBI had secured the many files in his office. Throughout his forty-eight year career, Hoover had maintained within his office an extensive collection of personal and official files. For most of his career, people had speculated about the content of Hoover’s files, saying that he had collected information about past presidents, congressmen, and celebrities. A longtime rumor held that he used that information to blackmail his way into staying in power. Now, the files sat, unguarded. Acting Attorney General Richard Kleindienst ordered John Mohr, Assistant to the Director, to change the locks on Hoover’s office. Hoover’s secretary, Helen Gandy, took the files marked “personal” to Hoover’s house and in the days following his death, tore up between 30 and 32 file drawers worth of paper. When asked what she did with the personal files, she recalled, “I tore them up and put them in cartons, and they were taken to the Washington field office to be either incinerated or shredded. I do not know what system there was at the time. I tore them up first.” Controversy later surrounded Gandy’s destruction of the files because she testified that prior to his death, Hoover had begun going through his personal files and occasionally found documents that were not “personal” in nature, but rather belonged in the FBI’s official or confidential files. Whatever was contained in those files now lay shredded in the garbage. Hoover’s personal papers and the secrets he held on those in charge would forever remain a mystery. See “Inquiry Into the Destruction of Former FBI Director J. Edgar Hoover’s Files and FBI Recordkeeping, House of Representatives, Government Information and Individual Rights Subcommittee of the Committee of Government Operations, December 1, 1975, Pg. 114, http://babel.hathitrust.org/cgi/pt?id=pur1.32754076879463;view=1up;seq=118.
Most importantly for Hoover, he died without having been forced into retirement. Nixon wrote in his diary, “He died at the right time; fortunately, he died in office. It would have killed him had he been forced out of office or had he resigned even voluntarily.”\textsuperscript{477} He died a month and half before the Watergate break-in, which would embroil Nixon’s remaining presidency and take down Hoover’s successor, FBI Interim Director Pat Gray. And most importantly, Hoover avoided the spectacle that would become a Congressional investigation into the Bureau following Nixon’s resignation. Things were about to get dirty; on the morning of Hoover’s death, the FBI sat on the cusp of an incredibly difficult time period.

Whatever issues Hoover might have had with Nixon, and however unfavorably his most vocal critics felt, Hoover’s death elicited a swell of support from Congress and from Nixon himself. It was as if all dissatisfaction with the director was forgotten. Instead, people in Washington rushed to commemorate a legend. Hoover had served as director the Bureau for nearly 48 years, “[carrying] out his duties under eight presidents and 16 Attorneys General.”\textsuperscript{478} Congressman Gerald R. Ford gave tribute to Hoover on the day of his death, stating:

He took over the direction of the FBI in 1924 when it was a scandal-ridden and ineffective bureaucracy. Since Mr. Hoover’s tenure as FBI Director began, not one FBI agent has been charged with wrongdoing. Himself, an “honest cop,” Mr. Hoover set for the FBI the highest standards and those standards have never been lowered…He was a leader of an organization whose crime-fighting record is unsurpassed. Mr. Hoover almost singlehandedly transformed the FBI into the superlative law enforcement agency it became in the thirties and forties and is today.\textsuperscript{479}

Included in the Congressional eulogies of Hoover’s life, spoken in Congress on the day of his death, were echoes of an American fable regarding Hoover’s life and work—namely, that

\textsuperscript{477} Nixon, 599.
he “created the FBI,”\footnote{Ibid, 30.} that “J. Edgar Hoover was the length, breadth, and shadow of the FBI…their only Director.”\footnote{“Proceedings in the House,” May 2, 1972, 68.} Though he neither created the FBI nor served as its only director (indeed, there were five directors prior to Hoover’s tenure),\footnote{“Proceedings in the Senate,” May 2, 1972, 11.} people had a difficult time remembering an FBI before J. Edgar Hoover because he had dominated the image of the Bureau for so long.

In the days after his death, Americans pondered what the FBI would be without the overshadowing presence of its leader for the past forty-eight years. Hoover began working for the Bureau in 1917, during World War I.\footnote{“J. Edgar Hoover Speaks Out,” Memorial Tributes in Congress, 49.} In his earliest days on the job, he fought against the “Red Scare” under Attorney General Mitchell Palmer, having a hand in deporting such well-known socialist figures as Emma Goldblum.\footnote{Christopher Finan, \emph{From the Palmer Raids to the Patriot Act: A History of the Fight For Free Speech In America} (Boston: Beacon Press, 2007).} He became known for his work against gangsters in the 1930s,\footnote{“Proceedings in the House,” 110.} capturing or killing “such notorious criminals as John Dillinger, George “Baby Face” Nelson, Charles “Pretty Boy” Floyd and “Ma” and Fred Barker out of operation.\footnote{Ibid, 121.} One Congressman, Lawrence Hogan, noted that Hoover’s greatest accomplishment was that he “transferred hero worship from the criminal element to the law enforcement officer.”\footnote{Ibid, 30.}

Before Hoover’s tenure as director, many had admired the lawlessness of gangsters. After Hoover’s great struggle against the criminal element, however, the country aspired to a new admiration, and from the 1930s onwards, “the idol of the American boy and girl was the ‘fighting G-man,
destroying the forces of crime and evil.”

Appointed as director at the young age of twenty-nine under Calvin Coolidge, he guarded the Bureau through nearly half a century of historical progression: the Great Depression, World War II, the Korean War, and the Vietnam War. He was largely remembered as the person who saved the Bureau from its own bumbling weakness. Following his death, Congressmen touted time and again his contribution to law and order within the United States, stating, “Through his skills and his ability, J. Edgar Hoover built the FBI from a disorganized, inefficient section of the Justice Department to one of the most widely respected organizations in the world.”

Not only was he credited with creating the nation’s crime-fighting apparatus, but he also received credit for creating the nation’s first intelligence organization. Congressman George E. Danielson remarked, “At the beginning of World War II, the United States had no intelligence system whatsoever, and no counterintelligence system. At the direction of President Franklin D. Roosevelt, J. Edgar Hoover immediately set about filling this need.”

On the day of his death, the House of Representatives passed a resolution ordering that the Hoover’s body lie in state in the United States Capitol. They praised him for never

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487 *Ibid*, 42.
488 *Ibid*, 134, 70.
489 J. Edgar Hoover Speaks Out, Memorial Tributes in Congress, 49. Following his death, a eulogy by the *Chicago Tribune* on May 3, 1972 stated, “J. Edgar Hoover served under eight Presidents and had the confidence of them all. Entering the Justice Department in 1916 as an agent in the Alien Enemy Registration Service, he was called five years later to the post of assistant director of what was then known as the Bureau of Investigation. On May 10, 1924, at the age of 29, he was named director of the Bureau by Atty. Gen. Harlan Fiske Stone, later a justice of the Supreme Court.” (see Congressional Proceedings, pg. 102)
492 House Concurrent Resolution 600, Proceedings in the House, Tuesday, May 2, 1972, 37.
allowing the Bureau to become embroiled in politics. \footnote{Proceedings in the House,” 116.} Nixon ordered that the flag be flown at half mast. \footnote{Nixon, 599.} At his funeral, Nixon gave Hoover’s eulogy, praising him, saying, “J. Edgar Hoover was one of the giants. His long life brimmed over with magnificent achievement and dedicated service to this country which he loved so well.” \footnote{J. Edgar Hoover: Memorial Tributes in the Congress of the United States and Various Articles and Editorials Relating to his Life and Work, Washington: US Government Printing Office, xxiv.}

Hoover’s death signaled an important end for Nixon, but more importantly, it signaled the end of an era for the Bureau. After 48 years as director, Hoover was gone. Agents recalled that for three or four years after Hoover’s death, no one would go near his office. They simply could not believe he was really, truly dead. \footnote{J. Edgar Hoover: Memorial Tributes in the Congress of the United States and Various Articles and Editorials Relating to his Life and Work, Washington: US Government Printing Office, xxiv.} Though controversy swirled regarding Hoover’s positions towards the end of his life, his presence served to shore up a flood of controversy that would erupt following his death. After a prolonged saga of trying to keep his job under Nixon, Hoover found himself successful. However, his beloved Bureau spent the next few years wavering under an uneasy leadership, succumbing to Nixon’s full political control, and finding itself out from under both the shadow and the protection of its long-held leader.
CHAPTER V
HOOVER’S SUCCESSOR, NIXON’S CHOICE

In February and March of 1973, the Senate’s Committee on the Judiciary held hearings to confirm L. Patrick Gray as Hoover’s successor. The committee, chaired by Mississippi Democratic Senator James O. Eastland, spent nine days listening to testimony from Gray and others. On its face, the hearing sought to determine if Gray was a worthy successor to Hoover. In practice, it became a cross examination of Gray’s political ties to the Administration, his handling of Watergate, and the FBI itself. Senators wondered aloud if Nixon had appointed Gray in order to have one of his own leading the FBI. The confirmation hearing resided in the penumbras of Watergate.

By March of 1973, Carl Bernstein and Bob Woodward had spilled myriad administrative secrets through the Washington Post, partly in thanks to their infamous source, Deep Throat. At the time of Gray’s hearing, the American public knew several things. First, they knew that the Watergate bugging of the Democratic National Headquarters on June 17, 1972, in the words of Bernstein and Woodward, “stemmed from a massive campaign of political spying and sabotage conducted on behalf of President Nixon’s re-election and directed by officials of the White

496 Oral History, W. Dennis Aiken, June 22, 2015.
House and the Committee for the Re-election of the President.®497 They knew that “hundreds of thousands of dollars in Nixon campaign contributions had been set aside to pay for an extensive undercover campaign aimed at discrediting individual Democratic presidential candidates.”®498 They knew that Nixon operatives had tried to sabotage Democratic candidate Edward S. Muskie’s presidential campaign by forging a letter in his name that “condoned a racial slur on Americans of French-Canadian descent as ‘Canucks.’”®499 The FBI investigation uncovered former Attorney General John Mitchell’s role in the orchestration of a plot to upend Democratic campaign efforts; he controlled the secret campaign fund that made everything possible. Still, President Nixon had won his reelection campaign in 1972. Though the FBI continued its Watergate investigation, the public, and the Senate, were unsure if any of its discoveries might implicate anyone else in the Nixon administration.

