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Description of document: Records related to destruction of Federal Bureau of Investigation (FBI) Field Office Investigative Records/Files, 1977-1991

Requested date: 24-May-2012

Release date: 27-June-2012

Posted date: 07-December-2020

Source of document: FOIA Officer
National Archives and Records Administration
8601 Adelphi Road, Room 3110
College Park, MD 20740
Fax: (301) 837-0293
Email: foia@nara.gov
Online: [FOIAonline](#)

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June 27, 2012

Re: Freedom of Information Act Referral NGC12-173

The Office of the General Counsel received your Freedom of Information Act referral from the Federal Bureau Investigation (FBI), dated May 24, 2012, on June 11, 2012, and assigned it our FOIA case number NGC12-173. Your FBI FOI/PA case # 1148078-000 was regarding File Number 66-HQ-3286.

I have enclosed a copy of the five documents referred to the National Archives and Records Administration (NARA) by the FBI. I am pleased to release the documents in full with the exception of the limited FBI redactions.

If you are not satisfied with our action on this request, you have the right to file an administrative appeal. Address your appeal to the Deputy Archivist (ND), National Archives and Records Administration, College Park, Maryland 20740. Your appeal should be received within 35 calendar days of the date of this letter and it should explain why you think this response does not meet the requirements of the FOIA. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." All correspondence should reference the tracking number NGC12-173.

An appeal regarding the FBI redactions should be sent according their enclosed instructions.

Please let me know if I can be of further of further assistance.

Sincerely,

JOSEPH A. SCANLON
NARA FOIA Officer
Office of General Counsel



Federal Bureau of Investigation

Washington, D.C. 20535

Date: May 24, 2012

To: National Archives & Records Administration
Steve Tilly
FOIA Officer
Room 3110
8601 Adelphi Road
College Park, MD 20740-6001

Handwritten tracking box containing: NGC Log No: NGC 12-173, Date Received: 6/11/2012, Date Due: 7/30/2012, Assigned to: JAS

From: David M. Hardy
Record/Information Dissemination Section
Records Management Division

Subject: FOI/PA Request
FBI FOI/PA # 1148078- 000 Re: FILE NUMBER 66-HQ-3286

In connection with review of FBI files responsive to the above request, the following was surfaced:

- 6 unclassified documents which originated with your agency are being referred to you for direct response to the requester.
FBI document(s) containing information (outlined in red) concerning your agency.
classified document(s) which originated with your agency is/are being referred to you for direct response to the requester.
classified FBI document(s) containing information (outlined in red) concerning your agency.
Please note that some of the enclosed documents contain deletions made by this Bureau.

A copy of the requester's initial letter and other significant correspondence is enclosed for your convenience. If you have any questions concerning this referral, please contact LAS Bradi L. Choquette at (406) 496-3810.

Additional Remarks:

Enclosure(s)

(INDEX LISTING ON PAGE 2)

Index A:

General Services Administration documents (1970 - 90's), File#HQ-66-3286, Serials 1289X (13 pgs), 1312 & 1313 (3 pgs), 1306 (28 pgs), 1491 (4 pgs) & 1522 (3 pgs)

Index B:

Index C:

Index D:

Section 28

Serial 1289X

pages 93-106 (13pgs)

NARA



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| Assoc. Dir. | |
| Dep. Dir. Adm. | <input checked="" type="checkbox"/> |
| Dep. Dir. Inv. | |
| Asst. Dir.: | |
| Adm. Serv. | |
| Crim. Inv. | |
| Ident. | |
| Intell. | |
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| Training | |
| Public Affs. Off. | |
| Telephone Rm. | |
| Director's Sec'y | |

FEDERAL GOVERNMENT

MAR 20 1978

DESTRUCTION OF BUREAU PROPERTY GENERAL

Honorable William H. Webster
Director
Federal Bureau of Investigation
Washington, DC 20535

Dear Judge Webster:

During the past several months we have read a number of newspaper and magazine reports (copies enclosed) critical of Federal Bureau of Investigation records control schedules for field office investigative files and the manner in which the schedules are being applied to these records. Since the National Archives and Records Service has approved the disposition of these field office records and since our responsibilities (44 USC 2904) include oversight of Federal agency records management practices, we are concerned about the records management issues raised in these reports.

We believe that it would be useful to both our agencies for members of our staffs to review the current schedule for field office investigative files and the procedures for its application to the records. Such a review could determine whether any revisions to both the schedule and the procedures are necessary.

We would appreciate your comment on this proposal. If you or your staff have any questions concerning this matter please call Mr. Walter Stender, Assistant Archivist for Federal Records Centers, on 724-1598.

Sincerely,

James B Rhoads

JAMES B. RHOADS
Archivist of the United States

Enclosures

66-3286-B-1
EXP. PROC.
40 MAR 22 1978
UNRECORDED COPY

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9-30-12 BY SP-4 elw/ghk

EX-131
REC-56 66-3286-1289X

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4-10
24 MAR 22 1978

3- ENCLOSURE

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9-23-82 BY SP4 E2W/ghk

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DATE 9/10/03 BY AUC 60290 BCE/DCG/jms

N.Y. Times March 15, 79

F.B.I. Is Destroying Criminal Files On Cases Closed for Five Years

By ANTHONY MARRO
Special to The New York Times

WASHINGTON, March 14—The Federal Bureau of Investigation, over the objections of some of its agents but with the consent of the National Archives, has begun to destroy the inactive criminal files in its field offices of cases that have been closed for five years.

The policy, which was approved by the bureau's executive conference about four months ago, calls for the destruction of all criminal files in the 59 field offices, providing that the case has been closed for five years, the subject of the file is not considered a threat to "national security" and the subject does not have any civil litigation pending against the Government.

James Awe, the F.B.I. agent who supervises the management of its 7,000 file cabinets of records, said today that material of substance would still be on file at bureau headquarters here in Washington and that most of the material to be destroyed would be "unfounded allegations that never resulted in Federal violations" that were proved.

Overreaction Is Seen

A number of agents said privately, however, that agents working on organized crime cases were concerned that information they considered important to the bureau's monitoring of criminal organizations could be lost.

"We're retreating full blast," said one, who did not want to be quoted by name. He suggested that the bureau had acted properly in deciding to limit its so-called "internal security" investigations, which often focused on fringe political groups, but then had "overreacted" to criticism

of the bureau, and had decided to purge its criminal files as well.

"Five years from now, we'll have to start all over again," he predicted. "It will be like 1957. There'll be another Apalachin and nobody will know who they are." His reference was to a meeting of alleged organized crime figures at a private residence in upstate Apalachin, N.Y., in 1957.

Others in the bureau disagree, and one senior official suggested privately that the bureau might be better off if many of its files were "burned before they're read," rather than waiting five years.

Mr. Awe said that because only the field office files would be destroyed there would still be records at headquarters that would contain summaries of any "substantive" information that was in them.

Several bureau sources said that a reason for the decision was that a number of persons had begun civil suits against the Government after using requests under the Freedom of Information Act to obtain information that the bureau had on file on them.

Mr. Awe, however, said that it was more a routine management decision. "We're trying to manage these files, and it becomes a matter of cost effectiveness," he said. "It becomes a matter of using resources to maintain files when you don't need access to them anymore."

It could not be learned immediately how many files are scheduled to be destroyed under the new policy, which bureau officials said was not challenged by the Department of Justice. A bureau official said the usual method for destruction was shredder, incinerator or chemical agent.

OPTIONAL FORM 41
AUGUST 1967
GSA FPMR (41CFR) 100-11.206

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-19-81 BY 6383 YRF/CAF

66-3286-1289X
ENCLOSURE

THE FBI SHREDS ITS FILES

CATCH IN THE INFORMATION ACT

JOHN ROSENBERG

Amid the seemingly endless disclosures brought about under the Freedom of Information Act and the Privacy Act there is a little-noticed development that threatens to make a mockery of that well-intentioned legislation. With the cooperation, if not complicity, of the National Archives, the Federal Bureau of Investigation and other government agencies have embarked upon a "government-wide record destruction program" that has in all likelihood already destroyed most of the inactive investigative files located in FBI field offices—and unless something is done soon, numerous files in FBI Headquarters will meet the same fate.

One alarm has been sounded. Writing in this journal last October, Athan Theoharis cited the March 26, 1976 agreement between the National Archives and the Justice Department that authorized the destruction of "closed files of the Federal Bureau of Investigation containing investigative reports, inter- and intro-office communications, [and] related evidence. . . ." Fearing that the meager staff of ten in the Records Disposition Division of the National Archives responsible for the FBI was insufficient to monitor the destruction of FBI files, Theoharis warned that "existing law and regulations do not appear adequate to guarantee retention of public papers, thus assuring that the Freedom of Information Act will give access to the full record of federal agency practices" (See "Double-Entry Intelligence Files," by Athan Theoharis, *The Nation*, October 22, 1977.)

My recent experience suggests that this warning was

John Rosenberg is writing a biography of Clifford Durr on a grant from the Rabinowitz Foundation.

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ALL INFORMATION CONTAINED
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well advised. For the past year I have been working on a biography of Clifford Durr. Beginning in the early 1940s, Durr became a prominent critic of J. Edgar Hoover, loyalty investigations and the entire apparatus of the domestic cold war. An Alabama lawyer and brother-in-law of Hugo Black, he went to Washington with the first wave of New Dealers in 1933, serving in the Reconstruction Finance Corporation, then as General Counsel and Director of the Defense Plant Corporation, and finally as Federal Communications Commissioner from 1941 to 1948, when he was the leading figure in creating and expanding the role of public radio and television. In 1948 he refused reappointment to the FCC because of his opposition to Truman's loyalty program and spent the next two years practicing law in Washington, serving as president of the National Lawyers Guild and spending most of his time representing people who had lost their jobs because of the loyalty program. Unable to make a living at that, and after a year in Denver as counsel to the National Farmers Union, he returned to Alabama in 1951 and soon became one of the few white Southern lawyers to identify himself with the civil rights movement. (It was Durr, incidentally, who secured Rosa Parks's release from the Montgomery jail after she was arrested for refusing to move to the back of the bus.)

Last February Durr's widow and I began to request "all the material in FBI files" concerning the two of them, and 646 heavily censored pages were finally turned over to me on October 17, 1977 (66 additional pages were released following my appeal). Only then did I learn that the FBI treated my application—and pre-

THE NATION/February 4, 1978

66-3286-1289X
ENCLOSURE

...all similar ones—as a request to inform me in the FBI Headquarters files in Washington and that it was necessary to write separate letters to each field office that might have relevant material. I was also told at this time that the field offices were rapidly destroying their old files.

I wrote to the Mobile, Ala. field office on October 19, 1977. My letter was promptly acknowledged on October 26 by the SAC (Special Agent in Charge), who informed me that his staff was "currently in the process of searching our files so as to ascertain what information is pertinent to your request. Upon completion of this project, any information deemed to be within the scope of your request will be furnished to you."

On November 8 he wrote again, sending 6 pages of material. He added that his search had turned up indications of two extensive files on the Durrs, but they "no longer exist as they were previously destroyed in conformity with a Government-wide record destruction program."

Intrigued, I immediately wrote back asking when those files had been destroyed and how the 6 pages had managed to avoid a similar fate. On November 23 the SAC sent a reply that was as disturbing in its substance as in its syntax:

During late October, 1977, at a time contemporaneous to our Mobile Office receipt of your Freedom of Information Act (FOIA) request, a directive was issued from our FBI Headquarters at Washington which made the field office file destruction program immediately mandatory. Attendant to the directive were specific instructions as to the assignment of available manpower and for a vigorous pursuit of the file destruction program consistent with the guidelines previously established.

In compliance with this directive and as a result of circumstances which are factually and completely unrelated to your FOIA request, the two files I referred to in my previous correspondence to you were destroyed. Our records here at Mobile reflect that these two files, along with a multitude of other similar investigative-type materials, were destroyed on November 3, 1977. Again, let me emphasize there is absolutely no relation to the destruction of the two files and your FOIA request.

The files, in short, were not only destroyed nine months after my initial request to the FBI for "all the material in [its] files," but two weeks after the receipt of my request in the Mobile office. Even if one accepts the assurance that the destruction was unrelated to my request, the SAC's letter is alarming, since it reveals a mandatory destruction program of all old files, with apparently no—and obviously inadequate—supervision or review. The existence of this program was confirmed when I complained to the office of the Deputy Attorney General. Quinlan J. Shea Jr., Director of the Office of Privacy and Information Appeals, replied to me on December 9 that "the occurrence you described is extremely unfortunate. The destruction was the result of the concurrent existence of two distinct administrative programs—FOIPA [Freedom of Information Privacy Appeals] and destruction—with, it would appear, insufficient coordination between those actually administering them.

I am personally satisfied," he added, "that only administrative error was involved, as opposed to any wrongful intent to deny you access to the requested records."