Gray had been an acquaintance of Nixon’s prior to his appointment as interim director. A graduate of the Naval Academy and George Washington University Law School, he commanded submarine patrols during the Korean War.®500 In 1960, he left the Navy to work for Nixon’s campaign as a military advisor. In 1969, he worked for Nixon in the Department of Health, Education and Welfare. A year later, he acquired a position in the Attorney General’s office.®501 As early as 1971, Nixon’s staff had intimated to Gray that he would become Hoover’s successor, and soon. At one point, Attorney General John Mitchell asked Gray if he would like

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498 Ibid.
499 Ibid.
to serve as director; Gray replied that he would “serve in whatever capacity . . . the president may desire.”\textsuperscript{502} On the morning of Hoover’s death, Nixon called Gray to offer him the interim director position; Gray readily accepted.\textsuperscript{503} Though he was appointed interim director immediately following Hoover’s death in May, Gray did not receive word about his nomination as permanent director until February 1973.

According to Gray, Nixon worried that the confirmation hearing would lead to revelations concerning Watergate. Gray recalled that the Senate committee was “controlled by the Democrats [who] were out to get the hated Nixon, if they could.”\textsuperscript{504} At the time, Gray believed that Nixon was concerned for him and his ability to withstand an onslaught of liberal cross examination. Only later did he realize the truth. Years later, he recalled in his memoir, “Of course, he was not concerned for me, he was concerned for Nixon. He wanted to learn how much, if anything, I knew about the [Watergate] cover-up and if that knowledge could hurt him through my answers to the senators’ questions. Neither of us could know on that date how well founded that fear was.”\textsuperscript{505} Whatever fears or concerns he might have had, Nixon allayed them and formally nominated Gray to become the director of the FBI. On the first morning of Gray’s hearings, Senator Lowell P. Weicker, Jr. (Connecticut) noted the controversy surrounding his confirmation. He referenced a \textit{Time} magazine article which heeded:

\begin{quote}
Much of the Senate opposition to Gray is rooted in his lack of law enforcement experience. Gray, who became a lawyer while on active duty with the Navy in 1949, retired after 20 years military service in 1960. He was nominated for a federal judgeship
\end{quote}

\textsuperscript{502} Gray, 10.
\textsuperscript{503} \textit{Ibid}, 19.
\textsuperscript{504} \textit{Ibid}, 155.
\textsuperscript{505} \textit{Ibid}. 

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but because of his meager qualifications the nomination was withdrawn before the American Bar Association could officially act upon it...He and [Richard] Nixon met at a Washington cocktail party in 1947 and the two have been on friendly terms ever since.506

The article listed questions concerning Gray’s activity which it suggested should, if present, disqualify him from serving as director. The article urged the senators to determine Gray’s political ties to Nixon. At the time of Gray’s hearing, seven of Nixon’s aides had plead guilty or been found guilty at trial; senators had good reason to be suspicious of any of Nixon’s friends.507

Some congressmen saw Gray as a political affiliate of the president and an arm of his administration. Tantamount to the political concerns was the FBI’s involvement in the Watergate investigation—from the time of the Watergate break-in, Gray had overseen the investigation. Concerned that Nixon had appointed Gray in order to protect himself and his staff, the Time article urged the Senate committee to ask Gray:

Who asked you to campaign actively for President Nixon when you were acting director of the FBI? Why did you use the FBI to gather campaign material for Nixon? Why did the FBI do so little investigating of the Watergate political bugging conspiracy? Why did the FBI bug White House officials? Why did the FBI bug Washington news reporters?508

For Gray, the hearings in 1973 were a long-awaited opportunity. Having been appointed the interim director on the day of Hoover’s death (May 2, 1972), Gray had waited in limbo for some months, wondering if he would permanently assume directorship of the Bureau or be cast quietly into the basement of the organization’s long history. On the first day of his hearing, Gray arrived ready to defend his leadership of the FBI. He began by reading a prepared statement, which he

used as an opportunity to highlight his successes. He began by commenting on the difficult task
of succeeding Hoover, stating:

No one can doubt the tremendous challenge inherent in following the footsteps and
building on the legacy of John Edgar Hoover, whose personal vision and ideals, and
whose leadership, made the FBI an institution respected and honored by millions of our
fellow citizens. Thomas Jefferson said of Benjamin Franklin, “I succeed him; no one
could replace him.”

Despite his professed reverence for Hoover, he also emphasized his departure, explaining:

When I became Acting Director, I made a key decision. I decided that I would not be a
mere caretaker, making no waves and taking no actions. Rather, as Acting Director, I
would not only make those decisions necessary for the day-to-day conduct of FBI
operations but also those long-term decisions essential to the continued effectiveness and
efficiency of the organization.

Gray testified that when Nixon appointed him interim director, he gave him one order: remain
apolitical. Gray hoisted before the committee his undying loyalty to the United States.
Wallowing in self-righteousness, Gray pledged to Senator Eastland (D-Mississippi), “If, Mr.
Chairman, I am unable to persevere in this determination for any reason, if my loyalties to the
Nation’s elected leadership, to the Constitution, and to my job, ever come into conflict, I will
resign at once and return to my beloved law firm in southeastern Connecticut.”

Lastly, in his
opening statement, Gray portrayed himself as a critical mediator prepared to reason with the
longsuffering critics of the FBI, stating, “I believe in personal dialog, in person-to-person
discussions, where there is some chance, however slight, of correcting misunderstandings.”

Leave it to me to sway the naysayers, he pleaded. Gray made every effort to portray himself as
the worthy successor to Hoover’s kingdom.

509 Senate Hearing, 6.
510 Ibid, 6.
511 Ibid, 8.
512 Ibid, 8.
To distinguish his strategic vision for the Bureau, Gray drew the committee’s attention to the changes he had made since assuming his interim role. Gray argued that the changes were much needed and entirely absent during Hoover’s tenure. He lauded his appointment of female agents, explaining that during his very first month on the job as interim director, he allowed the FBI to accept applications from women aspiring to become special agents. At the time of the hearing in 1973, the FBI had seven female agents stationed in offices around the country and eight female agents in training at the FBI Academy in Quantico. Gray had relaxed “grooming standards” for agents. Under Hoover’s watchful eye, agents had been routinely weighed and subject to strict grooming standards and dress code. Gray allowed agents to wear their hair slightly longer, to don facial hair, and expanded the dress code beyond black suits and ties. He made changes that encouraged the hiring of more diverse agents. Though agents under Hoover had been largely white males, Gray established an Office of Equal Employment Opportunity Affairs to “recruit more black Americans, Asian-Americans, Spanish-speaking Americans, and American Indians.” By discussing achievements in Bureau investigations into organized crime and narcotics, he created a portrait of a Bureau that clung steadfast to Hoover’s highest qualities while discarding his worst anachronisms and prejudices.

513 Ibid, 9.
514 Ibid, 10.
515 A Washington Post article by Jon Katz entitled “FBI Must Reinstate Long-Haired Clerk,” (August 25, 1972, p. C1-C2) described Gray’s updated dress code. It stated: “1) Hair is to be combed back along the sides so it does not cover any portion of the ear and should be kept at such a length that, if combed straight down, would not extend below the middle of the ear; 2) Hair should be of moderate length in the front and if combed it does not cover the eyebrows. Hair at the back of the neck shall be cut or groomed so it does not extend over the top of the shirt collar; 3) Sideburns cannot extend below the bottom of the ear lobe, and hair shall not extend forward in the fashion of ‘mutton chops.’ The regulation states that mustaches are permissible if of moderate length and neatly trimmed and beards can be worn only in the case of a medically certified skin ailment.”
Despite his efforts to draw attention to his successes, the Senate committee moved immediately to questions surrounding his political affiliations. Senator Eastland began, asking Gray, “well, in fact, have you stayed out of politics?” When Gray responded, “I have done my very level best to stay out, Mr. Chairman, and I believe—“, Eastland interrupted, “Well, have you stayed out?” Gray replied, “Yes, sir.” But despite Gray’s assurance, Eastland insisted upon digging into the issue further. He asked Gray about a speech he had made to the City Club in Cleveland, Ohio, a speaking engagement allegedly requested by the White House. Gray provided to the committee his invitation to the event. The solicitation, sent to Gray from the White House, explained:

> Since its founding fifty years ago, Cleveland’s City Club has been a focus and one of the bulwarks of freedom of speech in one of America’s great cities. The Club maintains a deep interest in affairs of government, economics, and politics, both national and international. It offers a prestigious meeting place for the open discussion of important social, political and economic problems.

The invitation’s apolitical overtones shifted as it read, “With Ohio being crucially vital to our hopes in November, we would hope you will assign this forum some priority in planning your schedule.” Gray claimed that his reasons for giving the speech had nothing to do with politics. He added, defensively, that the FBI’s legal counsel reviewed the invitation and approved it. Despite his explanation, the committee expressed their disapproval. Senator Bayh commented, “I just hope in the future that perhaps when this White House, which is said to be the ultimate in political acumen, assesses a speech to be of political value to them, maybe someone who is not involved in politics, the FBI, will take their word for it and say, ‘No thanks, I will do that next

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516 Senate Hearing, 10.
518 Ibid.
519 Ibid.
The Senators had good reason to worry about Gray’s political affiliation with the Nixon White House, as Gray had worked for Nixon prior to assuming the Interim Directorship. In his testimony, Gray explained that he met Nixon in 1968 in the future president’s New York law office. During that meeting, Gray told Nixon “that I hoped that he was going to run for the Presidency.” Following Nixon’s election, Gray admitted to Nixon’s staff that he “really want[ed] a place in this administration.” Despite his self-professed desire to serve Nixon, however, Gray downplayed his relationship to the President, explaining, “if I am such a big friend of the President and such a partisan politician, how come I am outside looking in and trying real hard to get in?” His self-professed yearning to join the administration did not help his case. Gray’s efforts to join the president’s administration in 1969 were successful. Nixon appointed Gray to the Department of Health, Education and Welfare (HEW) as the Executive Assistant to the Secretary, where he gave a partisan speech to his own staff, stating:

I want to drive home hard the emphasis on loyalty. I do not speak of blind, automatic loyalty. I speak of a sincere, an intelligent, a freely made decision to join President Nixon and Secretary Fitch because we believe in them, trust them, understand the goals and objectives they hold, and desire to support them with the deepest sense of dedication and total commitment...Our Nation has elected a Republican President. We have a Republican Administration. We have Republican approaches to the problems of our people. We have the knowledge of the President’s goals. We have the common sense to know the desires and objectives of the President and the Secretary—we must have the loyalty, the courage, and the commitment to do their will—not our will. This means, plainly and simply, that we get on the track with the President and the Secretary and that we stay there and track with them. You may say, “I am not political”—“I am an Independent”—“I do not care what party is involved, I vote for the man”—“Politics is a dirty business”—an so on. From the vantage point of my ancient age, let me assure you that no American can afford to ignore politics, to ignore the machinery of government, to

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520 Ibid, 89.
522 Ibid, 102.
523 Ibid, 102.
adopt an attitude of “Let George do it.” This attitude is guaranteed to ensure the demise of the two party system—our form of democracy. No American can afford to avoid involvement, particularly in today’s world, when the thing to do is to become involved, to participate, to take a position.\textsuperscript{524} Gray’s insistence that no one in the HEW could ignore politics was troubling, as he called upon the staff to become political and to commit their loyalty to Nixon. The speech caused senators at his hearing to question whether he could truly be apolitical while serving under Nixon. Had Gray not given such explicitly political speeches as a government servant, perhaps his political leanings would not have been called into question. Unfortunately for him, the political tone of his past speech was undeniable. Eastland continued his investigation into Gray’s political support for the Nixon White House, asking Gray whether there was truth to accusations that he had fired FBI personnel for political reasons. Again, Gray denied any such action,\textsuperscript{525} so Eastland delved into Watergate.

Gray told the committee that he first heard of the Watergate break-in the morning after it occurred. He was in Los Angeles to deliver the commencement address at Pepperdine University Law School.\textsuperscript{526} Gray assured Eastland that when he learned of the matter, he contacted his second in command, Associate Director Mark Felt, and told him to “go to the hilt and spare no horses.”\textsuperscript{527}

Gray’s connections to the Nixon White House were the subject of suspicion by the Senate committee, with good reason. Senator Philip A. Hart (Michigan) raised the issue of whether

\textsuperscript{524} Address By L. Patrick Gray III, Executive Assistant to the Secretary, Department of Health, Education, and Welfare, to All Appointees in the Department at the Deputy Assistant Secretary Level and Below, July 25, 1969. The transcript of the speech was entered into the record of Gray’s Senate confirmation Hearings after Senator Bayh brought up the partisan nature of his speech.
\textsuperscript{525} Ibid, 26.
\textsuperscript{526} Ibid.

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Gray’s FBI provided information to Nixon to support his campaign efforts. Indeed, Gray supplied a memorandum substantiating the accusation. On September 8, 1972, Gray wrote to 21 special agents in charge (the heads of major FBI field offices) demanding on behalf of the White House:

In order for John Ehrlichman to give President maximum support during campaign trips over the next several weeks, the following information is required for each of the states listed.

(1) Identification of the substantive issue problem areas in the criminal justice field for that particular state. Please limit yourself to problems of sufficient magnitude that the President or John Ehrlichman might be expected to be aware of them. Brevity is the key, and often all that is necessary is to flag a sensitive problem so it can be avoided or more extensive preparation can be undertaken should we choose to speak about it.

(2) A list of events relating to the criminal justice area that would be good for John Ehrlichman to consider doing. For each suggested event, the following items should be indicated:
   a. Purpose of the event.
   b. The nature of the group or institutions involved.
   c. The content of the event.
   d. Names of specific people who can be contacted for the purpose of setting it up (together with titles, addresses, telephone numbers, etc.).

In accordance with above, you should submit by immediate teletype to be received by the Bureau no later than eight A.M., Monday, September eleventh pertinent material which should include matters pertaining to gun control legislation, corruption in police departments, probation and parole, etc. Deadline must be met.

In his testimony, Gray explained that he had been out of town when the White House sent the memo to the FBI; he claimed not to know about it until the offices had already supplied the requested information. An assistant director from the Crime Research Division answered the request and supplied the White House with the requested information. By the time Gray was informed of the Bureau’s response, he could only be angry. The damage had been done.

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527 Ibid, 27.
528 Teletype exhibit, 9/8/72, From Acting Director, FBI to SACS re: Inquiry from White House, Senate Hearings, pg. 67.
According to Gray, he recognized immediately that his office had made a mistake. In his testimony, he admitted that the Bureau had behaved incorrectly; following the incident, he said that he was “steaming around there raising a lot of cain [sic] and doing some things to make sure that this kind of nonsense did not occur again.”

The questions surrounding Gray’s confirmation centered upon the issue of to whom Gray felt that he, as director, reported. At one point, Senator Bayh said, “I am concerned, Mr. Gray, about your interpretation of the role of the FBI Director as far as to whom you are ultimately responsible. It is sort of a strange breed of cat, isn’t it, where you are responsible to the whole country, to the Commander-in-Chief, to the Congress, to each individual citizen.” When he asked Gray “to whom does loyalty flow from the FBI Director,” Gray faltered, stating, “that is a tough question.” He opined that the FBI director was responsible to the President, as head of the Executive Branch, to the Department of Justice, as an extension of the Executive Branch, and finally, his own conscience.

The fears of Gray’s politicization spread to the other senators on the committee. Senator Robert Byrd of West Virginia explained his fear of politicization of the FBI directorship, stating:

529 Ibid, 74.
530 Ibid, 90.
531 Ibid, 90.
532 Senator Byrd was a longtime friend of J. Edgar Hoover. His interest in the Bureau extended past the confirmation hearings for Gray. Byrd drafted correspondence after Gray’s hearing that explained his disdain for the interim director. He explained, “you may be sure that I do not wish to give any President “another private army” . . . that is precisely why I opposed the nomination of Mr. Gray, feeling that he would be so subservient as to make the FBI nothing more than a political instrument of the White House.” See 93rd Congress-LP-S1500, Byrd Letter to the Honorable Stuart Symington, April 30, 1973, Robert Byrd Library Archives. Byrd eventually passed legislation to limit FBI directors’ tenure to 10 years. See Vivian S. Chu and Henry B.
I fear that the FBI could, under a politically oriented Director, become the political arm of the White House—whether it be a Democrat in the White House or a Republican in the White House. I think this would be a danger to the protection of the constitutional liberties of all our people. I think that the politicization of the FBI could—I am not saying it would happen at all—but it could be the first step toward the conversion of the FBI into a sort of American Gestapo.\textsuperscript{533}

He proceeded to question Gray about the FBI’s investigation of the Watergate case.

Gray testified that his initial concern, upon hearing about the break-in, was whether the FBI had jurisdiction over the case. Had the break-in remained a mere burglary, the case would have passed to the DC Metropolitan Police Department. Because the case involved bugging of an office, however, it incited a federal statute, thereby invoking the FBI’s authority.\textsuperscript{534} Gray suffered many questions about the FBI’s investigation into Watergate. Had he prevented agents from investigating leads? Had he prevented agents from investigating leads that included higher-up officials in the Nixon Administration? Had he fired, demoted, or transferred agents who investigated Watergate too enthusiastically?\textsuperscript{535} Gray droned on with interminable answers. He had not precluded the FBI’s investigation into Watergate, he claimed, but he had cautioned agents that any prodding into Nixon’s staff was extremely sensitive and subsequently, intoned that they had better have foolproof evidentiary ground before pursuing any lead.

At one point, Senator Byrd asked about the original seven defendants—those investigated for the Watergate burglary in June 1972. Byrd had heard rumors that one of the defendants, James McCord, a former FBI agent and security officer for the Committee to Re-Elect the


\textsuperscript{534} Senate Hearing, 100

\textsuperscript{535} The FBI procured jurisdiction over the Watergate investigation under 18 US Code Section 2511 entitled “Procedure for interception of wire, oral, or electronic communications.

\textsuperscript{535} Senator Robert Byrd raised many of these questions. See Senate Hearing, 115-126.
President was “‘plugged’ into the FBI. Gray downplayed McCord’s affiliation; he had merely been an FBI Agent “from October 25, 1948, until he voluntarily resigned to enter private business February 18, 1951.” Furthermore, Gray assured the committee that McCord was not receiving classified information from FBI agents.

During his questioning, Senator Byrd continued to explore the FBI’s investigation into the Watergate case. At the time, Richard Nixon was still in office. Yet, at the time of Gray’s hearing, Byrd’s suspicion towards the administration was apparent and he focused a significant amount of his questioning on the investigation, asking which members of CREEP the FBI had interviewed, bringing up such subjects as Howard Hunt and G. Gordon Liddy, part of the original break-in. Gray, in an effort to please Byrd and the other senators on the committee, offered to open the raw files of the FBI for all senators to view. Gray said, “I will make these files available to the members of the committee and [I] will put two experienced agents with each member to assist the member, to respond to any questions. We have a task force set up in the FBI to crank out answers and we will deliver the product to the Senators.”

It was Gray’s eager willingness to open the files of the FBI that caught some of the senators by surprise. Senator Tunney wanted to know everyone to whom Gray might make the files available. He asked:

Senator Tunney: I believe that you testified yesterday that as you perceived your responsibilities as Director of the FBI, you report to the Attorney General?

Mr. Gray: That is right.

Senator Tunney: And you report to the President of the United States?

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536 Ibid, 125.  
537 Ibid, 126.  
538 Ibid, 141.
Mr. Gray: That is correct.

Senator Tunney: And anything that you have available to you should be made available to them?