One should be thankful, I suppose, that the intent was not wrongful, but this general program of destruction is seriously disturbing, quite aside from any implication of evil motives or administrative incompetence. According to Ronald Ostrow of the *Los Angeles Times*, who is investigating the record destruction program, the bureau's response to this concern is that all "substantive" material would have been forwarded to FBI Headquarters anyway, but that argument is not persuasive. An investigative agency's criteria for what is substantive simply are not the same as a scholar's. For example, the 6 pages that escaped destruction in Mobile (the SAC explained that they were "administrative-type files" and not "investigative-type files," and hence not included in the destruction program), were significant and they were not included in the material I received from Headquarters, even though they involved communications between Headquarters and Mobile over whether to release information to a Red-hunting Alabama Attorney General in 1961. (Hoover chose not to.) In addition, the Washington D.C. field office (WFO) subsequently released 91 pages, and virtually none of them were duplicated in the Headquarters material. (Earlier the Washington field office had estimated that it had between 250 and 500 pages that could be released, and it is likely that they withheld everything they had forwarded to Headquarters, as I requested. Of course, there is no way of knowing whether any of these 91 pages is duplicated in material FBI Headquarters refused to release to me, and there is plenty of that. One is reminded here—and elsewhere—of an observation Henry Adams made in *The Education*: "Material furnished by a government seldom satisfies critics or historians, for it lies always under suspicion.")

Although the FBI presumably does not regard anything in these 91 pages as substantial, much of it is in fact important, revealing and useful. To pick one instance, in 1964 the Durrs traveled to Washington for a testimonial affair in honor of their good friend Aubrey Williams, who as head of the National Youth Administration in the New Deal had, among other things, given Lyndon Johnson his first political job. The affair and Clifford Durr's speech were reported in *The Washington Post*; FBI Headquarters notified Mobile, which in turn requested the Washington field office to send "any information furnished to WFO by informants pertaining to the activities of DURR and Mrs. VIRGINIA DURR while they were in Washington." The Washington field office duly sent a copy of the *Post* article but had to report that "No information was received from informants in this office relative to the visit of the DURRS to Washington."

Now there is nothing "substantive" here, and there is no mention of this episode in the papers I have from FBI Headquarters, and yet there are those who would regard it as a matter of some significance that in 1964 the bureau took note of one old New Dealer honoring another; that the Mobile field office was concerned

movements mon-
Aubrey Williams
official concern (and the reverse was no
CLIFFORD
VIRGINIA DURR attended his testimonial); and
WFO had a network of informants to report on such
matters.

As matters stand, however, the question of whether all the important information in the field offices had been forwarded to FBI Headquarters before destruction may be academic, for the "Government-wide record destruction program" is about to spread to the Headquarters files themselves. Officials in the FOIPA branch at the FBI claim, Ostrow reports, that no "historically significant" material will be destroyed, but so far they have said neither who will attempt to formulate the crucial criteria nor who will apply them. It is not even clear whether they mean that only the record of famous cases or individuals will be preserved, or that they intend to read each file, saving parts and destroying parts—a seemingly impossible task. In either case, the criteria should be established and approved before destruction begins.

Using the Durr files as an example, and assuming for the moment that they would not have been totally destroyed as historically insignificant, one may wonder how an intrepid team of FBI document evaluators would regard such evidence as the following that is included in them:

¶ Indications that Durr was hounded because of his criticism of the bureau. In December of 1947, after a particularly bitter public dispute with J. Edgar Hoover over loyalty reports on applicants for radio licenses that the FBI sent on its own initiative to the FCC, one of Hoover's assistants wrote another: "It would be my recommendation that we not, at this time, open a loyalty investigation on Clifford Durr. I believe that we should wait until a loyalty form is received on him. To open an investigation at this time prior to the receipt of the loyalty form could easily be construed by him and publicized as persecution in view of his attack on the Bureau. . . . I think it would be better to wait until the loyalty form is received, at which time the Bureau has the definite responsibility of making the investigation." When his loyalty form did arrive, the FBI didn't quite know what to make of it. A 1949 "Background Report" notes: "On December 12, 1947, Durr's loyalty form was filled out in what appears to be a sarcastic or at least facetious manner, e.g., Aliases, 'Pat,' 'Pinky,' 'Daddy,' 'Grandpa'; Organizations: Sigma Alpha Epsilon; Group Health Associates, Inc., Exalted Order of Giraffes." (The latter, by the way, was a group of friends who happened to be tall.)

¶ Letters—two to members of Truman's Cabinet—that were stolen from Durr's desk. SAC, Denver, to the Director, November 4, 1950: "On November 3, 1950, —, whose identity should be protected, made available to—the following two letters which he had obtained from Mr. Durr's desk and/or file."

¶ A copy of the inscription written by Corliss Lamont in one of his books that was in the Durrs' library—pro-

vided by an informant posing as a friend who also reported on dinner-table conversations, guests, etc.

¶ Abundant evidence that, once the Durrs were back in Montgomery, the FBI was primarily interested in their work on behalf of integration. In 1962 SAC, Mobile, wrote Hoover that "Mrs. Durr is not known to have any current CP organizational functions or activities whereas she is publicly known to be sympathetic to Negroes in all current race troubles and issues." In 1964 Hoover wrote Mobile that Mrs. Durr "has never been identified as a Communist Party member. She was extremely active in integration activities over the years. . . . In addition, subject is considered to be a non-conformist. . . ." In 1964, when Durr was invited to deliver a series of lectures at English universities, Hoover alerted the CIA and the State Department: "Clifford Durr is a well-known proponent of civil rights for all and has been outspoken in his opposition to Government loyalty investigations and investigating committees in the past. . . . Mrs. Durr . . . is extremely active on behalf of integration activities at present."

¶ Eventually, Mrs. Durr was no longer seen as a threat to the national security, although for an interesting reason. Hoover to SAC, Mobile, November 13, 1968: "In view of fact that subject is a housewife it would appear that she no longer qualifies for inclusion in Section A of the Reserve Index."

Should the FBI be allowed to decide whether material like this is historically significant? Indeed, could the FBI, even with the best of intentions (I found several people in the FOIPA branch and the field offices who were especially concerned and helpful), and with expert assistance from the National Archives or the American Historical Association, ever formulate acceptable criteria that would balance the interest in the preservation of valuable historical documents with the right to privacy that was reaffirmed and mandated by the Privacy Act of 1974?

There is an irony here, for the justification of, and reason for, the record destruction in the first place is the requirement in the Privacy Act—placed there at the insistence of civil libertarians—that each federal agency "maintain in its records only such information as is relevant and necessary to accomplish a purpose . . . required to be accomplished by statute or by executive order of the President." Further, no federal agency may maintain records "describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained unless pertinent to and within the scope of an authorized law enforcement activity."

The FBI, in short, is caught in the middle of a familiar struggle between historians, who champion the public's right to know, and Congress, which has shown a commendable—if late-blooming—concern for the right to privacy. As a historian, my view is that Congress was too hasty in requiring the wholesale destruction of documents, even documents the government had no business securing in the first place. I believe, further, that the rights of people whose privacy was invaded by the FBI

and other government agencies over the years can be protected by measures short of that wholesale destruction.

Surely the public does have a legitimate interest in learning how public agencies—especially sensitive ones like its national police force—have behaved in the past, and valuable history can be written from records that even conscientious investigators would not regard as significant. Thus, records that were created at public expense to serve public policy should be preserved. Moreover, if a belated concern for the right to privacy is the real reason for the destruction, shouldn't the FBI be required to secure the permission of the subjects of those files before destroying them? Certainly some investigatees would want to waive their newly appreciated right to privacy in the interest of preserving the historical record of a shameful period in our history. Or are their preferences to be ignored in the suddenly popular rush to protect their rights? And what of the dead—who speaks for their posthumous concern for privacy? Finally, destruction of the files will not right the wrongs that were done; it will only destroy the evidence of them.

In short, acceptable criteria for saving and destroying

some of each file would seem impossible to formulate, and destroying all but a few celebrity files would also be a calamity. Why not, instead, save the whole sordid lot of it (or what's left), store it in the National Archives, and limit access in the ways research libraries have always done, such as requiring advance permission of the subjects of the files, or closing them until a specified number of years after their deaths?

It is neither necessary nor wise for Congress to amend the Privacy Act—transferring the files to the National Archives would in itself prevent the originating agency from maintaining them—but the Government Information and Individual Rights Subcommittee of the House Committee on Government Operations should be urged to hold immediate hearings to rescind or revise the March 1976 agreement that authorizes and sets guidelines for the record destruction program.

It is a misguided conception of civil liberties that attempts to compensate for their abuse by obliterating the historical record of those abuses. Forgetting the past cannot right its wrongs, and may contribute to their recurrence.

barrage," as it was called in Cuba, which ITT laid down to clear the way for a telephone rate increase in 1957—an increase for which Batista was later awarded a gold telephone, now on view in Havana's Museum of the Revolution. And there are the requests for compensation by various American hotels, some of which the Cubans believe to be properties of the Mafia. The Cubans are going to be understandably reluctant to compensate such claimants.

Even if Cuba wanted to satisfy American claims, could it pay anything? Certainly it cannot pay much. The Cuban economy is just stumbling ahead; the island's GNP per capita is as stagnant now as it was in the 1950s. Cuba has a debt of almost \$6 billion to the USSR; virtually everything on the island is rationed. The mainstay of Castro's economy—still the sugar industry—is currently producing, thanks to droughts, spare parts shortages and mismanagement, at levels established a half-century ago, during the salad days of American capitalism. There is not much fat to share out.

Moreover, the Cubans have declared of late that they intend to maintain the current nature of their trading patterns. Thus, the American traders will have to struggle for their share of the 35 percent which is allocated to Western Europe and Japan. This determination to maintain two-thirds of its trading relations with the Socialist bloc would seem not only to limit the possibility of compensation through trade, but also limit the broader

10/21/77
American objective, which is to gain a measure of influence in Cuba in order to moderate its policies on human rights and aid to African revolutionaries.

If Cuba will not or cannot pay, there remain several possibilities. The Carter administration might decide it was in the broader national interest to favor the traders and outflank the claimsmen by ending the embargo and opening trade without preconditions. But if it did so, Cuban goods would likely be attached by angry claimsmen as soon as they reached America. It has happened in the past when Cuban sugar, ships and aircraft were impounded by local court orders.

The real hope of the claimsmen seems to be that, in one way or the other, the Congress can be persuaded to compensate them in order to assure normalization of relations with Cuba. The chief counsel for the JCCCC, Samuel McIlwain, has suggested that, if Congress agrees to pay Castro any counterclaims for the Bay of Pigs or CIA-sponsored raids, these sums should be set aside to pay U.S. claimants. Or perhaps Congress might agree to pay back rent on the Guantánamo base, on the understanding that this money would go, via some equitable formula, to the claimsmen.

But one senses that the Congressmen, their hackles raised by the proposed Panama settlement, will not be quick to do anything that might be interpreted as surrendering, even indirectly, to Fidel. The likelihood is that the competing demands of the claimsmen and the traders will contribute powerfully to a paralysis of U.S.-Cuban relations that may last for another decade. □

BUREAUCRATS ABOVE THE LAW

Double-Entry Intelligence Files

ATHAN THEOHARIS

Historians and archivists will welcome the Final Report of the National Study Commission on Records and Documents of Federal Officials (really two reports, one from the majority and one an alternate). Both versions affirm what has been in some question—not least because of Richard Nixon's acquisitive instincts—that the papers of all federal officials (not only Presidents but bureaucrats, members of Congress and judges) are public property and must be held available for scrutiny by the public. But having made this vitally important finding, the Study Commission evidently felt that the bulk of its task was done. It cites the Federal Records Act of 1950,

which obliges the head of each federal agency to "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency . . ." and notes that, to insure compliance with such requirements, the Code of Federal Regulations of 1976 stipulates that "With particular regard to the formulation of basic Government policy, Federal officials are responsible for incorporating in the records of their agencies all essential information on their major actions." The two reports agree that these statutes, together with the Freedom of Information Act, provide sufficient guarantees for the preservation of, and access to, such records, within reasonable bounds of confidentiality and the safeguarding of national security.

This optimism I find unwarranted, in view of recently acquired knowledge about the separate records-keeping and document-destruction practices of government agencies, and particularly the intelligence agencies. When devising multiple filing systems and document-destruction procedures, intelligence bureaucrats have in the past fully recognized that their agencies' reputations and thus

Athan Theoharis, professor of American history at Marquette University, is the author of *Seeds of Repression: Harry S. Truman and the Origins of McCarthyism* (Quadrangle Books) and *The Yalta Myths: An Issue in American Politics, 1945-55* (University of Missouri Press). He is completing a study of internal security policy in the years 1936 to 1976, tentatively called *On the Road to 1984*.

... could be damaged should "sensitive" documents of a certain kind ever be publicly disclosed. Despite the assurance of confidentiality provided by "national security" classifications, these officials devised filing procedures that separated extremely sensitive from other "national security" classified documents. This system had a double objective: to permit the prompt destruction of these sensitive documents without leaving behind any clue that such documents had ever existed. Moreover, although some of these record-keeping practices were established before, and others after, the 1950 Act, the legislative requirements that adequate records be created and preserved were deliberately ignored.

Apparently, the National Archives personnel responsible for reviewing agency documents before permitting their destruction had been unaware of these procedures intended to avoid public knowledge of illegal activities. For, on March 26, 1976, the appraiser in the Records Disposition Division of the National Archives' Office of Federal Records Centers who had responsibility for FBI documents authorized (and the archivist subsequently signed) the destruction of "Closed files of the Federal Bureau of Investigation containing investigative reports, inter- and intro-office communications, related evidence collected or received during the course of public business in accordance with the FBI investigative mandate." (Emphasis added.) Thus, extensive files were destroyed without the responsible Archives personnel ascertaining their historical and public importance. The limited number of personnel (ten) in this Archives Division explains why such voluminous files could not be reviewed. Yet the National Archives has not requested money to hire additional staff for the purpose.

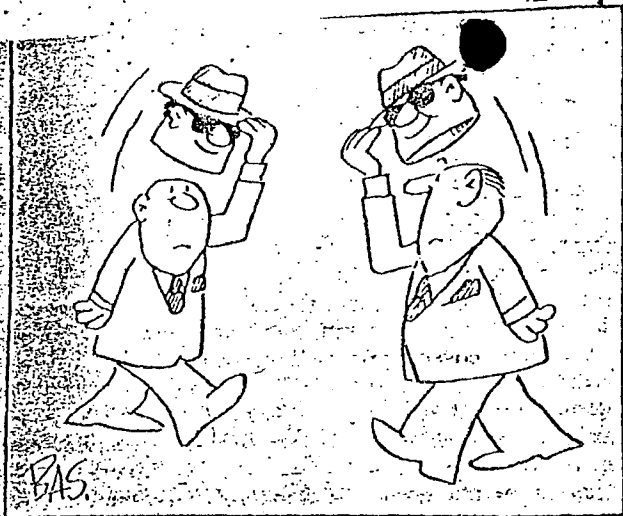
In memorandums of April 11, 1940, November 15, 1941, March 1, 1942, January 16, 1943, March 9, 1943 and November 9, 1944, FBI Director J. Edgar Hoover advised bureau officials (both those in Washington and Special Agents in Charge of field offices) how to prepare for submission to headquarters memorandums that were not to be retained and filed in the FBI's general files. These communications were to be typed on pink paper (later blue) the better to keep them separate from white-paper memorandums which, on receipt by Washington, would be given a serial number for filing purposes. In part, Hoover's reason for setting up this color code had been to reduce paper work. A deeper purpose, however, was to enable FBI field offices to convey sensitive information in writing to the FBI Director or Washington headquarters without running the danger that a retrievable record would thereby be created. His April 11, 1940 memorandum identified documents to be destroyed as including those "written merely for informative purposes, which need not be retained for permanent filing." The March 1, 1942 instruction more specifically identified these as including memorandums "prepared solely for the benefit of the Director and other officials and eventually to be returned to the dictator [of the memorandum] to be destroyed, or retained in the Director's office."

In 1942 the bureau instituted a "Do Not File" procedure for all field-office requests for authorization to

conduct break-ins along with the documents that formally approved these requests. Such papers were not to be given serial numbers, nor to be filed under the appropriate case or caption category. Whenever Hoover or his headquarters staff deemed it advisable to destroy them they could vanish without a trace. An internal bureau memorandum of July 19, 1966, from William Sullivan to Cartha De Loach (both men at the time were assistants to the Director) describes in detail the Do Not File procedure: To prevent excessive recourse to break-ins—which Sullivan characterized as "clearly illegal"—and to make sure that sufficient care was taken to prevent their discovery, prior written authorization from the Director or assistant director was required for all such crimes. Under normal procedures, of course, this would create a retrievable record, and the Do Not File device was invented to avoid that hazard. In September 1976 Congressional testimony, former FBI Assistant Director Charles Brennan conceded that this was indeed one purpose of the Do Not File procedure. It would also enable the bureau to comply with court disclosure orders, since witnesses could affirm that a search of FBI records had been made and no evidence uncovered of illegal government activities.

The recent discovery of this separate file keeping raised additional questions about the FBI's way with its records. In the course of reviewing the "Official-Confidential" files formerly retained by Hoover in his personal office the staff of the Senate Select Committee on Intelligence Activities came across the Sullivan-to-De Loach memorandum mentioned above. Mark Gitenstein, the staff counsel who made this find, then noticed that a caption "PF," had been crossed out in the upper-right-hand corner and the notation added that, in November 1971, the document had been transferred to Hoover's Official-Confidential files. Further investigation established, first, that "PF" stood for Hoover's "Personal Files"; second, that this document, along with seven other documents, had been transferred from the "B" entry in the Personal File ("B" for "Black Bag" jobs or break-ins) to Hoover's Official-Confidential files and, third, that shortly after his death in May 1972, Hoover's Personal Files had been sent to his home. There, following Hoover's instructions but allegedly after first reviewing the voluminous Personal Files to insure that they contained no official documents, the FBI Director's personal secretary, Helen Gandy, destroyed them. In her December 1975 testimony, Ms. Gandy maintained that she had found no other official documents.

Given the decidedly official character of the Do Not File memorandum (the seven other items remain classified, but assuredly Hoover in 1971 considered them official), we confront the not very credible possibility that the only alphabetical entry in Hoover's Personal File to contain official documents had been the letter "B." The process by which documents were selected for transfer and destruction prevents us from knowing whether the requirements of the 1950 Act and the 1976 Code were actually met.



Tachydromos (Greece)

Obviously, a Do Not File procedure allows those concerned to deny knowledge of the extent and nature of recognizably illegal or "sensitive" activities, and other recent disclosures suggest that such separate filing procedures were not confined to break-ins. Thus, Sullivan's 1969 reports from Paris to Washington headquarters on his surveillance of nationally syndicated columnist Joseph Kraft were sent under the Do Not File procedure. In addition, despite Atty. Gen. Nicholas Katzenbach's 1966 requirement that all requests for authority to wiretap be submitted in writing and the names of those subject to such surveillances be included in a special file (an ELSUR Index), the wiretap records of the seventeen individuals (White House and National Security Council aides and reporters) tapped between 1969 and 1971, allegedly to uncover the source or sources of national security leaks, were not placed in this Index or filed with other FBI "national security" wiretap records. (Nor were the 1972 wiretap records on Charles Radford, a lower-level military aide suspected of having leaked National Security Council documents to the Joint Chiefs of Staff, included in the ELSUR Index or filed with other FBI "national security" taps. And FBI reports on its surveillance of Anna Chennault in October/November 1968 were "protected and secured" to insure that they would not be discovered and thereby affect that year's Presidential race.) Accordingly, when Sullivan told Asst. Atty. Gen. Robert Mardian in July 1971 that Hoover might use these taps to blackmail the President, Mardian, after consulting with Nixon, transferred the tap records from the FBI to the safe of White House aide John Ehrlichman. Because they were not listed originally in the ELSUR Index, there was no record either that these files had been transferred or that the wiretaps had been carried out.

In another area, when Congress in September 1971 repealed the emergency detention title of the McCarran Internal Security Act of 1950, Hoover asked Atty. Gen. John Mitchell how to handle the policy documents of the Justice Department's independently established, broader—and illegal—detention program. On February 19, 1972, Mardian advised Hoover to destroy these materials. Furthermore, upon concluding the study that re-

sulted in the recommended changes of intelligence procedure (known as the Coplon Plan), Hoover in June 1970 advised other intelligence officials who had participated to destroy this plan's working copies.

During the pretrial hearings in the Judith Coplon case, the FBI's extensive and illegal use of wiretapping was revealed because Federal District Judge Albert Reeves ruled that certain FBI reports be submitted as evidence. Hoover then devised yet another filing procedure. In Bureau Bulletin No. 34 of July 8, 1949, he ordered that "facts and information which are considered of a nature not expedient to disseminate or would cause embarrassment to the bureau, if distributed" were henceforth to be omitted from agent reports, but detailed in the administrative pages that accompanied these reports. Normally, agents employed administrative pages to highlight investigative findings or to outline future investigative efforts. Because those pages could be kept separate from the reports, Hoover's order would allow the FBI to conduct questionable or illegal activities, and profit from their findings without risking disclosure during trial proceedings or even without responsible Justice Department officials ever learning of them.

This need to prevent discovery of illegal FBI investigative activities had also led Hoover on October 19, 1949 to advise all Special Agents in Charge how to hide the fact that the bureau was conducting an extensive "security index" program. It predated passage of the McCarran Internal Security Act and was partially based on a secret directive of August 3, 1948 from Atty. Gen. Tom Clark. The FBI, however, began to compile additional indexes—a Communist Index, a "Detcom (Communist Detention) program" and a "Comsab (Communist Saboteurs) program"—without the Attorney General's direction or knowledge. To guard against discovery of this program by the press and the Congress—as well as to prevent the Attorney General from discovering the bureau's independent extension of his authorization—Hoover advised SACs: "No mention must be made in any investigative report relating to the classifications of top functionaries and key figures, nor to the Detcom or Comsab programs, nor to the security index or the Communist Index. These investigative procedures and administrative aids are confidential and should not be known to any outside agency."

Then, when the FBI after February 1958, began to receive copies of letters illegally obtained through the agency's closely guarded mail cover/intercept program in New York City, similar filing procedures were set down, as described in a November 26, 1962 memorandum. Copies of intercepted mail were to be destroyed (if of no value) or filed in a secure area, separate from other FBI files. Such copies were also not to be included in the subject's case file, although a cross-reference would permit retrieval. When significant information found in this intercepted mail was sent on to FBI field offices or other divisions, it was to be paraphrased to disguise the source. Agents in Charge of this project in New York were specifically warned not to disseminate the obtained information outside the bureau and not to cite it in any investigative report.

Were there other FBI files? Obviously, this question cannot be answered definitively. When interviewed by David Wise, author of *The Police State*, William Sullivan claimed that John Mohr (then an FBI assistant director) had removed "very mysterious files" from Hoover's office after the FBI Director's death. These were "very sensitive and explosive files," Sullivan maintained, and not all of them were located by Atty. Gen. Edward Levi when he found "164 such files in the Justice Department."

Nor were these separate filing procedures and the attendant document destruction confined to the FBI. The CIA's drug program documents were destroyed in January 1973. Also, during the September 1975 Congressional testimony, CIA Director William Colby affirmed that the agency's record-keeping practices made it impossible to reconstruct past CIA activities involving the production and retention of highly poisonous toxins: "Only a very limited documentation of activities took place"; the desire for compartmentation involving sensitive matters "reduced the amount of record keeping."

In 1969, the National Security Agency devised similar filing and destruction procedures. In 1967, the NSA had begun to intercept the international electronic communications of targeted American citizens and organizations. The NSA had the equipment necessary to intercept all electronic messages, and could isolate particularly desired messages according to pre-selected names or code words. To exploit this capability, the CIA and the FBI provided the NSA with a so-called Watch List of individuals or organizations whose messages were to be intercepted. Informal document transmittal and separate filing methods were then devised. Being perfectly aware that such interception was illegal, NSA officials in 1969 worked out procedures to hide the existence of the activity and their involvement in it. Reports produced through this eavesdropping were given no serial numbers, were not filed with other NSA reports, were hand-delivered only to those officials having knowledge of the program, and were distributed "For Background Use Only." Agencies receiving the material were directed either to destroy it or return it to the NSA within two weeks.

Are these separate file-keeping and destruction procedures merely aberrational practices that have now been abandoned? Unfortunately, in the absence of proof to the contrary we must assume that they may be continuing or might be resumed. It is unlikely that before 1975 responsible, informed citizens would have accused the intelligence agencies of such practices, and if they had, few Americans would have taken them seriously. Furthermore, recent testimony under oath by intelligence officers and their responses to document requests during the first intensive Congressional inquiry into the practices of the intelligence community have raised additional questions about the intelligence agencies' file-keeping practices.

Thus in 1975, FBI Director Clarence Kelley during a press conference, senior FBI officials testifying before Congress, and FBI memorandums responding to specific inquiries of the Senate Select Committee all affirmed that

FBI break-ins during domestic security investigations had ceased in 1966, and that the exact number of such past FBI break-ins could not be provided because, thanks to the Do Not File procedure, written records did not exist. In 1976, however, in response to a court order involving a damage suit brought against the government by the Socialist Workers Party, the FBI not only produced break-in documents but these documents disclosed that FBI domestic security break-ins continued after 1966 and as late as July 1976.

In addition, William Colby testified in September 1973 that the CIA could not be fully responsive to the Senate Select Committee's queries concerning the CIA's drug programs and specifically its toxin program. Not only had documents concerning the CIA's general drug programs been destroyed in January 1973, but the agency's desire for compartmentation of sensitive materials had "reduced [the] amount of record keeping" and thus there had been "only a very limited documentation of [the] activities [which] took place." But in July 1977, contradicting Colby's assertions, CIA Director Stansfield Turner advised the Senate Select Committee that documents pertaining to the CIA's past drug program had been discovered after "extraordinary and extensive search efforts." These, Turner reported, had been found in retired archives filed under financial accounts. The newly discovered documents showed that CIA drug testing on American citizens had been more extensive than had been disclosed in 1975.

The file-keeping procedures, and their underlying intent to prevent public/Congressional knowledge of questionable or patently illegal activities, challenge the assumptions underlying the National Study Commission recommendations. Existing law and regulations do not appear adequate to guarantee retention of public papers, thus assuring that the Freedom of Information Act will give access to the full record of federal agency practices. The problem is more complex and thorny than the commission recognized. Perhaps the preservation and access to such papers cannot be insured. But the attempt should nevertheless be made, and a number of additional safeguards are required. First, the Congress should enact legislation specifically forbidding the maintenance of separate files and requiring federal officials to create a unitary and complete filing system. Heavy fines and criminal penalties should be provided for noncompliance. Second, an oversight committee should be created to insure that more dual, triple or even more elaborate systems do not continue, will not be devised, or if devised cannot remain undetected. An independent board of archivists, journalists and historians might well be created to provide this oversight. It must have subpoena powers and complete authority to inspect agency filing systems. Third, and perhaps this would be less a procedural change than a political awakening, cold-war secrecy and national security assumptions must be critically reassessed.