Mr. Gray: That is correct. But I have judgment, too, you know. They are not going to let me sit in that position, Senator, if I go running with every item over to them.

Senator Tunney: I understand that. Now, insofar as presidential surrogates are concerned, do you have a responsibility, as you perceive it, to make available FBI investigative reports to White House assistants?

Mr. Gray: I don’t know about—you are using surrogates now and White House assistants. Who are we talking about? Are we talking about those people who went out on campaign trails?

Senator Tunney: No.

Mr. Gray: Are we talking of men like Mr. Dean and Mr. Haldeman and Mr. Ehrlichman?

Senator Tunney: I am talking about men who work in the White House.

Mr. Gray: I am not going to make those available to everybody who works in the White House but if you are talking about counsel to the President, if you are talking about Mr. Haldeman and Mr. Ehrlichman, the answer to your question is “Yes.”

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539 John Dean served as legal counsel to Nixon. He is remembered for being the first White House official to accuse Nixon of being involved in Watergate. In June 1973, he testified before the Senate and implicated several White House staffers. He was also notorious for accompanying the FBI in its interviews of White House staff during the Watergate investigation. He was charged with obstruction of justice and served four months in federal prison. See “John Dean”, “The Watergate Story, Washington Post, n.d., http://www.washingtonpost.com/wp-srv/politics/special/watergate/dean.html.


Senator Tunney: Do you make any file available to them that the FBI has?

Mr. Gray: Upon specific request from one of those individuals acting as the agent of the United States, I would, and I engage in the presumption of regularity which I think all of us have to engage in. I can’t be the head of a bureau in a department of the executive branch and say, no, I am not going to do this. 542

The hypothetical question—would you give FBI investigatory materials to the president and his staff—was already being answered in real life. Gray had provided Dean, Ehrlichman, and Haldeman with the materials they requested. His careful attention to the question by specifying staff members related directly to his past actions. He was allowing Dean unfettered access to his investigation, and he did so because he felt beholden to the president’s authority. Later in the questioning, Senator Fong asked Gray about the President’s ability to request information from the FBI. He asked, “if the President of the United States wishes to have an FBI file delivered to him, would it be delivered to him?” to which Gray answered, “That would be delivered to him.” 543 Gray admitted such openness of the Bureau with its files was not standard practice; nonetheless, he felt an obligation to the President, as his boss, to supply whatever information he requested on behalf of any investigation.

Though he admitted his loyalty to the president, he had a more difficult time admitting past FBI indiscretions. In a heated exchange, Senator Ted Kennedy asked Gray whether there was any validity to media reports about the FBI’s wiretaps on journalists and White House staff. Though the FBI had indeed carried out such wiretaps under Hoover, Gray either was not informed of such actions or knowingly denied that such actions happened. To Senator Kennedy’s prodding, Gray retorted, “there is no record of any such business here of bugging

542 Senate Hearing, 148-149.
543 Ibid, 183.
news reporters and White House people."\textsuperscript{544} Senator Kennedy, however, was not satisfied with Gray’s answer. He refused to dismiss the \textit{Time} article’s allegations that the FBI, under Gray, had illegally wiretapped American citizens. He did not believe that Gray had done the work necessary to say with certainty that the FBI had not conducted the wiretapping. He continued his questioning:

Senator Kennedy: So do I gather the extent of your investigation is a review of your own files, and a telephone call to the public information officer of the Justice Department, and no one in the White House, about the allegations and charges by \textit{Time} magazine?

Mr. Gray: That is correct, because I had no formal complaint there had been any—

Senator Kennedy: I was listening to you earlier when you were talking about how your Inspection Division follows up every single complaint that comes on out when it affects the FBI.

Mr. Gray: On one of us.

Senator Kennedy: But when a crime like this, and it is a crime. Would it not be a crime?

Mr. Gray: If these acts were committed, certainly it is a felony, no question about it, certainly.

Senator Kennedy: But the extent of your investigation is, as I stated, just a review of your own files, the files of the FBI, on what wiretaps had been authorized, and since you didn’t see any approval there, and after a routine call from the public information officer from the Justice Department, you let that drop; is that correct?

Mr. Gray: I would not classify it as just a routine call. He was quite upset when he read this article to me, and I am sure he was speaking for the Attorney General. I am sure that there had been discussion between the Attorney General and the Assistant Attorney General in charge of the Internal Security Division where those reports are made. I have to assume this—this is a normal type of procedure—and I did what I would do under these circumstances—I checked our records and indexes.

Senator Kennedy: That is the sole extent of what you did?

Mr. Gray: That is correct, Senator Kennedy, that is exactly what my testimony is.\textsuperscript{545}

\textsuperscript{544} \textit{Ibid}, 210.
\textsuperscript{545} \textit{Ibid}, 212-213.
After decades of Hoover’s unrelenting thoroughness to gather evidence, Gray’s cursory search seemed strikingly inadequate. The Bureau’s job was to go beyond face value and to investigate every lead thoroughly. Yet, Gray did not practice the FBI’s most important practices. He took Nixon’s administration at their word. Even though the crimes, if committed, would have been felonies, Gray seemed content to put his hands over his eyes and ears, thereby precluding himself from seeing or hearing anything that might upset the situation.

Though Kennedy was relentless in his questioning about the wiretaps, things only intensified once the committee moved to the topic of Watergate. Paramount to their questioning was an effort to determine whether Gray had effectively overseen the FBI’s investigation of the break-in, or whether he had hindered it with his close relationship to the White House. Senators raised rumor after rumor. Had the White House requested files on Presidential candidates from the FBI? Gray insisted that no, the FBI had not supplied such files. Gray did, however, confirm that he regularly sent Watergate files to John Dean. This alarmed the senators, as rumors had circulated that Dean had passed along FBI files to other persons of interest. Tunney raised his opposition to this practice, saying, “I am shocked, quite frankly, at the possibility that something that you, as Director of the FBI, send to the White House could be used by White House counselors to disseminate to [persons of interest].”\(^{546}\)

It seemed that each time Gray opened his mouth to testify, he made the situation worse for himself. One of his gravest missteps during the hearing was his generous offer to open the FBI’s Watergate investigation files to every senator. Several days into the hearing, the ACLU sent a letter to the committee chair, Senator Eastland, expressing concern about Gray’s offer.

\(^{546}\) *Ibid*, 277.
The letter stated, “these files undoubtedly contain information about individuals which should not be disclosed without careful consideration of their rights.” Senator Hruska agreed with the letter, and he scolded Gray, saying “I want to say to you that I suffered quite a setback in my thinking and felt that you made a very dramatic and radical decision in making these available.’ Gray held his own, maintaining that he had weighed the level of controversy stemming from his decision prior to making such a generous offer; his rationale, however, was that he intended to uphold the FBI’s credibility in the investigation and the only way to do so would be to make such files available for examination.

Senator Hruska found Gray’s answer acceptable. He encouraged the committee to remember:

That the people involved in the Watergate investigation have not been nominated to be FBI Director; Louis Patrick Gray III has. We ought to talk about Mr. Louis Patrick Gray III, his accomplishments, his integrity, his record, and what he has done since he has been Acting Director. We ought to leave other inquiries for other occasions, other committees, and other authorities.

His admonition highlighted the real challenge of Gray’s hearing. The senators were not only assessing his fitness for the position of FBI director, but they were also trying to determine just how much of a Nixon supporter he was. The president and his administration were already

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547 Ibid, 285. In the hearing, Senator Gurney indicated that the senators participating in Gray’s confirmation hearing disagreed as to whether the permanent position of FBI director should be filled prior to the conclusion of the Watergate investigation. See pg. 291. Interestingly, news articles in the James O. Eastland Collection at the University of Mississippi reflect that even during Gray’s hearing, Eastland believed he would be confirmed. An article that appeared in the Jackson, Mississippi publication, Daily News, entitled “Eastland Sure Gray Will Be FBI Director,” stated, “Eastland said he has no doubt that Gray, who has been acting director of the FBI since J. Edgar Hoover’s death last May, will be confirmed easily by the Senate.” See “Eastland Sure Gray Will Be FBI Director,” Daily News, March 2, 1973, n.p. in James O. Eastland Collection, The University of Mississippi Archives.

549 Ibid, 292.
under scrutiny for Watergate. In the midst of Watergate, Nixon had nominated a personal friend who had given politically tinged speeches in favor of the Republican party and Nixon both before and after being appointed Interim Director. His speeches encouraged loyalty to the administration on behalf of government employees. Thus, his confirmation hearing and its many forays into his political affiliations represented a moment in time when the Senate worried less about the FBI itself and more about what the FBI might be capable of when working exclusively in support of a president.\textsuperscript{551} They worried that the FBI, under Gray’s leadership, would function less like a federal law enforcement agency and more like a state police.

One of the justifications that Patrick Gray used when asked about supplying information to the White House included a legal memo written by the Bureau’s legal counsel merely three days after the Watergate break in took place. The memo, addressed to Assistant Director Mark Felt, stated:

\begin{quote}
You advised me that the Acting Director desires an opinion on the legal basis for dissemination by the FBI to the White House of information concerning a criminal case being investigated. More specifically, if I understand the situation, he means a case being investigated as a criminal case for prosecution involving a violation of Title 18, United States Code, and which does, or may, implicate Federal employees as subjects. Our reply is limited to such a situation.