The intelligence agencies' record-keeping practices in the recent past show their bureaucrats to have felt themselves above the law. Rather than being bound to respect legal or constitutional limitations, these officials decided that the law could be safely circumvented, first by ex-

...ing popular and Congressional tolerance for secrecy, and then by devising elaborate filing procedures to prevent discovery. What is needed for a return to government by law, and not by men, is to create safeguards against the tendency of intelligence agency officials to decide for themselves, and secretly, what national policy

shall be. Central to this is the need to reaffirm the people's "right to know" as much about national security as it does about economic policy. Otherwise the recommendations offered in both National Study Commission reports could prove to be cosmetic, and that is not what their proponents intended.

BEHIND THE BERLIN WALL

SOCIALISM WITH A GERMAN FACE

JONATHAN STEELE

East Germany was on the front page of *The New York Times* on September 24. It was a rare occurrence, caused this time by the news that a stream of dissident writers, musicians and theatre people is flowing out of the country. The spate of expulsions—some forced, others merely encouraged—began with Wolf Biermann, the unorthodox Marxist singer-poet who was refused permission to return from a trip to West Germany last autumn.

The government of the German Democratic Republic was at first surprised when scores of other intellectuals protested the exclusion of Biermann. It briefly detained a few of them, put some under house arrest, but left the majority alone until it decided that they too would be better out of the country. In the last ten months the cultural migration has included more than twenty intellectuals. The facts reported in the Western media were true; the events are sad. Western newsmen covering the Belgrade review conference on European Security and Cooperation this month (it opened on October 3) now have a new peg on which to hang legitimate stories about repression in Eastern Europe.

Yet there is also something sorrowful about the inability or unwillingness of most Westerners writing about Eastern Europe to go beyond the clichés. How many reports of the recent exodus from the GDR have contrasted the situation with the position of intellectuals in the Soviet Union or Czechoslovakia? In those countries expulsion is a mild form of punishment, when compared with the more usual practice of imprisonment, or internal exile with no chance to pursue one's work. In East Germany an exit visa has become the most common punishment, at least for prominent intellectual dissidents. For those brought up on an ideological diet in which the GDR was always described as the most authoritarian state in Communist Europe this may seem an aberration. Those who remember that East Germany was the only East-European state in which the Stalinist purges of the early 1950s produced no executions, may see it as just a mild case of history repeating itself.

No country has had a poorer image abroad than East

Germany—the "other Germany" as it has been patronizingly called. The hideous Berlin Wall fixed itself deep in most people's minds as the symbol of a new German brutality. More than that, it was taken as a symbol of illegitimacy. Here was graphic and deadly proof that the GDR is a bastard state. For two decades the West tried to wish East Germany away. The attempt failed, and the Helsinki Conference of 1975—precursor of this month's meeting in Belgrade—became the coming-out party for the East German leadership. By an accident of the French diplomatic alphabet, Erich Honecker found himself sitting between Chancellor Helmut Schmidt and President Ford. Nothing could have been more ironic than that the East German party leader should be flanked by the heads of government of the two countries which had done more than any others to prevent the GDR's coming into being.

Although the Western boycott was the most aggravating international issue for the GDR, its relations with its allies in Eastern Europe were not without problems. To be sure, it was integrated into the Warsaw Pact and Comecon, but its companions in those bodies were a long time getting over the feeling that the GDR was an artificial state.

In short, East Germany had to gain legitimacy in the eyes of its friends as well as its enemies. During the first postwar years Stalin saw the country primarily as a strategic buffer for the Soviet Union and a source of reparations payments; the interests of the small minority of Communists in the Soviet Zone of Germany took second place. Three times, first under Stalin, then under Malenkov and Beria, and finally under Khrushchev, the USSR toyed with the idea of withdrawing from the country in return for the neutralization of the whole of Germany. Although the Russians hoped, at least in the period just after the war, that a neutral Germany would be leftward-leaning, they were more concerned to insure that its foreign policy was safe than that its political system was Communist. In 1955, to the chagrin of the East German leadership, the Soviet Union recognized the Federal Republic without demanding a diplomatic *quid pro quo* for the GDR. It was not until 1974, almost exactly a year after the GDR's entry into the United Nations, that reciprocity came and the United States recognized East Germany.

Jonathan Steele, Washington correspondent for the Manchester Guardian, was formerly its East European correspondent. His book, *Inside East Germany: The State That Came in from the Cold*, was published by Urizen Books on October 3.

OCT 1977

B. J. Hill

PUBLIC OR PRIVATE PAPERS?:

The Arrogance of the Intelligence Community

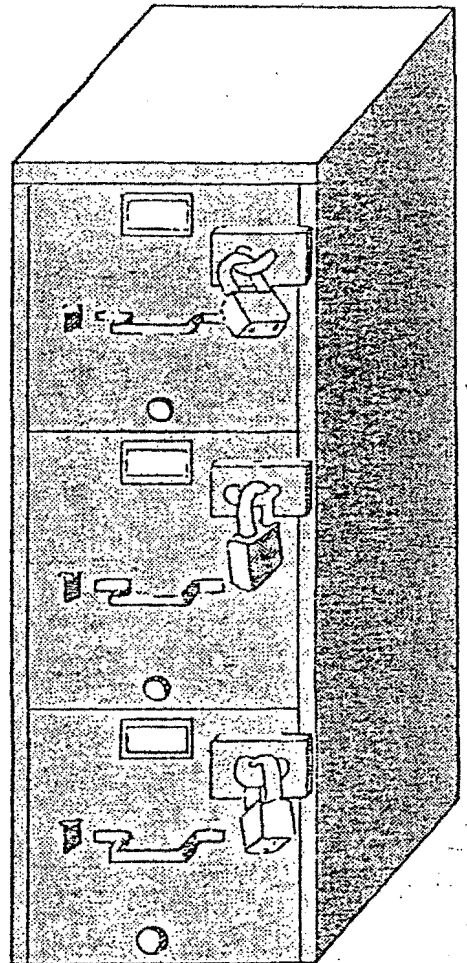
"A SYSTEM OF GOVERNMENT BASED ON PRINCIPLES OF ACCOUNTABILITY AND CHECKS AND BALANCES CAN ONLY FUNCTION EFFECTIVELY IF THERE IS KNOWLEDGE OF THE PAST ACTIONS OF PUBLIC OFFICIALS."

By Athan G. Theoharis
Professor of History,
Marquette University, Milwaukee, Wis.

THE MUTED CONTROVERSY precipitated by former Secretary of State Henry Kissinger's insistence on his right to define as his personal property the stenographic records of his telephone and office conversations renews the relatively recent concern over whether the papers of prominent political figures should be considered public or personal property. The criteria for limiting access to the records of public officials admittedly are a central concern of the historical and archival professions. More importantly, they are crucial to the conduct of our political system. A system of government based on principles of accountability and checks and

balances can only function effectively if there is knowledge of the past actions of public officials.

The creation of the National Study Commission on Records and Documents of Federal Officials in response to the agreement between former Pres. Richard Nixon and the head of the General Services Administration Arthur Sampson implicitly confirms the importance of access. The Nixon-Sampson agreement recognizing the former President's papers as his personal property and his right to control, and possibly destroy, them precipitated a furor which forced Congress and the articulate public to confront an issue which had formerly not been seriously addressed. If welcome, that awareness came rather late—the Nixon-Sampson agreement posed the possibility that important documents might be de-



stroyed. We have recently learned, however, that, shortly after his death in May, 1972, former FBI Director J. Edgar Hoover's "personal files" were, in fact, destroyed. Mr. Hoover was no ordinary Federal official—his tenure as FBI Director dated from 1924 and the decisions he made had crucial bearing for the conduct of past Federal policy and, given recent Congressional inquiries, for the determination of future legislative policy. Thus, the destruction of these "personal files" is a matter of interest not merely to the archivist, the historian, or the merely curious. In a basic sense, this 1972 action squarely poses the question of what are personal papers and who ultimately should make this determination? Is there a need to develop procedures whereby public officials (whether elective or appointive) do not have the

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absolute discretion to determine what are personal, as opposed to official, papers and the conditions and standards for access? The Hoover case demonstrates that these are not academic questions and impels immediate action to safeguard the public interest and to devise procedures to insure that important papers are not destroyed or closed for arbitrary or personal reasons.

Can public officials destroy their papers?

In the case of Hoover's "personal files," it is not unreasonable to conclude that official papers were destroyed. The Congressional investigations into the destruction of these files—first conducted by the staff of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities and then by the staff of the Subcommittee on Government Information and Individual Rights of the House Committee on Government Operations—established that, shortly before his death, Hoover reviewed certain of his personal files. As a result of his review, the Director ordered eight documents transferred from his "personal files" to his "official-confidential files." All these eight had originally been filed in the letter "B" entry of Hoover's "personal files." One of these documents, outlining the Bureau's "Do Not File" procedure for the conduct of break-ins, has been publicly released. This document clearly was not personal—it details how recognized illegal activities would be authorized and further outlines how this record could not become publicly released.

Furthermore, during the hearings conducted by the House Subcommittee, Miss Helen Gandy, Hoover's former personal secretary, testified that, at his direction, affirmed after his death by Acting FBI Director Clyde Tolson and other Bureau officials, she destroyed Hoover's "personal files." Before doing so, she maintained, she reviewed these files and determined, without the concurrence of any other responsible official, that they contained no official matters. Accepting her testimony on face value, we must conclude that only the "B" entry of Hoover's "personal files" had included documents pertaining to official Bureau business. This conclusion does not seem likely or convincing. Yet, since the files have been destroyed, we have no way of resolving this important matter.

At issue here, then, is the control over the papers of prominent public figures. Can we allow interested parties

whether the public official, his or her secretary, or associates) to determine whether certain papers should be preserved? In this case, Congress (then in the midst of an important inquiry into abuses of power by Federal intelligence agencies) was denied the information essential to meeting its oversight, investigative, and legislative responsibilities. Historians as well will confront the inevitably haunting possibility that relevant and essential documents were destroyed. Moreover, the public's interest in a full accounting of past activities as the basis for judgment about future policy and priorities has been denied.

When is a document produced by a public official personal and not official? On the face, there is no problem concerning income tax returns or correspondence involving familial and private matters. What about correspondence (whether to other public officials, family, or friends) bearing upon the individual's conduct in office? Can this be classified as personal, to be retained and/or destroyed at the discretion of the individual? Let me give an example of such a document marked by the sender "personal" and then comment on its significance. I have selected this document only to raise the question who is to judge, and on the basis of what criteria, what is a personal as opposed to an official paper. The letter I shall cite was not destroyed and is deposited in the Lyndon Baines Johnson Presidential Library.

On Sept. 10, 1964, Assistant FBI Director Cartha DeLoach wrote White House aide William Moyers:

Thank you for your very thoughtful and generous note concerning our operation in Atlantic City. Please be assured that it was a pleasure and privilege to be able to be of assistance to the President, and all the boys that were with me felt honored in being selected for the assignment.

I think everything worked out well, and I'm certainly glad that we were able to come through with vital tidbits from time to time which were of assistance to you and Walter (Jenkins, another White House aide). You know you have only to call on us when a similar situation arises.

Thank you again for taking time out of your busy day to write to me, and I hope we can get together soon.

The informal and personal tone of this letter, the implication of simple helpfulness, and the vagueness of the references (to "our operations," "assistance," "all the boys," "vital tidbits," and "similar situation"), all suggest that this was an innocuous personal letter. This was not the case, however, and indeed it is rather fortuitous that

we can understand these cryptic references and assess the value of this "personal" correspondence.

As part of its investigation of the Federal intelligence agencies, the Senate Select Committee on Intelligence Activities learned that a special FBI squad headed by Mr. DeLoach had been assigned to cover the 1964 Democratic National Convention in Atlantic City, N.J. This squad's ostensible objective was to obtain information needed to protect the President, and particularly concerning efforts to disrupt the convention. This information was forwarded to the White House. However, clearly political information acquired incident to this surveillance was also forwarded as well. Was the White House aware of this political intelligence effort? If so, did the White House order that this cease or did it exploit this political advantage? FBI records made available to the Senate Select Committee do not conclusively answer these questions. The DeLoach to Moyers letter, however, does.

FBI record-keeping procedures

Nor is the issue merely the possibility that so-called personal papers might be destroyed. The Senate Select Committee and the House Subcommittee on Government Information investigations also established that various intelligence agencies devised separate file-keeping procedures. These procedures would enable the agencies to destroy official documents without leaving a record that this had been done.

Thus, in memoranda of April 11, 1940; Nov. 15, 1941; March 1, 1942; Jan. 16, 1943; March 9, 1943; and Nov. 9, 1944, FBI Director Hoover informed Bureau Headquarters officials and supervisors of procedures detailing how to prepare memoranda which were not to be retained and filed in the FBI's general files. The ostensible purpose was to minimize unnecessary paper work. The April 11, 1940, and March 1, 1942, memoranda, however, suggest that a further purpose had been to insure that sensitive information could be conveyed to the FBI Director and high-level Washington Bureau officials in writing with the assurances that this information could be kept confidential and no permanent record would thereby have been created. The April 11, 1940, memorandum identified such documents to be destroyed as including "memoranda written merely for informative purposes, which need not be retained for permanent filing." The March 1, 1942, memorandum more specifically

identified these documents as including memoranda "prepared solely for the benefit of the Director which will possibly be seen by the Director and other officials and eventually be returned to the dictator [of the memorandum] to be destroyed or retained in the Director's office."

This procedure to destroy "informational" documents provided the basis for the Bureau's "Do Not File" procedure instituted in 1942 for the authorization of break-ins. Described in detail in an internal Bureau memorandum of July 19, 1966, from William Sullivan to Cartha DeLoach, the "Do Not File" procedure was based on the recognition that break-ins were "clearly illegal" and thus could not be authorized from "outside the Bureau." To insure that FBI agents would not resort to break-ins excessively, and further that they would have devised sufficient safeguards to insure against discovery of FBI involvement, prior written authorization from the Director or the Assistant Director was required for all planned break-ins. This requirement meant that a written record of the request and the authorization would have to be created. To insure that these documents could not be uncovered or that there would be no record that they had been destroyed, this special filing procedure was devised—unlike other written communications from the field, break-in documents from the field offices to Washington would not be given a serial number and filed. Accordingly, these documents could be destroyed (indeed, the directions for this procedure were that they were to be destroyed) without leaving a record that this had been done. This procedure would thereby permit the Bureau to comply with discovery requirements during trial proceedings and affirm that a search of FBI files uncovered no evidence of illegal activities, and to comply with any Congressional requests for access to Bureau files without political risk.

The arrogance of intelligence officials

This attempt to safeguard "sensitive" information underlay similar filing procedures employed by the FBI and the National Security Agency (NSA). It also determined the decisions of former CIA Director Richard Helms to order certain documents destroyed and of the participants in the formulation of the Huston Plan to ensure that working copies of the final report were destroyed. Thus, the wiretap records of the 17 individuals (White House and

National Security Council aides and reporters) tapped between 1969 and 1971 allegedly to uncover the source(s) of leaks of "national security" information were not filed with other FBI "national security" wiretap records or included in the Bureau's ELSUR Index. The wiretap records on Charles Radford, a military aide suspected of having leaked National Security Council documents to the Joint Chiefs of Staff, were also filed separately. Furthermore, the reports from Paris of Assistant FBI Director William Sullivan based on his physical surveillance of nationally syndicated columnist Joseph Kraft were sent to Washington under the "Do Not File" procedure. We have also learned that, in January, 1973, CIA Director Helms ordered destroyed the tapes and transcripts (and logs) of his telephone calls and room conversations. Lastly, in June, 1970, Director Hoover ordered that all working copies of the Huston Plan should be destroyed and, in 1969, the National Security Agency devised filing procedures similar to those adopted by the Bureau for the authorization of break-ins. Having compiled a Watch List of those particular American citizens and organizations whose international communications were to be intercepted, and cognizant that this warrantless electronic surveillance was illegal, the NSA devised a formal system to insure "more restrictive control and security of sensitive information" and thereby "restrict the knowledge" of the Agency's involvement in this activity. Reports produced under this interception program would not be given NSA serial numbers and would be disseminated "For Background Use Only," and agencies receiving these reports were directed to destroy the material or return it to the NSA within two weeks.

Was the resort to these separate filing procedures confined to these three agencies and to these now-known programs? Are we now fully aware of the scope and objectives of activities conducted by Federal agencies and officials? Clearly, we do not know the answers to these questions. I doubt that any thoughtful citizen would even have claimed as late as 1974 that Federal agencies would have devised such filing procedures. Furthermore, in the summer of 1976, as the result of a suit brought by the Socialist Workers Party against the Federal government, we learned that the FBI continued to conduct break-ins after 1966 and that written records of break-in requests and reports were still extant. This is significant only because FBI officials—

documents submitted to, and in testimony before, the Senate Select Committee in 1975 in the course of a serious Congressional inquiry—had suggested that break-ins had ended subject to Director Hoover's order of 1966 and that all records of this practice had been destroyed pursuant to the "Do Not File" requirement.

Conclusion

In this article, I have not sought to call attention again to the abuses of power of Federal intelligence agencies—that is the function of other constituted bodies. This summary, however, is intended to highlight the magnitude and difficulty of the task confronting Congress today. The problem is not solely how to resolve the competing claims affecting access to the papers and records of public officials and agencies and the standards for determining classification restrictions. An additional consideration could be stated in the form of a series of questions: Are we fully knowledgeable about the official activities of public officials and agencies? Can we be assured that even classified records, when and if opened, are complete and accurate? Is there not then the need to insist upon the public's right of access to *all* papers produced by public officials in the course of their tenure in office?

I concede that this series of questions minimizes the privacy rights of public officials. I see no other recourse—no longer can we operate on the assumption that public officials will not destroy their files. The responsibilities of public service are onerous and the rewards are not commensurate with these responsibilities. Yet, ours is a complex political system which, at the minimum, requires the assurance of complete information for its effective operation. Basic to the functioning and preservation of this system is the imperative that public officials be accountable for their official activities and that, when these officials abuse power, we can be apprised of that fact in order to take whatever remedial measures are deemed sufficient or necessary to prevent recurrence. This, I think, is the most compelling argument for access and for devising new oversight procedures to ensure that interested parties can not either control or destroy important public documents. That was the central task before the National Study Commission and an issue which, given its report and findings, should command the total interest and involvement of the American public and its political leaders.

Section 28

Serial 1312 & 1313

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NARA



JAN 29 1979

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Mr. Robert L. Saloschin, Director
Office of Information Law and Policy
Department of Justice
Washington, DC 20530

FEDERAL GOVERNMENT

Destruction of Property - Persec

Dear Mr. Saloschin:

I understand that on January 22, 1979, you and Jim O'Neill discussed your memorandum to me of January 16, 1979, regarding the notice announcing the formation of "Historians for Freedom of Information." In order to provide you with additional information I am enclosing a copy of a study we completed last month concerning the disposition of Federal Bureau of Investigation field office investigative files. I think that you will find it of interest.

(Handwritten initials)

If you still believe that a meeting could be helpful, we would be ready to attend.

Sincerely,

James B. Rhoads

JAMES B. RHOADS
Archivist of the United States

Enclosure

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11 FEB 5 1979

cc: Honorable William H. Webster
Director, Federal Bureau of Investigation

(Handwritten initials)

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General Services Administration National Archives and Records Service Washington, DC 2040

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Honorable William H. Webster
 Director
 Federal Bureau of Investigation
 Washington, DC 20535

FEDERAL GOVERNMENT

Dear Judge Webster:

DESTRUCTION OF BUREAU RECORDS

As you are aware, the National Archives and Records Service (NARS) with your cooperation early last year initiated a review of the current records schedule for FBI field office investigative files and the procedures for its application to the records. The purpose of the review was to determine whether any revisions to the schedule and the procedures were necessary.

Enclosed is a copy of our report on this matter. The report concludes that the procedures established by the FBI for implementing its schedules for field office investigative files do not deviate from the retention standards approved by NARS for these records. The report also concludes that no change need be made in the current standard for temporary retention of field office investigative files. However, it does recommend that the FBI revise the wording of the retention standards in its current schedules for such files in order to (1) define more clearly the retention periods in effect for the files and (2) document more fully that the disposal of the files is governed by the expiration of fixed retention periods. Your records management staff has accepted this recommendation and has submitted for NARS approval a revised schedule for field office investigative files.

I want to thank you for the cooperation that we received from the FBI in conducting this review. Members of my staff received the fullest measure of assistance from each Bureau representative with whom they dealt. We particularly appreciate the extensive time and effort rendered by James W. Awe, Section Chief, Records Systems Section, and [redacted] of his staff. Please extend our thanks to them.

Sincerely,

James B. Rhoads

JAMES B. RHOADS
 Archivist of the United States

b6 PER
 b7C FBI

H- Awe

Enclosure

(Handwritten initials)

ENC. BEHIND FILE

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 DATE 9/10/03 BY AUC 60290 BSE/DCG/ymw

CAP. PROG.
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 FEB 18 1979

DISPOSITION OF
FEDERAL BUREAU OF INVESTIGATION FIELD OFFICE INVESTIGATIVE FILES

December 1978

Prepared by: Office of Federal Records Centers
National Archives and Records Service
General Services Administration
Washington, DC 20408

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Section 34

Serial 1491

pgs 63-64 (4pgs)

NARA

National Archives



Washington, DC 20408

FEB 21 1991

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- Off. Liaison & Int. Affs. _____
- Off. of Public Affs. _____
- Telephone Rm. _____
- Director's Sec'y _____

Honorable William S. Sessions
 Director
 Federal Bureau of Investigation
 Washington, D.C. 20535

Dear Mr. Sessions: **DESTRUCTION OF Field Files + Records**

I am sorry that you were unable to attend the December 13, 1990, World War II Executive Branch Steering Committee meeting at the National Archives. One of the agenda items at the meeting was the declassification of World War II records. One problem the group confronted in considering this matter is that no one knows just how much of the documentation from the era of World War II remains to be reviewed.

We do know that there are almost 27,000,000 pages of classified records from the World War II era currently in the custody of the National Archives. We are working to reduce this backlog, but each year the volume grows as agencies transfer more records to NARA. In 1990, for example, we reviewed and declassified 10,270,000 pages of material. At the same time, however, we accessioned another 10,232,500 pages of classified World War II records. With this situation, it is virtually impossible for NARA to estimate the resources it would require to review all of the classified records from the World War II era. Moreover, accurate data on the amount of World War II material remaining in the custody of the creating or receiving Federal agencies is currently unavailable. Enclosed is a brief summary of what is known about classified World War II records in agency custody.

Therefore, in accordance with suggestions heard at the meeting on December 13, I am requesting the assistance of the members of the Steering Committee in identifying the volume of records yet to be transferred to the National Archives and reviewed for possible declassification.

66-3286-1491

I would appreciate your assistance in determining the volume of Federal Bureau of Investigation records from the World War II era that has not yet been transferred to the National Archives. For these records, it would be helpful if you could also indicate which, if any, of these records have been previously reviewed for declassification, whether any groups of them would be subject to systematic or bulk review, and whether your agency could provide any additional resources for such a review. Please feel free to add any general comments on the declassification process. With this information, I believe that we can begin to discuss some possible transfer dates and to

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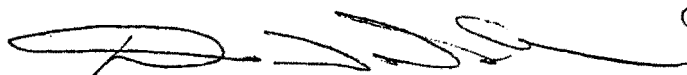
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estimate the resources required for any further declassification of these important records.

I hope that you will be able to attend the next meeting of the Steering Committee, which will be held on June 3, 1991. Until then, best wishes.

Sincerely,



DON W. WILSON
Archivist of the United States

Enclosure

cc: Oliver Revell, Deputy Director for Investigations
Federal Bureau of Investigation, Washington, DC 20520

World War II Classified Records in Agency Custody

INTELLIGENCE AGENCIES

A. Central Intelligence Agency: Ca. 800-1000 cubic feet of World War II era records of the Office of Strategic Services. The agency retains original records screened out of 350 cubic feet transferred to the National Archives.

B. Federal Bureau of Investigation: Ca. 2,500 cubic feet of World War II era records appraised as permanent in 1982. The records are in various subject classifications. However, two of the classes which are predominately WW II, 98 Sabotage and 65 Espionage, make up the majority of the cubic footage. Much of the World War II material is on microfilm. Since 1982 the Bureau has transferred only 290 cubic feet of records.

C. The National Security Agency: Ca. 600 cubic feet of original World War II era records. Sanitized copies of 60% of this material was transferred to the National Archives (495 cubic feet).

MILITARY AGENCIES

A. Army: Most of the World War II era records have been transferred to the National Archives. One notable exception is the Army Investigative Records Repository at Ft. Meade. Unknown volume of classified records and ca. 17,000 reels of World War II and post war microfilm. Small collections appropriate for transfer are retained by the Center for Military History and the Corps of Engineers. Unknown volume of classified World War II chemical warfare and ordnance believed to be in the custody of Edgewood Arsenal and Aberdeen Proving Ground.

B. Navy: Ca. 9,200 cubic feet of World War II era records. The Navy Historical Center retains 2,850 cubic feet most of which is unclassified. This material is scheduled for transfer to the National Archives in 1995-96. The Marine Corps Historical Center has begun transfer of its remaining 1,350 cubic feet of World War II material to the National Archives. Another 5,000 cubic feet of Navy SEABEE World War II era material is retained by the Office of Naval Facilities Engineering Command in Port Hueneme, California. If not already declassified, these records would be suitable for "bulk" declassification.

C. Air Force: Ca. 5,500 cubic feet of World War II material. Air Force Historical Research Center retained originals of ca. 500 cubic feet of World War II records and transferred a microfilm copy to the National Archives. Roughly 10% remain classified. An additional 5,000 cubic of research and development records, publications and general correspondence are currently being appraised for possible transfer to the National Archives.

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If not already declassified, these records would be suitable for "bulk" declassification.