For reasons shown below, we conclude that the FBI has no authority, or duty, to initiate dissemination of information to the White House concerning the criminal investigation in progress. Note that we use the word “initiate.” We did not consider the matter of disseminating such information to the White House on specific White House request. In this latter situation we assume that since the President is the top boss of the Executive Branch he can obtain from that branch any information that he wishes. This is a different matter, legally and otherwise, from the one in which we would on our own decision
\end{quote}

\textsuperscript{550} \textit{Ibid}, 293.
\textsuperscript{551} One of Gray’s most attacked speeches was the one given in Cleveland. Gray testified that “with reference to my Cleveland speech, I found on the memorandum, in my handwriting, to my speech writers, I said, ‘Conceptually, let’s try a speech responding factually to criticisms of the Princeton conference.”’ See pg. 294 of Senate Hearings.
Towards the end of the memo, the legal counsel addressed past actions of the Bureau, writing:

This discussion raises the question of legality of dissemination to the White House in the past. It is my understanding under Mr. Hoover we disseminated information on criminal cases to the White House when, as, and if Mr. Hoover directed that we do so, and this was done on Mr. Hoover’s instructions without reference to the matter of whether we did or did not have the authority. The practice apparently had the sanction, grudgingly or otherwise, of the Attorney General and apparently was at least condoned by the White House. This is not to say either that it was right or it was wrong. Our only position is that from a strict legal standpoint, there was no specific authority for it. The authority and the obligation of the FBI are to keep the Attorney General fully informed and to leave the rest to him.553

But the kicker came when Gray admitted to Senator Kennedy that he had allowed White House staffer Dean to sit in on FBI interviews concerning the Watergate investigation. Not only had Gray allowed one of Nixon’s staffers to witness the FBI’s questioning of White House staff, but he also failed to follow up on important investigatory leads involving the White House. During the hearing, Senator Ervin referenced a *Washington Post* article that stated a person of interest in the Watergate case, Donald Segretti:

had been subpoenaed to testify in the Watergate criminal prosecution, that he had been interviewed by the FBI, and that 2 days before the convening of the Republican National Convention he was in Miami, and that a White House aide showed him statements which he said had been made to the FBI, and was told about giving some kind of suggestions from the White House aid as to how he should testify in case he were called as a witness in the criminal prosecution.554

Senator Ervin was accusing Dean of showing Segretti the FBI files passed along to him by Gray. Segretti was key to the Watergate investigation, as he led FBI agents into the twisted accounting supporting the Committee to Re Elect the President (CREEP). He hired undercover agents to

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552 Memorandum from D.J. Dalbey to Mr. Felt, Subject Dissemination of information, the White House, criminal cases, July 20, 1972, Senate Hearing, 298.
553 Memorandum, Senate Hearing, 299.
554 *Ibid*, 305.
carry out CREEP’s dirty work, including break-ins. In exchange for the recruits’ loyalty and work, Segretti promised them high profile jobs within the Nixon administration following the president’s reelection.\textsuperscript{555} During their investigation into Watergate, Bob Woodward and Carl Bernstein wrote that Segretti assured his undercover agents that Nixon knew about the work they were doing for him and that they would be rewarded accordingly.\textsuperscript{556} His involvement in the Watergate break-in was crucial to understanding the incident’s connections to the White House. So, the possibility that Segretti was receiving insider information from the White House about the FBI’s investigation was serious business. Senator Ervin asked Gray if the FBI had interviewed Segretti in order to determine whether he was receiving such information from the White House. Gray replied that he was never interviewed as such; he said:

\begin{quote}
The only thing that was ever done was the call that I made to Mr. Dean when I saw this article in the newspaper. Because, the only individual who had these from me was Mr. Dean, and in point of fact, you know, Mr. Segretti would have been entitled to look at these had he asked to look at them. This is the law of the case.\textsuperscript{557}
\end{quote}

That Gray had not ordered the FBI to follow up on the leak was bad enough; that the Interim Director of the FBI believed that anyone on the White House’s payroll could look at the FBI’s Watergate investigation files was astounding. Gray had interpreted the legal opinion from FBI counsel to mean that the White House could look at documents related to any investigation, and furthermore, it could allow any individual, including those currently under investigation by the FBI to see such files. He was not worried about the possibility that Dean would allow Segretti to see FBI files prior to being interviewed by FBI agents; in fact, he legally justified such action by

\textsuperscript{556} Bernstein and Woodward, “FBI Finds Nixon Aides Sabotaged Democrats.”
\textsuperscript{557} \textit{Ibid}, 305-306.
Gray’s actions in the Watergate investigation became central to his confirmation hearing. Senator Byrd acknowledged that the confirmation hearing was taking place at an unfortunate time and lamented his inability to separate Gray’s confirmation from the Watergate case. Had the investigation ended before the confirmation, then the senators would have had an easier time deciding whether, in retrospect, the FBI had carried out a thorough investigation. But, since they were assessing the FBI’s ability to look into Watergate while also assessing the FBI’s leader, it made for complicated hearing. Senator Byrd stated:

If we start with the premise, as I think I have to, that there is something about the Watergate that has not yet been brought to light, and then if we go to the next premise, that being that the investigative agency, the FBI, did not in fact investigate and probe in depth, and with absolute thoroughness and with absolute objectivity—which premise I have to accept at this moment—then when we consider that you were the Acting Director for 10 months during this investigation, I have no alternative but to vote against the confirmation. I wish that it were possible for us to be able to delay this vote on the confirmation until we knew what really took place with respect to the Watergate incident and how well the FBI really conducted the investigation.\(^{558}\)

Of all the senators on the committee, only Senator Hruska took advantage of Gray’s offer to review the FBI’s Watergate files. He recounted that he was “impressed by the absolute thoroughness and the painstaking detail in which all of the aspects were pursued.”\(^{559}\) Despite Senator Hruska’s favorable review, the committee as a whole found Gray’s prowess as lead investigator seriously lacking. For the remainder of Gray’s time before the committee, he received hours upon hours of questions relating to the case. Senator Byrd continued to press upon Gray’s allowance to Dean to sit in on FBI interviews of White House personnel. Gray defended himself, saying:

\(^{558}\) Ibid, 316.  
\(^{559}\) Ibid, 320.
Mr. Gray: No, I was not really in a position to object. I saw nothing wrong with it. If the counsel to the President of the United States tells me that he wants to attend interviews of individuals who are members of the President’s staff—including some highly placed ones—and that he is charged with conducting an inquiry by the President to determine whether any of these fellows are involved, I am not going to question that, Senator.

Senator Byrd: What kind of answers to questions do you think you will get in that kind of situation?

Mr. Gray: I have no idea.

Senator Byrd: Do you not think the White House personnel are going to be intimidated by the presence of Mr. Dean?

Mr. Gray: If they had any involvement, I would say perhaps they would be intimidated. That really depends upon their involvement. 560

Based upon his answers, it appeared that Gray seemed unaware or indifferent to the idea that Dean might be the one who, all along, was the one with the involvement. Only in an exchange with Senator Gurney did Gray publically own up to this possibility. When Senator Gurney asked if there was anything unusual about Dean being present when White House staff were interrogated, Gray replied no. He once again stressed that Dean served as counsel to the president and that his attorney-client privilege allowed him to be there. Senator Gurney retorted:

Isn’t there another reason why he would want to be present? Certainly it occurs to me that any investigator or lawyer charged with an investigation would want to be present when a witness testified or was interrogated so that he could not only hear the answers but also to get an impression of the demeanor of the witness; isn’t this a fair thing to say? 561

Gray responded that he could conceive of that being a reason, but Dean had never mentioned it to him. Senator Tunney challenged Gray by asking him how much of the Watergate files Dean had actually seen. Gray defended himself, saying he had only allowed Dean to see the files he

560 Ibid, 335.
561 Ibid, 347.
himself had seen. Dean only saw 82 of the 186 reports.\footnote{Ibid, 365.} But Senator Tunney continued prodding. “Let’s just say that he made a request for all the reports?” he asked. Gray responded, “In a situation like this where he is charged by the President to conduct an inquiry, yes, I probably would have made them available to him.”\footnote{Ibid.} At one point, Senator Kennedy asked Gray whether he ever considered “the possibility that Mr. Dean was more involved in this Watergate affair than otherwise might have been thought, and whether, on the basis of ‘regularity,’ access to the files and interviews should have been extended?”\footnote{Ibid, 376.} His question led to the following exchange:

Gray: I feel quite certain that my memory is good on this, is that we had no indications whatsoever that Mr. Dean was involved in any way, where he might have been asked to represent anybody. This just never did come up. I knew, of course, that he was counsel to the President, and I knew that the President had named him to conduct this inquiry. I did not at any time believe that he was compromised nor did I believe at any time that, had there been any reason to consider that he was compromised in any way by Watergate, the President would have designated him as the individual to conduct the—

Senator Kennedy: Perhaps the President didn’t know.

Mr. Gray: This could be a possibility, Senator. Really, that would be a very, very remote possibility. We really had no information on the basis of the reports coming in to us from all kinds of sources that Mr. Dean was involved in any way.\footnote{Ibid, 376.}

Kennedy continued to question Gray, asking if he had spoken with John Mitchell when he learned about the Watergate incident. Though Mitchell and Gray stayed in Los Angeles at the same hotel on the date of the break-in, Gray maintained that they had not spoken. He asked specifics about persons that the FBI had interviewed; Gray referenced informational sheets assembled for him by FBI personnel, seemingly detached from the case itself. After days of

\footnote{Ibid, 365.}
testimony, the senators had heard enough. They turned their questions over to outside experts, and Gray, war-weary and defeated, concluded his testimony.

The committee called John Elliff to testify. Elliff, a political scientist and Brandeis University professor who had studied the FBI since the Princeton Conference of 1971, was well-versed in the history of the Bureau. When he heard Gray’s offer on the first day of his hearing to make available to the entire Senate the FBI’s Watergate files, Elliff was concerned enough to write the Attorney General, Richard Kleindienst, to emphasize the unprecedented (and absurd) nature of such an offer. Elliff argued that Gray’s offer of the Watergate files had been presented independent of any approval on behalf of the Attorney General. He had singlehandedly decided to open the files. Second, he argued that Elliff’s offer had contradicted the legal opinion of his own Bureau counsel. Though the FBI counsel had said that Gray was not to initiate any offer of files to the White House, he had a duty to supply them when asked to do so. With the Senate, however, Gray volunteered the files upon his own volition. Elliff wrote in his statement to the committee, “it is not clear why there is a difference between the two situations and why the Acting FBI Director should be able [to] go beyond the bounds of the explicit request made by the Senate”566 in offering the files. Elliff’s testimony highlighted the tension inherent in allowing the FBI Director to report to both the President and the Attorney General, and how Gray, in some instances, bypassed the Attorney General completely to adhere to the President’s interests.