CIVILIAN AGENCIES

A. Department of Energy: Volume unknown. DOE has retained most of its predecessor agency World War II era records in various sites nationwide. The Coordination and Information Center in Las Vegas, Los Alamos, Hanford, Oak Ridge, and Lawrence Berkeley Laboratory all have World War II materials which are suitable for transfer to the National Archives. Percentage of classified remains high.

B. Treasury: Volume unknown. Treasury has among a variety of records series in the Department Office (formerly the Office of the Secretary), World War II era records relating to International financial and monetary policy. The records of the Office of the Assistant Secretary for International Affairs have been appraised. No records have been transferred. Even if not classified, foreign government information presents access problems.

C. Department of Justice: 3,500 cubic feet of World War II Internal Security Litigation case files containing classified records. Under a schedule approved in 1989, the Department has begun transferring World War II material to the National Archives (35 cubic feet of World War II policy records were transferred in 1989).

Section 28

Serial 1306

pages 167-195 (28 pgs)

NARIA

(part of report in serial
1313)

I. INTRODUCTION

THE
PURPOSE AND ORIGIN OF STUDY

This report is the outcome of a study conducted by the National Archives and Records Service (NARS) of the disposition of Federal Bureau of Investigation (FBI) field office investigative files. The purpose of the study was to determine, through a review of the current disposition schedule for such files and procedures for its application to the records, whether revision to either the schedule or the procedures was necessary.

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The study was initiated through an exchange of correspondence in March 1978 between James B. Rhoads, Archivist of the United States, and William H. Webster, Director of the FBI. NARS undertook the study because of its responsibility for oversight of records management practices in Federal agencies and its concern over the appearance of a number of newspaper and magazine articles critical of the current records control schedule for FBI field office investigative files.

SCOPE AND CONDUCT OF THE STUDY

DECLASSIFIED BY SP4 EIW/gmk
ON 9-23-92 per release

CLASS. AUTHORITY 1.2.4.2
DATE OF REVIEW 12-18-98
5-19-81

A. Overview. The study was conducted by staff members of the Records Disposition Division, Office of Federal Records Centers, NARS, with the assistance of the staff of the Records Systems Section within the FBI's Records Management Division. The NARS team consisted of Thomas W. Wadlow, Director, Records Disposition Division, and two archivists on his staff with extensive experience in the appraisal of intelligence and investigative records. The team enjoyed the fullest cooperation from the FBI in conducting the study. Special mention must be made of the assistance rendered by Special Agent James W. Ave, Section Chief, Records Systems

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Section, and his staff. Not only did the staff of the Records Systems Section locate and retrieve the headquarters case files requested by the NARS team, but the staff also arranged for access to other FBI documentation and personnel consulted in the course of the study. In addition, a ^{FBI} staff member accompanied the NARS ^{Team} on its field office visits in order to facilitate review of the files and arrange interviews with field personnel.

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B. Specific issues. The study of disposition of FBI field office investigative files encompassed three related issues. Outlined below are brief descriptions of the issues, the purpose of studying them, and the manner in which they were examined.

1. Application of current disposal authority for field office investigative files. This phase of the study involved an examination of the current field office schedule for investigative files and the manner in which the FBI applies it to the records. NARS sought to determine whether the procedures for applying the schedule conformed with the disposal instructions approved by NARS for these records. The conduct of this phase of the study included (a) review of FBI documentation on disposal procedures for field office investigative files and (b) inspection of disposal practices at ^{the New York} ~~several~~ FBI field offices. Chapter II of the ^e report contains the discussion and conclusions relating to this issue.

2. Reporting requirements and the FBI central records system. This phase of the study involved an evaluation of the FBI's reporting requirements for field office investigations. Several published comments had questioned whether the FBI's headquarters case files contained a full account of field office actions in substantive investigations. NARS sought to determine whether FBI procedures provided for the submission to headquarters of such accounts in substantive investigations. The conduct of

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this phase of the study included (a) examination of FBI manuals on administrative procedures and investigative operations and (b) review of headquarters inspection reports for their evaluation of reporting practices in eight different field offices over a ten year period (Exhibit ^{III-2}~~I-1~~ lists the field offices and periods covered by the inspection reports). Chapter III of the report contains the discussion and conclusions relating to this issue.

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3. Headquarters and field office investigative files: a comparison. This phase of the study involved a comparison of the content of headquarters and field office investigative files for the same cases. Previous NARS appraisals had determined that field office investigative files did not have sufficient historical or other research value to warrant permanent retention by the Federal Government. However, these appraisals had not included on-site examination of the records. As several researchers had stated that field office investigative files contains substantive documentation that was not contained in headquarters files,¹ NARS decided that its reevaluation of field office files should include (a) an examination of such files and (b) a comparison of their contents with those of headquarters case files for the same cases. The purpose of such a comparison was to determine whether headquarters case files document substantive field office investigations to such a degree as to warrant authorizing disposal of the field office case files.

The conduct of this phase of the study included visits to three major FBI field offices (New York City, Chicago, and Washington, D.C.) and examination of 76 field office investigative files. The files covered a full range of investigative matters--criminal, security, and applicant cases (Exhibit ^{IV-1}~~I-2~~ furnishes a statistical profile of the case files examined in the course of the study). Although many of the files involved routine

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1. Athan Theoharis, "Double-Entry Intelligence Files," Nation, October 22, 1977, pp. 393-7; John Rosenberg, "Catch in the Information Act," Nation, February 4, 1978, pp. 108-11.

cases, some related to cases of an archival nature in terms of the criteria set forth in the FBI's proposed schedule for headquarters case files. After review of investigative files at a field office was completed, examination of headquarters files for these cases was conducted. This process, combined with copious notes on each file, permitted a detailed comparison of the records for each case. Chapter IV of the report contains the discussion and conclusions relating to this issue.

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C. Format of report. Chapters II, III, and IV, which discuss in detail the issues described above, form the body of the report and are organized similarly. The major section of each chapter is entitled "discussion," followed by a brief section entitled "conclusions." Chapter V of the report summarizes the conclusions drawn from the study and furnishes recommendations regarding revision of the current schedule for field office investigative files. Exhibits to the report are identified by chapter to which they relate and are numbered thereunder consecutively (i.e., Exhibit I-1).

D. General conclusions.

1. The FBI program for disposition of field office investigative files conforms fully with the disposition instructions approved by NARS. However, NARS recommends that the FBI revise the wording of its approved disposition instructions in order to document publicly that field office investigative files are not destroyed until the expiration of fixed retention periods.

2. Although FBI reporting procedures vary according to type of investigation, the procedures do provide for submission of full accounts of field office actions in substantive investigations. Moreover, those matters that are not reported to headquarters are so ephemeral and lacking

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in substance that it does not seem possible for them to meet the criteria set forth for designating investigative cases for permanent retention by the Federal Government.

3. On the basis of an examination of the records, FBI field office investigative files do not have sufficient historical or other research value to warrant permanent retention. This judgment is based on two major considerations: (a) the headquarters case files contain a more complete account of substantive investigations than the scattered and fragmentary field office files and (b) the headquarters case files contain field office accounts summarizing significant aspects of such investigations. Therefore, no change need be made in the current retention standard for field office investigative files.

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II. DEVELOPING AND IMPLEMENTING THE CURRENT SCHEDULES
FOR FBI FIELD OFFICE INVESTIGATIVE FILES

DISCUSSION

A. Authority for disposal of field office investigative files. ~~CONFIDENTIAL~~ 15
The FBI first obtained authority to destroy its field office investigative files in 1945, when the Joint Committee on the Disposition of Executive Papers authorized disposal of closed field office investigative files dating from 1910 to 1938 (see ^{Exhibit} Attachment II-1, Job No. 345-288). A year later the FBI obtained continuing authority to destroy its field office investigative files (see ^{Exhibit} Attachment II-2, Job No. 346-S237). Staff members of the National Archives evaluated each of these disposal requests and determined in both cases that the field office investigative files "appear to contain nothing of last^{ing} value not preserved in the corresponding case files kept at headquarters in Washington." It should be further noted that these disposal schedules did not contain any standard retention periods for field office investigative files. Under the schedules the FBI was authorized to destroy such files at the time of the closing of the case.

B. Current records schedules for disposal of field office investigative files. The FBI in 1976 revised its 1946 schedule for field office investigative files. The revision to the schedule resulted from a change in investigative reporting requirements under which field offices were advised to forward only data of substance to FBI headquarters. The revised schedule provided for field office investigative files a retention period of "10 years after date of case closing or when administrative needs have been met, whichever is earlier." (See ^{Exhibit} Attachment II-3, Job No. NC1-65-76-3) NARS approved this schedule after determining that the

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change in reporting requirements did not necessitate a change in the retention standard for field office investigative files. In other words, field office investigative files remained a series of records authorized for disposal.

On August 31, 1977, NARS approved a second schedule for disposal of field office investigative files. This schedule reduced the retention period for investigative files involving criminal matters to "5 years after date of case closing or when administrative needs have been met, whichever is earlier." (See ^{Exhibit} Attachment II-4, Job No. NCI-65-77-11)

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Newspaper reports have questioned the wisdom of reducing the retention period for these files.¹ The reports, on the basis of interviews with unnamed FBI agents, suggest that criminal case files at field offices are not maintained for a sufficient period of time to meet FBI field office law enforcement needs.

It should be noted that NARS does not have authority to establish retention periods for disposable agency records. Establishing appropriate retention periods for records is an agency responsibility and involves a determination of the legal, fiscal, and administrative needs for the records (FPMR 101-11.406-3). NARS does not substitute its judgment for that of agency officials in determining how long a particular series of records is needed for agency operations. In other words, establishing a retention period for a series of records is the responsibility of the users of the records. In evaluating and approving the current FBI schedules for field office investigative files, therefore, NARS accepted

1. Articles by Anthony Marro in New York Times of March 15, 1978, p. A16, and by Jonathan Kwitling in Wall Street Journal of September 1978, p. .

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the determination of FBI officials that for agency purposes criminal case files were needed for no more than 5 years after case closing.

In conducting this review of the current schedule for field office investigative files, NARS examined documentation provided by FBI records management officials on the development of the current schedule covering criminal case files. The documentation demonstrated that the proposal to reduce the retention period for field office criminal case files from 10 to 5 years after close of case received the concurrence of FBI headquarters officials with responsibility for oversight of the agency's criminal investigations. In addition, the proposal received approval from the Director of the Bureau.

In short, the decision to reduce the retention period for field office criminal case files appears to have been a carefully considered judgment by agency officials familiar with the need for these records. Moreover, despite the newspaper accounts of complaints from FBI agents about the reduced retention period, FBI records management officials informed NARS representatives that headquarters had not received any reports of impairment to field operations resulting from the reduced retention period for criminal case files.

C. Application of current disposal schedules to field office investigative files. The instructions that the FBI has issued to its field offices regarding disposal of field office investigative files incorporate the most recent retention standards approved by NARS. Field offices have been instructed to destroy investigative files relating to criminal matters five years after closing or five years after the date of the last relevant communication, whichever is later, and files relating to applicant and security matters ten years after closing or

ten years after date of the last relevant communication, whichever is later. Field offices also have been furnished with a classification list identifying each file classification as criminal-, applicant-, or security-related. As FBI investigative files are organized by classification and case number, field office personnel can determine from the classification list whether closed cases within a particular classification are covered by a five- or ten-year retention period.

Although the FBI could use the language of the disposal schedules approved by NARS to destroy field office investigative files "when administrative needs have been met," such disposal authority has not been delegated to field offices. Field offices have authority to destroy investigative files only on the basis of the five- and ten-year retention periods.

In addition, the field offices have been advised that they cannot use the disposal authority conferred by the schedules to destroy investigative files (1) relating to matters in litigation, (2) relating to Freedom of Information and Privacy Act (FOIPA) requests, or (3) involving records for which disposal is temporarily suspended (e.g., because of current congressional interest in the records).

The procedures that the FBI has set forth for implementing the schedules require that field offices review each file prior to destruction and maintain a numerical listing of files destroyed. As FBI field offices maintain closed investigative files in numerical order, it is necessary to examine each file in determining that (1) the file has been closed for the period specified in the disposal schedule and (2) the file is not exempted from destruction because of FOIPA request, litigation, or suspension of disposal authority. In addition, each file is reviewed on a document by document basis to locate items wherein subject material has

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been indexed. The location of these items is essential to identifying related subject index cards and purging them from the field office indices at the time the investigative files are destroyed.

A NARS representative examined the manner in which the New York field office applied the disposal schedules to its closed investigative files. The methods employed at the field office proved to be consistent with the procedures set forth in agency instructions and described above.

CONCLUSIONS

The procedures that the FBI has established for implementing its schedules for field office investigative files do not deviate from the retention standards that NARS has approved for these records. Under the procedures the destruction of field office investigative files is taking place on the basis of the five-year (criminal classifications) and ten-year (security and applicant classifications) retention periods approved by NARS. The actual application of the schedule to the records, on the basis of a review of this aspect of FBI operations at the New York field office, accords fully with the procedures set forth by the agency.

NARS does recommend that the FBI revise the current schedules for field office investigative files by deleting the provision that permits disposal of such records before the expiration of the standard five- and ten-year retention periods (i.e., "Destroy when . . . administrative needs have been met . . ."). NARS understands that such disposal authority has not been delegated to field offices. As the disposal authority is not in use, it appears appropriate to delete the reference to it in the current schedules. This would bring the schedules into line with the disposal authority actually in use at the field offices. Moreover, it would eliminate

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the possibility of reading the schedules and mistakenly concluding that FBI field office investigative files are not maintained for the standard retention periods described in the schedules.