But Elliff’s testimony also drew attention to another problem tangential to Gray’s confirmation. He gave a long exposition on the many problems inherent in the FBI. He discussed his concern that the FBI had no legislative charter and therefore its intelligence

566 Ibid, 402.
gathering had largely been directed by the executive orders of past presidents.\textsuperscript{567} He referenced Gray’s continuance of previous policies and programs related to collection on so-called “radical” groups.\textsuperscript{568} Most concerning, as technology increased, so did the ability to collect surveillance.\textsuperscript{569} And finally, he declared “the FBI’s intelligence system appears to be founded on out-of-date assumptions.”\textsuperscript{570} Elliff’s testimony concentrated not on Gray, but rather on all the problems inherent in the Bureau. He remained fixated on the lack of a legislative charter for the agency, reminding the senators that the Bureau’s intelligence capabilities stemmed wholly from presidents’ whims. The irony of that allowance was not yet known to the committee. They had no idea the depths to which Nixon had already gone to protect himself and to secure his chances for reelection. The Watergate investigation had progressed to a significant extent at this point. The senators knew that Watergate had implicated those working for CREEP; what they did not yet know was that it would also implicate Nixon. When he was asked about whether Gray had politicized the position of director by carrying out the Watergate investigation while working with Dean, he replied:

My personal impression is that if it was a sin, it was a sin of transition. He was a man new to his job, new to his responsibilities, an Acting Director and not a full-fledged permanent Director of the FBI, and that perhaps as permanent Director he would have said, ‘Mr. President, I will conduct this investigation, I advise you not to have an in-house investigation on your own. That will only tend to politicize an investigation which ought to be an objective, neutral investigation.’\textsuperscript{571}

Elliff generously gave Gray an allowance. Had he politicized the role of director? Perhaps; but if he did, Elliff reasoned, it was only because he was new to the job. Finally, Elliff expressed his

\textsuperscript{567} Ibid, 410.
\textsuperscript{568} Ibid, 413.
\textsuperscript{569} Ibid, 414.
\textsuperscript{570} Ibid, 419.
\textsuperscript{571} Ibid, 433.
hope that Gray and future presidents had learned, following the Watergate investigation, that when an investigation leads close to the White House, the President:

ought to exercise the self-restraint himself not to duplicate the investigation being conducted by the FBI. He should not attempt to inject into the investigative process a man of his own as was done in this case; and if future occasions such as this do arise, when the temptation is there to have a Presidential aide conduct an investigation that ought to be in the hands of the FBI, both sides should resist that temptation.572

Elliff’s testimony was compelling, in that he identified many issues that needed to be addressed by Congress concerning the FBI—namely the lack of a charter. Yet, he did not add anything noteworthy to the discussion on Gray.

One of the most poignant testimonies in the hearing came from Joseph L. Rauh, Jr., a past chairman of the Americans for Democratic Action.573 His testimony, unlike Elliff’s, spoke to Gray’s fitness as director. Rauh opposed Gray’s confirmation. In his prepared statement, he elucidated an interesting personal history with the FBI. In 1950, he wrote a favorable review of a book that had attacked the FBI and Hoover.574 He said, “The review appeared in the Washington Post on a Sunday morning. When the Senate met on Monday noon, Senator Bourke Hickenlooper, who I had never met, took the floor to denounce me with a speech prepared from

572 Ibid, 434.
573 The Americans for Democratic Action is a political organization founded in 1947 by prominent liberals, including Eleanor Roosevelt. Though the group was anti-communist, it came under scrutiny from Joseph McCarthy during the 1950s. The organization was antiracism, favored civil rights, and supported leftwing positions related to American involvement in Vietnam, the environment, and abortion. See “Americans for Democratic Action,” in the Eleanor Roosevelt Papers Project, George Washington University, https://www.gwu.edu/~erpapers/teaching/glossary/ada.cfm.
574 Statement of Joseph L. Rauh, Jr., Vice Chairman, Americans for Democratic Action, Before the Senate Judiciary Committee, Senate Hearings, pg. 445. Hoover hated Max Lowenthal’s The Federal Bureau of Investigation, which criticized the FBI. Athan G. Theoharis and John Stuart Cox wrote, “Working for more than a decade, Lowenthal had compiled a formidable indictment.” See Theoharis and Cox’s The Boss: J. Edgar Hoover and the Great American
my dossier at the FBI.” He later summarized, “what happened was this: FBI materials were used to silence or attempt to silence a critic.” Despite his negative encounter with the Bureau, he also had a very favorable one. He described a situation that occurred in 1969 when his client, Joseph A. Yablonski, was murdered. He said, “it seemed certain that the murder was union-connected and union-directed. But I was helpless to prove this important fact myself.”

Initially, Attorney General John Mitchell and Secretary of Labor George P. Shultz refused to take the case, but eventually, public criticism forced Mitchell to order the FBI to investigate. Rauh testified, “the Bureau’s determination, thoroughness, and ability obtained overwhelming evidence of the involvement of the United Mine Workers officials and made possible the cleaning up of one of the country’s greatest trade unions.”

Having seen both the good and the bad that the Bureau was capable of doing, Rauh served as a credible and rational voice when he expressed his disdain at the prospect of Gray becoming the permanent director. He said:

I have been an FBI watcher for 30 years, and I want to say for Mr. Hoover that I do not believe he did a partisan political act in those 30 years. I am not defending the use of FBI materials to discredit critics, and as one who was subjected to that treatment, it is not a very happy treatment. But it is different; there is not the same degree of danger that the use of FBI files in politics would be.

I never thought I would be saying that I was thinking of the good old days of J. Edgar Hoover. [Laughter.]

But I want to make my point clear: Mr. Hoover would not let politics get in there. He did some other things that we are all worried about, but on this item he was a giant, and that


Senate Hearings, 448.

Ibid, 445.

Ibid.
is what we must never forget. And it was because, through my personal experience, I could explain the difference between using FBI files in a partisan way and using them against your critics, whether you like that or not, that I referred to this incident [involving Rauh’s *Washington Post* review].

Now, both for the good the FBI has done—its magnificent police work—and for the dangers of the dossiers, surveillance, wiretapping, and bugging, there is no place for a partisan political figure at the head of the FBI.

Its whole moral depends upon being nonpolitical, and the dangers in the use of its great power now are really beyond description. So the question is, is that danger there? We believe it is…

And everything that has happened in the last 10 months confirms the worst fears that one would have of taking a political appointee and putting him into this job that requires a giant to stand against political pressures.  

Rauh’s testimony hit straight at the issue. He was not a fan of Hoover, but he worried that even with Hoover’s mistakes, he was a better director than Gray because he did not let himself succumb to partisanship. Rauh was clear in saying that Hoover brought his own set of issues to bear. Hoover had virulently attacked the Bureau’s critics (including Rauh). His anti-communist ideology had diverged into paranoia, something Rauh, as former chairman of the Americans for Democratic Action knew well. Rauh, however, praised Hoover for avoiding partisanship. His testimony was powerful. He had neither blind affection nor blind hatred for the Bureau. He had experienced Hoover’s wrath for his review and had also witnessed the Hoover’s propensity to toss aside politics when investigating a crime, no matter the victim. Rauh believed that Gray, as a political appointee, did not have the stature to be a “giant” against political pressures, and he was right. Gray, an interim director of the FBI and an ambitious people pleaser, sought Nixon’s approval in everything he did. He did whatever Nixon told him to do. While Hoover made Nixon angry in order to preserve his control of the Bureau, Gray offered the Bureau to Nixon on

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Gray’s automaton-like desire to please surfaced yet again in a final exchange with Senator Kennedy. On the final day of the hearing, Gray had been called to the stand to testify one last time. Senator Kennedy asked Gray about when he learned of a work relationship between Gordon Liddy, one of the Watergate burglars, and Nixon’s counsel, Dean. His question led to the following exchange:

Senator Kennedy: When you saw Mr. Dean’s name mentioned and the name of one of the defendants mentioned, what sort of antenna went up?
Mr. Gray: No antenna went up. I couldn’t make that kind of jump at that point in time, that because he had recommended Liddy as a counsel to the committee he had to be involved. And as I testified this morning, Senator, I don’t think the President is going to name his counsel to conduct an inquiry of White House involvement if he has any reason to believe the counsel is involved.
Senator Kennedy: How is the President going to determine this?
Mr. Gray: I think the President knows perhaps even more than the FBI Director about things that go on within the entire Nation. I don’t have the picture on the White House staff.
Senator Kennedy: Why is he requesting that information from you if he already knows?
Mr. Gray: That is the President I am talking about, Senator.
Senator Kennedy: That is the one I am talking about. If you say on the one hand he knows more about it than you people, yet he has requested you people to look into it, then he is relying upon you, isn’t he?
Mr. Gray: He knows more about his own staff and certainly he is not going to have a man there as his counsel who is involved in any way.  

Gray simply could not fathom that Dean or Nixon would be involved in Watergate. He held the President in such high regard that he was above reproach. Gray anchored the entire FBI investigation of Watergate on the assumption that Nixon and his innermost staff, including Dean, were innocent. His inoculation to their possible guilt became an issue for Senator Byrd on the final day of Gray’s confirmation hearing. Byrd marveled at Gray’s baseless trust of the Nixon administration, stating:

\[\text{Ibid, 634.}\]
Senator Byrd: You have known of Presidents being betrayed, have you not, by a confidant?
Mr. Gray: I think there may have been some Presidents in our history who have found themselves in this situation, yes, sir.
Senator Byrd: And surely Senators have been betrayed?
Mr. Gray: Yes, sir.
Senator Byrd: Governors betrayed?
Mr. Gray: Yes, sir.
Senator Byrd: Even Christ was betrayed by one of His chosen few. What I can’t understand, this presumption of regularity goes so far and so deep that everything is accepted at face value, without question, without the slightest iota of suspicion.\footnote{Ibid, 669.}

The exchange continued, with Senator Byrd becoming increasingly angry. Byrd was especially frustrated to learn that the FBI contacted Dean on June 22 to ask if Howard Hunt, one of the Watergate burglars, had an office in the White House. Gray testified that when asked on the 22\textsuperscript{nd} if Hunt had an office, Dean said he would have to check. Yet, Gray also indicated that Hunt’s possessions from his office were removed from his office on June 19 and placed in Dean’s office on the 20.\footnote{Ibid, 667.} In other words, Byrd caught Dean’s “contradiction.” He stated:

Senator Byrd: You indicated that Mr. Dean probably lied to the FBI agents as you now look back, yet yesterday you said you would continue to send to him raw FBI files if he requested them. Why would you now continue to send raw FBI files to an individual who probably lied, to use your words, to an FBI agent?
Mr. Gray: Well, Senator Byrd, I think that you have got to realize once again that I am a Bureau Chief in an executive department of the Government, that I have to take orders from somebody, that I do report to somebody, that I am just not out there in the open, you know, independent and doing exactly as I please, and that man is Counsel to the President of the United States.\footnote{Ibid, 671.}

Senator Byrd continued his questioning of Gray. He asked:

Senator Byrd: Mr. Gray, where does your first duty lie, to the President of the United States or to the FBI?
Mr. Gray: I’m sorry, sir?
Senator Byrd: Where does your first duty lie, to the President of the United States or to the FBI?
Mr. Gray: I think that that is a tough question and I have said that before. I am a Bureau

\footnote{Ibid, 669.}
\footnote{Ibid, 667.}
\footnote{Ibid, 671.}

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Chief in an executive department of the Government. I take orders from the President of
the United States and, as I think I previously testified, if the Congress wants to put this
FBI out into independent orbit and let its Director operate the FBI as he sees fit, we may
indeed be creating a situation in which we are going to develop a national police force.
This is a very real risk. It is a very serious question. It is not a light question. But at this
time, by virtue of congressional enactment, I am in the position of Acting Director at the
pleasure of the President of the United States. I do take my orders from the President of
the United States. I can’t evade that.\textsuperscript{584}

By the end of the hearing, Senator Byrd declared that he could not vote in favor of Gray’s
confirmation. He cited a long list of indiscretions on the part of Gray: he had made political
speeches on behalf of Nixon (including at the City Club of Cleveland); he supplied information
from FBI field offices to assist Nixon’s presidential campaign; having visited 58 of 59 FBI field
offices during his ten months as interim director, he was out of the office too frequently; his
dealings with Dean regarding the Watergate investigation demonstrated a lack of independence
in the investigation; he had taken Dean’s suspicious answers at face value and had not
investigated them further; he had stated in his confirmation hearing that he would continue to
turn over raw files to Dean.\textsuperscript{585} He concluded that he could not vote to confirm Gray’s
appointment as director, explaining:

\begin{quote}
I think that the image of the FBI has suffered, in view of all the developments which
occurred during his acting directorship, and I think that the professionalism, morale, and
efficiency of the FBI have likewise suffered, as has public confidence in the FBI. There
is too much evidence of political activity on the part of the Acting Director; there is too
much subservience to the White House; there are too many unanswered questions with
respect to the possible misuse of FBI files in connection with the Watergate
investigation—all of these, together with the foregoing detailed reasons, are sufficient to
justify a fear that the FBI could, in the future, become a White House national police
force to be used in political campaigns, thus endangering the constitutional liberties of all
Americans.\textsuperscript{586}
\end{quote}

By the end of the hearing, Gray’s ability to serve as director had been called into question; he

\textsuperscript{584} \textit{Ibid}, 672.  
\textsuperscript{585} \textit{Ibid}, 691-692.
had been berated, prodded, and deflated with the senators’ many questions. All that remained was the committee’s final decision.

Before the committee made its final decision, Gray became compelled to confess an indiscretion. Although he initially denied disposing of any FBI files on behalf of the Nixon Administration, he recanted his story after a sleepless night. After the hearings had ended, Gray called Assistant Attorney General Henry Peterson and admitted, “[John] Dean did give me two files. I wasn’t ready to admit that to you yesterday and I’m sorry.” When Peterson asked to see the files, Gray stated, “I burned them.”

Gray explained to Attorney General Kleindienst that the files had come from the White House safe of one of the Watergate burglars, E. Howard Hunt. Gray maintained that the documents were not connected to Watergate but rather included some top-secret State Department cables and documents about Senator Ted Kennedy’s car accident at Cappaquiddick in 1969. He recalled that John Dean had given him the files in the presence of John Ehrlichman and declared, “these should never see the light of day.” Gray recalled, “I took their statements at face value.” He took the documents home, where he stored them in his closet. Six months later, he burned them along with his discarded Christmas wrapping paper. When Kleindienst heard Gray’s confession, he alerted Nixon, who withdrew his nomination from Gray. His tenure as FBI director was done.

Three days before Nixon’s resignation in 1974, the tapes subpoenaed from Nixon’s office confirmed what prosecutors involved in the Watergate investigation had suspected. A recording

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587 *Gray*, 242.
on June 23, 1972—six days after the Watergate burglary—revealed Nixon’s involvement in the
cover-up of the break-in during the earliest days of the investigation. When the tape became
public, it would be the tipping point that led to Nixon’s resignation.591 That summer morning,
Nixon and his chief of staff, Bob Haldeman, brainstormed a way to derail the FBI’s investigation
into the burglary. Haldeman briefed Nixon on the Bureau’s progress, explaining, “their
investigation is now leading into some productive areas, because they’ve been able to trace the
money . . . and it goes in some directions we don’t want it to go.”592 Haldeman proposed a
solution. He explained, “the way to handle this now is for us to have [CIA director Vernon]
Walters call Pat Gray and just say, “Stay the hell out of this. This is—there’s some business here
we don’t want you going any further on.”593 Journalist Rick Perlstein contextualized this
conversation, writing that John Mitchell (former Attorney General and director of the Committee
to Re-Elect the President) and Dean had come up with the plan the evening before. They
believed they could put an end to the FBI’s investigation by “simply [telling] the FBI that, yes,
this whole break-in was part of a CIA operation. A secret CIA operation that the FBI had no
business looking into.”594 The CIA and FBI had an agreement not to meddle with each others’
 sources. Nixon’s staff believed they could end the FBI’s investigation by convincing the CIA
director to claim CIA sources were involved. In doing so, the FBI would have to back away.
Walters did approach Gray and ask him to back off. The FBI temporarily redirected its

590 Ibid.
592 Smoking Gun Transcript, Miller Center of Public Affairs, University of Virginia.
593 Ibid.
investigation, only to meander eventually back towards evidence suggesting White House involvement.

Following his resignation as interim director, Gray was suicidal. He recalled:

Until that moment I had total faith and belief in the government of the United States and in the office of the presidency. I could not accept the fact that we in the FBI—and the American people—had been lied to so blithely by the president and the top officials of our government. The destruction of the two Hunt files, the lies of Dean and Ehrlichman about Dean conducting an investigation for the president and reporting directly to the president, and my resulting cooperation with Dean and the fulfillment of his requests in the name of the president were just too much for me to reconcile.

In that moment, the Senate confirmation committee’s fears were confirmed. Gray had allowed himself to be used by the president in an effort to hinder the FBI’s investigation into Watergate. He had allowed Nixon’s men to meddle in the investigation, and though he could not imagine at the time that they were involved in any wrongdoing, it turned out that they very much were guilty. Gray would continue to face hardship long after his tenure as director ended. Though the Watergate special prosecutor decided not to prosecute Gray for his destruction of Hunt’s files, the Attorney General’s office later indicted Gray and his Associate Director, Felt, for a black bag job that the FBI ran against Weather Underground. Gray spent years and all of his personal savings on a defense team. Eventually, the Attorney General’s office dropped the charges against Gray. In the preface to his memoir, Gray’s son recounted the toll that Watergate and the subsequent charges took on his father. He wrote:

Watergate was his undoing. Though he had not been part of any of the conspiracies, it would take him the next eight years to prove it. Five federal grand juries, four committees of Congress, dozens of magazine articles, hundreds of newspaper accounts. The cover of Time magazine. The dust jack of All The President’s Men. All of them lumping him in with the actual criminals, all of them assuming his guilt. None offering

595 Gray, 253.
any proof.  

Gray is a tragic figure in the history of the FBI. It is difficult to imagine who could have adequately filled the gaping hole in leadership left after Hoover’s death. It is also difficult to imagine that anyone short of Hoover could have withstood the onslaught of intervention and deceit the Nixon White House hurled at Gray. From the beginning of his tenure as interim director, it seemed that circumstances did not stand in his favor. Although Hoover was vulnerable towards the end of his life, Nixon could not penetrate the Bureau’s political impartiality. Nixon could not make the FBI work for him. With Gray, however, Nixon handpicked a man who demonstrated blind loyalty towards him. Gray was loyal first to Nixon and second to the Bureau. Even during the Watergate investigation, he could not fathom that the president and his men could be capable of committing crimes. Gray learned the extent of the corruption the hard way.

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597 Ibid, xxi.
CONCLUSION

The FBI under Nixon faced its most tumultuous days. For nearly half a century, the Bureau resided under the protection of a stalwart leader, Hoover. Though historians viewed his authority over the Bureau as impenetrable, his final days in office speak otherwise. At the end of his life, Hoover was stuck in a machine of his own making. He had led the Bureau to implement effective intelligence gathering policies. Under his leadership, agents carried out black bag jobs at his behest, collecting multitudes of useful information to prosecute criminals. When Hoover felt the public’s approval shift against him, he struggled to quell his agent’s eagerness to continue collecting intelligence. His rogue assistant director, William Sullivan, did everything in his power to assist the Nixon Administration’s efforts to collect political intelligence. Hoover’s firing of Sullivan was seen, at the time, as the action of a zealous and territorial leader. This work, however, argues for a more complicated examination into Hoover’s actions. Hoover’s firing of Sullivan and his sabotage of the Huston Plan was a last-ditch effort to save himself from the wrath of a growing chorus of critics. The Princeton Conference of 1971 was a public ridicule of Hoover. The nation’s brightest academics converged on an Ivy League campus to critically assess the Bureau’s recent actions. For years, Hoover and the Bureau had been one and the same; thus, Hoover saw the conference as nothing more than a critique of himself.