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III. REPORTING REQUIREMENTS AND CENTRAL RECORDS SYSTEM

DISCUSSION

A. Examination of FBI Manuals on Administrative Procedure and Investigative Operations.

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Two comprehensive manuals are used by FBI Field Offices concerning their administration, investigation, reporting, and records activities:

1/. MANUAL OF ADMINISTRATIVE OPERATIONS and PROCEDURES (MAOP) which is divided in two parts. Part I contains those rules and regulations, of a personnel nature, while Part II sets forth that information which pertains to the administrative operations of the field office. The current revision of MAOP is 2/28/78, and totals 646 pages including index in one volume.

o Part II, Section 1, specifies that good judgment and common sense must be exercised at all times in determining what information concerning individuals is to be transmitted to FBIHQ in view of the restrictive provisions of the Privacy Act of 1974, Title 5, USC, Section 552. Such information collected and maintained is required to be relevant, necessary and within the scope of an authorized law enforcement activity and a purpose of the FBI authorized by statute or Executive Order. Care is to be taken to insure that all information

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furnished FBIHQ is information which is lawfully collected, and, moreover, it is not enough that such data might be of interest to FBIHQ, its collection and maintenance must be pursuant to Federal law.

o Field offices are not authorized to unilaterally issue memoranda which establishes rules, regulations, procedures, or policies such as those found in various Bureau Manuals or which set forth information and instructions of the type normally handled by FBIHQ. These must be submitted to FBIHQ for approval before distribution.

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o Part II, Section 10(MAOP) deals with written communication. Generally, communications are put in one or another of the following media: letters, memoranda, reports, airtels, and teletypes.

o General rules regarding recording and notification of investigations require that the results must be submitted to FBIHQ in 18 specific instances and by specified type of related communication, i.e., memo, reports, progress letter summaries, etc..

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o In January 1978, Director, FBI, implemented a new report format in all criminal and criminal related investigations - known as Prosecutive Report(PR). This report is forwarded to FBIHQ at the end of investigation and prior to rendering prosecutive opinion. Copies, including all supplemental paperwork, are forwarded from all field offices wherein prosecution is anticipated. The makeup of the new PR contains a table of contents specifying the types of information required wherein the facts of a case must be set forth according to principles of good report writing, namely, (1) accuracy, (2) completeness, (3) brevity, (4) impartiality, and (5) form. Field offices are not to indicate in PRs (1) opinions or conclusions of Agents, (2) descriptions of subjects in antitrust cases, and (3) words or phrases which might be regarded as objectionable or offensive to any race, creed or religious sect. Finally, the January memorandum implementing the new PR format explains reporting requirements in minute detail, the case classifications affected, and contains exhibits for the entire content of a sample PR.

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2/. MANUAL OF INVESTIGATIVE OPERATIONS AND GUIDELINES (MIOG) which is also divided in two parts. This manual was designed to assist investigative employees in the performance of their duties. Part I illustrates the investigative responsibilities of the FBI with section numbers corresponding to respective case file classification numbers. Part II of MIOG pertains to those areas which are supportive of the FBI's investigative responsibilities. The current revision of MIOG is 1/31/78, and totals 1493 pages including index, in three volumes.

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o Investigative authority and responsibilities for 204 * classifications, their related criminal laws, rules of criminal procedure, admissibility of evidence, interviews, descriptions of persons, surveillance, technical services, etc., are among sections extensively covered therein.

B. Review of FBIHQ Inspection Reports for their Evaluation of Field Office Reporting Practices.

o FBIHQ Inspection Division regularly-usually on an annual basis- conducts inspections of its field offices. During these inspections studies are made, among others, of (1) Correspondence and Communication Branch (personnel, management, work loads, word processing, etc.), (2) Offices Services Manager

* See Exhibit II-1 (The FBI Central Records System)

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(support services such as records management), (3) Records and Administrative Branch. Their object is to evaluate the efficiency of these operations.

o Typical questions covered in-depth during these inspections as reflected in check-lists used as inspector's aides, include:

(1) Are the office administrative files in conformance with the manual of rules and regulations, and sufficient to meet the office needs ?

(2) Is there an adequate system of accountability of evidence, including chargeouts, maintenance of tickler, book, receipts or notations as to the disposition or transmittal of information to other offices and/or to FBIHQ ?

o Thousands of case files are examined by the inspectors who tabulate errors of form and types of errors. ~~XXX~~ In the inspection reports examined* the instances of non-compliance with rules specified in Bureau Manuals were relatively few, and in most cases pertained not to substantive but to minor matters such as, incorrect dates, file numbers and titles, misfiles, failure to index, etc.. Errors considered substantive as noted in the inspection reports included: synopsis of report and details not in complete agreement; investigation needs more attention; incomplete caution statement; failure to advise subject of rights; photo not identified; investigation delayed, etc..

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Inspection reports, however, also show what action was immediately taken or contemplated by the Agent in Charge of the field office to correct noted deficiencies.

CONCLUSION

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The foregoing is a very brief description of FBI Manuals on their reporting and investigative operations used by field offices to which FBIHQ requires strict adherence. These Directives can only be described as the most comprehensive coverage of FBI field office requirements imaginable-nothing appears to have been left to chance. An examination of FBI Manuals of procedure, therefore, clearly shows that administrative procedures and investigative practices applicable to field offices creates information that more than adequately documents cases forwarded to FBIHQ which may be used by historians or other researchers.

Additionally, FBIHQ inspection reports of field activities cover a broad range of subjects which are extensively probed during each inspection. Ascertaining whether or not the field office is investigating and reporting information to FBIHQ in strict conformance with regulations is fully documented therein.

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In summary, the FBI field offices are required to forward to FBIHQ the originals, duplicates, or summarizations of substance of all significant aspects of pertinent investigative matters. However, it should be noted that FBI field offices do maintain certain other records that are not contained at FBIHQ. Such records include files, index cards, and related material pertaining to cases in which there was no prosecutive action undertaken; perpetrators of violations not developed during investigation; or investigation revealed allegations were unsubstantiated or not within the investigative jurisdiction of the FBI. These investigations are closed in the field office and correspondence is not forwarded to FBIHQ. An examination of FBIHQ investigative and reporting rules revealed them to be adequate; the results of inspection reports of field activities shows that field offices are complying with these requirements and in doing so provide adequate documentation for historical and other research in those cases forwarded to FBIHQ.

CONF. X

FBIHQ INSPECTION REPORTS OF FIELD OFFICES

| <u>FIELD OFFICE</u> | <u>INSPECTION REPORT DATES</u> |
|-----------------------|--------------------------------|
| San Juan, Puerto Rico | 1968 - 1978 |
| Omaha, Nebraska | 1968 - 1977 |
| Las Vegas, Nevada | 1968 - 1976 |
| Boston, Massachusetts | 1968 - 1977 |
| Miami, Florida | 1968 - 1978 |
| New York, N. Y. | 1968 - 1978 |
| Butte, Montana | 1969 - 1977 |
| Seattle, Washington | 1967 - 1976 |
| Washington, DC | 1968 - 1976 |

EXHIBIT I-2

X

IV. COMPARING FIELD OFFICE AND HEADQUARTERS INVESTIGATIVE FILES

DISCUSSION

A. Procedures for comparing field office and headquarters files.

In conducting this study NARS representatives reviewed ⁷⁶75 closed investigative files at FBI field offices in Washington, D.C., New York City, and Chicago. The field offices reported 72 of the ⁷⁶75 cases to headquarters, and for each of these 72 cases the NARS study team reviewed the corresponding headquarters file and compared its content to that of the field office file (see ^{Exhibit} Attachment IV-1 for table of files reviewed).

1. Selection of classifications and cases. Given the substantial number of classifications in the FBI's central records system, it was not feasible to review sample cases in each of the 205 classifications. Therefore, in consultation with FBI records management officials, the study team developed a list of classifications (1) representative of a broad range of criminal, security, and applicant matters and (2) active in terms of the number of cases handled by FBI field offices. The study team used the list of classifications to review cases similar in classification at each of the field offices. All cases reviewed were "office of origin" cases: cases in which the field office visited by the study team had primary jurisdiction over the conduct of the investigation (as compared to auxiliary offices that have a supporting role in investigations).

In addition, the study team requested that FBI program officials at each field office identify cases handled at their office that appeared to meet archival criteria for permanent retention of

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investigative files at FBI headquarters.¹ This procedure insured that the study team could compare the content of field office and headquarters investigative files for cases of such significance that the headquarters file merited retention as a permanently valuable record. 11 of the ⁷⁶75 files examined at the field offices involved cases that in the judgment of the study team did merit permanent retention at headquarters under the proposed schedule (cf. ^{Exhibit} Attachment IV-1). The remaining files reviewed at field offices were selected randomly from the file room on the basis of the study team's classification list.

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2. File review procedures. The study team documented its review of each field office file through use of a questionnaire (see ^{Exhibit} Attachment IV-2 for sample questionnaire). The questionnaire provided

1. These criteria were taken from a proposed schedule for FBI headquarters records that outlines procedures for designating selected investigative case files for permanent retention and eventual transfer to NARS. The schedule provides that files will be selected and designated for permanent retention if they meet one or more of the following criteria:

- a. The investigation or case has significant impact on law enforcement policies or procedures, agency rules or regulations, or investigative and intelligence techniques;
- b. The investigation or case involves an actual or potential breakdown of public order (civil disturbances) or major proportions;
- c. The investigation or case directly involves a full-field investigation for (1) a subversive or extremist organization, with or without foreign connections or (2) a person or persons holding a major leadership position within such an organization;
- d. The investigation or case directly involves a person, element, or organization whose activities are deemed to pose a substantial and compelling threat to the conduct of national defense or foreign policy;
- e. The investigation or case is significant in terms of intensity of public interest, expressed by (1) a demonstrated interest of a Congressional committee or the Executive Office of the President, or (2) a high degree of national media attention.

At the time of the issuance of this report the schedule containing these criteria was pending before the Senate Judiciary Committee, to which it had been referred for review and possible comment under 44 U.S.C. 3303a(c).

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that reviewers describe the content of the file, both the documentation forwarded to headquarters and that not forwarded to headquarters, and determine whether any material not forwarded to headquarters had substantive value for documenting the development of the case. The same questionnaire was used to examine the corresponding headquarters file on the case and confirm the presence of materials forwarded from the field office. From the comparison of the headquarters and field office files for the same cases, the reviewers determined whether the headquarters file contained a full account of the case or investigation.

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A few of the files reviewed at field offices consisted of more than 20 sections (i.e., 1½-2 inch thick folders) of documentation. In the interests of examining a substantial number of different files, the reviewers did not attempt to examine completely each such voluminous file. Rather, they limited their examination to those sections of the file relating to one or two phases of the investigation.

B. The content of field office and headquarters investigative files.

This analysis of the content of FBI investigative records is based on the study team's examination of field office and headquarters case files. The analysis is organized according to the types of case files examined:

(a) files for cases reported to headquarters and (b) files for cases not reported to headquarters.

1. Cases reported to headquarters. For these cases there is a substantial duplication of content between a field office investigative file and the counterpart file at headquarters. The documentation contained in both files includes letters, memoranda, airtels, teletypes, and other forms of correspondence between headquarters and field offices, as well as reports and letterhead memoranda (LHMs) from field office to headquarters

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on the results of the investigation. Of this documentation the investigative reports and LHMs contain the most substantive information for research purposes. Investigative reports and LHMs located in field office files invariably were contained in the corresponding headquarters case files.

LHMs are a form of report used to transmit information (1) of possible interest to other Government agencies or for use in conducting an investigation abroad, (2) in certain unprosecutable security cases, and (3) in response to investigative requests from foreign police agencies. Investigative and prosecutive reports, on the other hand, set forth the results of field office investigations, including (1) a synopsis of facts, (2) a description of the complaint, offense, or other basis for the investigation, (3) statements of essential facts in the case, including descriptions of suspects, subjects, and victims, results of laboratory investigations, interviews of witnesses and sources, identification records of subjects, and relevant local police reports, and (4) opinion of the U.S. Attorney or Assistant U.S. Attorney regarding prosecution of the matter. Field offices also utilize investigative reports in transmitting the results of applicant background investigations, but the content of such reports naturally does not relate to a complaint or offense, but rather to the character, loyalty, associations, qualifications, and abilities of the applicant or employee. ~~CONFIDENTIAL~~

Investigative reports often can be several hundred pages long, and the completion of a major case may involve the submission of a number of such investigative reports, each covering a different phase of the investigation. Although the reports do appear to document all substantive aspects of the investigation, they do not necessarily document all actions taken in the course of the investigation. In the interest of economy and

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brevity, field offices sometimes explicitly omit from the reports "negative information" (information of no value to the development or resolution of the case), data of personnel and vehicle assignments, radio logs, and other ephemeral documentation. FBI reporting procedures authorize omitting such data from the details of the report.