President Richard Nixon never had to fire Hoover. When Hoover passed away
unexpectedly in May 1972, Nixon was able to appoint Hoover’s successor. L. Patrick Gray, a loyal acquaintance of Nixon, assumed the position of interim director a mere six weeks before the Watergate break-in. Gray never had the gravitas to fill the enormous void that Hoover left behind. His inadequacy became even starker in light of Watergate. Prior to his position at the FBI, Gray had been a senior bureaucrat in the Department of Justice. He served his superiors with blind obedience. He was excited at the prospect of becoming the permanent director of the Bureau. He was no match, however, for Hoover, who had spent decades standing toe to toe with presidents throughout multiple wars, both hot and cold. Hoover’s absence and the weak leader that Nixon chose to replace him both represented a crisis for the Bureau.
In the days and months following Gray’s resignation, the FBI received fresh attention from Congress. Watergate had revealed new depths of corruption within the government. Congress decided to look deeper and see how far wrongdoing had extended throughout the government.

In 1975, Senator Frank Church, a Democrat from Indiana, chaired a Senate Committee to investigate the intelligence community. Though the committee would be mostly remembered for its unveiling of CIA abuse, it also investigated the FBI’s COINTELPRO, the counterintelligence operation unearthed in the Media, Pennsylvania FBI documents. The attention would shift back to Hoover, and because the committee looked at Hoover at the apex of his career, his final days as a vulnerable director would be forgotten. Hoover as he was under Nixon became a distant memory. When the Freedom of Information Act became law in 1974, intelligence agencies were forced to release previously classified documents to the public. Historians and journalists, eager to examine the depth of Hoover’s wrongdoing, rushed to procure the newly released files. They were eager to examine the depth of Hoover’s wrongdoing. His reluctance to collect intelligence at the end of his life fell by the wayside.

Gray would also be forgotten. Nixon appointed Clarence Kelley, a former FBI agent and police chief from Kansas City, Missouri. Kelley worked to reform the Bureau in the aftermath of
the Church Committee’s examination of the Bureau. Keenly aware of Hoover’s misdeeds, Kelley repaired relations with the CIA and worked to improve the American public’s deeply negative perception of the Bureau. Unfortunately, he was ousted from office after allowing Bureau repairmen perform light carpentry work on his home, paid for Bureau funds. Kelley’s wife was dying of cancer at the time, and Kelley claimed he had not the time nor energy to worry about his house. He promised he would reimburse the Bureau. To his dismay, neither Congress nor President Jimmy Carter had any patience for an FBI director’s wrongdoings. Kelley retired from office in 1977, and Carter replaced him with Judge William Webster, a federal judge who led the Bureau into the 1980s with a fierce attention to the rule of law.

Yet, the Bureau’s time under Nixon would remain crucial days that redefined the relationship between FBI director and the president.
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**Articles**


VITA

MELISSA GRAVES

EDUCATION

Ph.D. University of Mississippi
Oxford, Mississippi
ABD, Ph.D. Candidate
History, expected May 2016
Dissertation Title: Nixon’s FBI: The Bureau in Crisis
Major Field: United States, Post 1877 (emphasis in Cold War and Intelligence Community / Defense history)
Minor Fields: Middle East History; US Religious History

M.A. University of Mississippi
Oxford, Mississippi
History, 2011
Focus: Religious Fundamentalism

J.D. University of Mississippi School of Law
Oxford, Mississippi
Law, 2007

Summer Coursework University of Cambridge, Downing College
Cambridge, England
2006

B.A. Hardin-Simmons University
Abilene, Texas
English and Communication, 2005
Summa Cum Laude

PROFESSIONAL EXPERIENCE

July 2015-Present University of Mississippi Center for Intelligence and Security Studies
University, MS
**Interim Director**

- Oversee a multi-million dollar budget and teaching staff for a minor of 80 students.
- Design curricula and programs targeted to undergraduate students.
- Ensure deliverables are met for ODNI Centers for Academic Excellence grant.

**August 2011-Present**

**University of Mississippi Center for Intelligence and Security Studies**

**University, MS**

**Instructor**

- Teach intelligence analysis, writing, and briefing to upper-level college students.
- Teach about the history of the intelligence community, the intelligence community’s relationship to policymaking, and national security law to introductory level college students.
- Chair senior level students’ theses and capstone projects relating to intelligence and national security.
- Instructor of record for the following courses: ISS 125, Introduction to Intelligence Studies (Fall 2011, Spring 2012, Fall 2012, Spring 2013, Fall 2013, Spring 2014, Fall 2014, Spring 2015, Fall 2015) and ISS 351 and 352, Advanced Analytics (Fall 2012, Spring 2013, Fall 2013, Spring 2014, Fall 2014, Spring 2015, Fall 2015); ISS 420 Special Topics (Summer 2012); ISS 499 Capstone (Spring 2014, Spring 2015, Fall 2015).

**December 2012-July 2015**

**University of Mississippi Center for Intelligence and Security Studies**

**University, MS**

**Associate Director**

- Conduct research on behalf of CISS including drafting grant proposals, overseeing book and article projects, and overseeing faculty research grants. Submitted a grant proposal that allowed the Center for Intelligence and Security Studies to become one of the Office of the Director of National Intelligence’s Centers for Academic Excellence in 2012.
- Oversee and produce *Days of Intrigue*, a weekend-long intelligence and policymaking case study to teach elite students from across the nation about how intelligence analysis interacts with policy. The case study has become a standard across the Intelligence Community for university analytical training, as evidenced by the Defense Intelligence Agency’s adoption of the Days of Intrigue model for its Centers for Academic Excellence program. The case study includes practitioners from US intelligence agencies (CIA, DIA, FBI, NSA, and State INR as well as US politicians who serve as team leaders for CISS students) and incorporates students from the University’s intelligence minor and public policy major.
- Prepare student presentations for Five Eyes Analytic Workshop.
• Establish and maintain academic collaborations with university intelligence studies programs in the United Kingdom. Because of this collaboration, CISS has cohosted a series of international intelligence research workshops with Brunel University as well as held study abroad programs and engaged in scholarly publishing opportunities.

• Manage center projects including international conferences / workshops, collaborations, and publications.

• Oversee student research, including presentations to U.S. and foreign intelligence agencies.

May 2014-Present  
**American Council on Education**  
Washington DC  
**Curriculum Reviewer**

• Travel to military bases to review intelligence curriculum and provide undergraduate / graduate course credit.

• Interview military personnel to award college course credit based upon job duties.

January 2012-September 2012  
**Institute for Intergovernmental Research**  
Tallahassee, FL  
**Contractor**

• Researched and wrote a report related to the future of policing and criminal law.

• Presented policy recommendations before the Department of Justice’s Director of Bureau of Justice Association and the Police Futures Association in Washington, DC.

October 2008-December 2012  
**Center for Intelligence and Security Studies**  
University, MS  
**Project Coordinator**

• Recruited high performing high school and university students to intelligence minor. Cohort GPA averages in the 3.7-3.8 GPA range.

• Managed budgets for grant-related projects, totaling over $6 million.

• Traveled and presented at academic conferences as a representative of the center.

• Ensured program compliance with state and federal laws.

• Oversaw conference logistics for three international conferences.

• Wrote grant proposals and appropriations requests, resulting in an award of $6.8 million in federal government appropriations and $1.3 million in grant awards.

May 2008-July 2008  
**Office of Attorney General**  
District of Columbia  
**Summer Associate**
• Drafted legal documents including motions, guardianship petitions, letters, and research memos.
• Corresponded with DDS case managers concerning court order statuses.

Legal Research Intern
• Wrote literature reviews on social, mental, and criminal issues for inclusion in the Institute’s peer reviewed publications.

SPECIALIZED TRAINING
• Department of Homeland Security Analytical Writing and Briefing Seminar, 2013
• Federal Bureau of Investigation (FBI) Behavioral Science Research Methods Certification, University of Virginia, 2011
• University of Mississippi Office of Research and Sponsored Programs Research Administration and Management Program Certification, 2009

BAR LICENSES
Texas (inactive since 2014)
Passed bar exam in Washington (2008)

GRANTS
- Graves, M., Dissertation Research Grant, University of Mississippi Office of Research and Sponsored Programs, 2014, $1000, funded.
- Subcontractor, Stottler Henke and Pherson Associates, “IARPA SIRIUS Subcontract with the Center for Intelligence and Security Studies,” IARPA, 2011, $179,573, not funded.

PUBLICATIONS

BOOK CHAPTERS

BOOKS

PEER REVIEWED JOURNAL ARTICLES

PROFESSIONAL PUBLICATIONS

BOOK REVIEWS

AWARDS
Nominated, Instructor of the Year, International Association for Intelligence Educators (2012, 2015)
Nominated, Frist Award (University of Mississippi, 2011)
Recipient, Minnie L. Anderson Medal for Character and Service (Hardin-Simmons University, 2005)
Regional Gold American Advertising Award, Student Division, 2004

PAPERS PRESENTED / PRESENTATIONS


Graves, M., “The University of Mississippi As a CAE Institution.” Intelligence Community Centers for Academic Excellence Annual Meeting, September 2014.

Since 2008, presented professional papers and made presentations to groups, including:

American Bar Association
Defense Intelligence Agency’s Five Eyes Analytic Workshop
International Association for Intelligence Education
International Studies Association
The Institute for Defense and Government Advancement

MEMBERSHIPS
International Association for Intelligence Educators
American Bar Association
International Studies Association Intelligence Section
FBI Futures Working Group

SERVICE
University of Mississippi’s Chancellor’s Standing Committee on Accessibility
University of Mississippi’s Chancellor’s Committee on the Status of Women
International Studies Association Young Scholars Committee
President, Board of Directors, Theatre Oxford, 2014-2015