In addition to reports and LHMs, the documentation duplicated between field office and headquarters files normally includes correspondence between field offices and headquarters. The amount of such correspondence generally is dependent on the notoriety or significance of the case and the length of the investigation. In major cases the files include numerous field office airtels and teletypes on the status of the case and the progress of the investigation. In such cases copies of communications between field offices that set forth leads may also be referred to headquarters for informational purposes. Other documentation duplicated in the files can include headquarters communications initiating an investigation and establishing guidelines for its conduct, forwarding results of reviews of headquarters investigative files, requiring submission of a report on a particular phase of an investigation, and authorizing or denying use of requested investigative techniques.

Although there is a substantial duplication of content between a field office file and its headquarters counterpart, the field office file generally contains documentation that is not duplicated in the headquarters file. Such documentation often includes routine traffic between field offices setting forth and responding to leads, correspondence with U.S. Attorneys on disposition of cases, special agents' memoranda to file, informant reports, records of indices searches, and memoranda of case supervisors outlining procedures for conducting a major investigation.

Information contained in this documentation that proves of value to the outcome of the case appears to be consistently incorporated in summary form into an investigative report or other communication to headquarters. Information that proves unproductive to the outcome of the case often is not reported to headquarters.

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On the other hand, headquarters case files, due to the scope of their documentation, frequently provide a more comprehensive account of a case than do individual field office files. For example, several cases reviewed by the study team involved security matters in which two or more field offices closed cases on the same subject, due to the subject's changes of residence. While the field office files covered separate phases of an investigation, the headquarters files covered the entire investigation. Several other cases involved security matters in which a number of field offices opened cases on an organization, due to its operation in different localities. Again, the headquarters files provided the fullest account of the investigation. Applicant cases also involved the conduct of different aspects of an investigation at two or more field offices. For each of these types of cases the headquarters case files provided more complete accounts of the case than the scattered and fragmentary files examined at individual field offices.

Similarly, headquarters case files often document aspects of a case not covered by any field office file. Such documentation includes correspondence within the FBI, with legal divisions of the Department of Justice, and with other Federal agencies on initiating, conducting, or concluding an investigation. This material was found most frequently in headquarters files relating to security matters, including espionage, foreign counterintelligence, and domestic security cases, and criminal matters such as civil rights cases.

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2. Cases not reported to headquarters. Of the 75 field office investigative files reviewed by the study team, only four did not have headquarters counterparts (cf. ^{Exhibit} Attachment IV-1). These four files involved cases closed administratively in the field after a limited investigation revealed no violation of Federal law and the U.S. Attorney's office confirmed the lack of prosecutive merit. The content of these files was limited to the complaints, reports of interviews or surveillance, letters to U.S. Attorneys confirming declinations of prosecution, and memoranda of Special Agents, including notices of case closing. Although the review by the study team involved only a small number of such files, the cases were not substantive and their closing at the field office level without reference to headquarters clearly complied with FBI reporting requirements.

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CONCLUSIONS

The headquarters investigative files reviewed by the study team do appear to document adequately, through reports, LHMS, and correspondence, the conduct of ^{substantive} investigations in the field. The investigative and prosecutive reports in particular serve not only to document in detail the results of the investigation, but also to demonstrate that it was conducted logically and thoroughly in accordance with investigative procedures. In comparing headquarters and field office investigative files the study team did not locate in field office files information of value to the outcome of an investigation that was not summarized or otherwise incorporated into communications to headquarters.

This is not to suggest that the contents of headquarters and field office investigative files duplicate one another completely, for they do not. Generally speaking, the documentation in a headquarters file is

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skewed to the substantive results of the investigation. In contrast, the field office file also documents the non-productive aspects of the investigation: the interviews of witnesses and sources, surveillance, searches of records, examination of evidence, and other leads that ultimately prove of no value in bringing a case to a logical conclusion. Investigative or prosecutive reports may furnish a summary account of the non-productive aspects of an investigation, but the documentation created during these phases of an investigation normally is retained in the field office file and not forwarded to headquarters.

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Based on on-site examination of field office and corresponding headquarters case files, the study team has concluded that headquarters case files do document field office investigations to such a degree as to warrant authorizing disposal of the field office investigative files. The volume of Federal records requires NARS to appraise records in terms of record series rather than in terms of individual documents or isolated files, and the study team's appraisal of field office investigative files is based on this approach. In arriving at the conclusion that this series of records did not warrant permanent retention, the study team recognized that it may be possible for a field office investigative file to contain a unique item or items of value to a researcher with a specialized interest in the records. Nonetheless, the systematic examination of field office files did not locate categories or types of documentation of potential research value that are not adequately summarized in reports or otherwise incorporated into communications forwarded to headquarters. Contrasted with the documentary content of headquarters files, documentation unique to field office files does not appear to have sufficient value to warrant permanent retention by the Federal Government.

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Moreover, the examination of investigative files closed in the field without reference to headquarters indicates that such files, in accordance with FBI reporting requirements, do not relate to substantive or significant investigations. Under current reporting requirements it does not appear possible for a case of sufficient significance to meet the criteria for permanent retention at headquarters to be closed administratively in the field without reference to headquarters. In short, field office investigative files--both those reported to headquarters and those not reported to headquarters--do not appear to have sufficient historical or other research value to warrant permanent retention by the Federal Government.

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EXHIBIT IV-1

Investigative Files Examined by NARS Study Team

| <u>Classification & Title</u> | <u>Field Files</u> | <u>Headquarters Files</u> | <u>Archival Files</u> |
|-------------------------------------|--------------------|---------------------------|-----------------------|
| 7 - Kidnaping | 10 | 8 | 0 |
| 44 - Civil Rights | 6 | 6 | 0 |
| 65** - Espionage | 11 | 11 | 0 |
| 77* - Applicants | 4 | 4 | 2 |
| 91 - Bank Robbery | 6 | 6 | 0 |
| 92 - Anti-Racketeering | 5 | 4 | 0 |
| 100** - Domestic Security | 9 | 8 | 3 |
| 105** - Foreign Counterintelligence | 12 | 12 | 2 |
| 140* - Security of Gov't Employees | 6 | 6 | 0 |
| 157** - Extremist Matters | 6 | 6 | 0 |
| 164 - Crime Aboard Aircraft | <u>1</u> | <u>1</u> | <u>1</u> |
| TOTAL | 76 | 72 | 11 |

* Applicant-related Classification

** Security-related Classification

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Section 34

Serial 1522

Pgs. 109-111 (3 pgs)

NSARA

National Archives



Washington, DC 20408

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SSP _____
CLASS _____
SRC'D _____
SER _____
REC _____

② Destruction of Field Files and Records

December 16, 1991

Mr. [redacted] Chief
Information Services Section
Information Management Division
Federal Bureau of Investigation
J.E. Hoover Bldg., Room 5634
Washington, DC 20535

b6 PER
b7C FBI

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10/8/03 BY AUC 100290 BCE/DCG/ymw

Dear Mr. [redacted]

A recent op-ed piece in the New York Times of December 3, 1991, referred to the FBI's handling of its records relating to the investigation of the murder of Harry T. and Harriette Moore in Florida in 1951. Enclosed is a copy of the article. You will note that the article reports that 30 pages of the file relating to this case have been destroyed, allegedly on the grounds of "protection of privacy, the bureau's inner workings and . . . 'national security.'"

As you are aware, NARA has a government-wide responsibility for preserving the permanently valuable records of the Federal Government. It appears to us that the file in question, given its size and subject matter content, is likely to be designated for permanent retention under the authorized retention plan and disposition schedule for the Bureau's records. Nearly all civil rights case files initiated before 1978 are scheduled for eventual transfer to the National Archives.

We are concerned about the statement that 30 pages from a file relating to a major civil rights murder investigation have been destroyed. I would appreciate your letting us know if any of the contents of the file have been destroyed. If the file is scheduled for permanent retention and documentation has been destroyed, please inform us of the authority used by the Bureau to expunge the records.

Thank you for helping us ensure compliance with the Records

ENCLOSURE

acknowledged
1/7/92

66-3286-1522

SHACKLEFORD

Disposal Act and thereby preserve Federal records of historical or other research value. I look forward to hearing from you.

Sincerely,



JAMES J. HASTINGS
Director
Records Appraisal
and Disposition Division

Enclosure

Florida's Christmas Murders

By Stetson Kennedy

JACKSONVILLE, Fla. After 40 years of seeming indifference, Florida has reopened its investigation into the murder of Harry T. Moore, the leader of the N.A.A.C.P. in Florida, and his wife, Harriette. But how serious is the state about solving a murder that could expose a joint venture between Klansmen and lawmen, including a helping hand from the F.B.I.?

On the night of Dec. 25, 1951, a bomb killed the Moores as they entered the bedroom of their frame house in Mims, midway down the eastern coast of Florida. It was their 25th wedding anniversary.

This was 13 years before the assassination of Medgar Evers and 27 years before a sniper's bullet killed the Rev. Dr. Martin Luther King Jr.

The Moore case is now being re-investigated on the order of Gov. Lawton Chiles. And, while he is to be commended, the Governor was not prompted by a sudden impulse to right an ancient wrong. It came about because a brave Florida woman had revealed, in September, that her ex-husband, a Floridian now in his 70's, frequently boasted that he had been involved in the Moore killings.

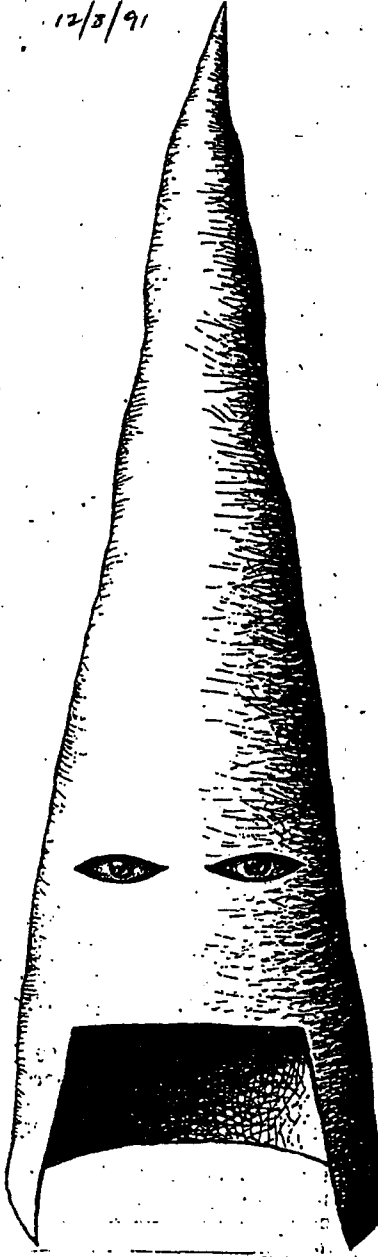
Initially, one agent of the Florida Department of Law Enforcement was assigned to the case in September, but after demands by civil rights groups, four inspectors were assigned to the case.

New evidence was not the only reason the Moore investigation was reopened. The "old" evidence is still brand new since uncensored information gathered by the F.B.I. has never been acted on — though it has been in Florida's possession since 1980. Indeed, the only material released on the case came from the F.B.I. in response to a reporter's Freedom of Information Act request in 1985. Even then, only 1,000 pages were made available — with all but an estimated 3 percent of the contents blacked out.

The F.B.I. admitted that a remaining 1,923 pages were being withheld and that 30 pages had been destroyed. The reason? Protection of privacy.

Stetson Kennedy, author of "The Klan Unmasked," was one of the first journalists to infiltrate the post-World War II Ku Klux Klan.

N.Y. Times
12/13/91



the bureau's inner workings and, unbelievably, "national security."

But even this minuscule offering provided frightening examples of what the lily-white F.B.I. and J. Edgar Hoover did, ostensibly to find the killers:

The bureau hired informants to record the license plate numbers of

the 600 people who attended the Moores' funeral, and then investigated all those who attended.

An F.B.I. agent reported that "it had to be a Negro who did the job, as no one else would know exactly where the Moores' bed was located." A subsequent report stated that the N.A.A.C.P. was a "definite suspect" in the killing and that "propaganda" and fund-raising purposes may have been behind the bombing.

They didn't stop there. The F.B.I. urged the Justice Department to appoint a particular judge, George W. Whitehurst, to preside over the Federal grand jury. They also urged the department to appoint as prosecutor James L. Guilmartin, "a Florida native who understands these matters."

It was thus hardly surprising that instead of indicting anyone for more serious charges, the grand jury came up only with perjury indictments for 12 Ku Klux Klan members.

Those indictments didn't go very far, either. When their lawyer, Edgar Waybright Sr. (the Imperial Wizard of the federated Florida, Alabama and Carolina Klans) filed a motion to dismiss the case on the grounds that no civil rights had been violated and therefore the Federal jury lacked jurisdiction, the judge and the prosecutor agreed. The case was thrown out.

Even at a time when civil rights laws were virtually nonexistent, the court's dismissal required the studious suppression of all evidence implicating law officers in the conspiracy.

Frank Meech, a retired F.B.I. agent who had played a leading role in the original probe, said in an October TV interview: "There was a general feeling in the law enforcement community at that time that Harry T. Moore had gotten too big for his britches and had to go." He added, that "for the tranquility of the South, and all, it was decided not to prosecute."

Another guest on the show was the retired Lake County sheriff, Willis McCall, who seven weeks before the killing had emptied his gun into two black prisoners handcuffed together. Asked about accusations that he had bankrolled the Moore assassinations, Mr. McCall said with a smirk, "I would have, but I didn't have that kind of money."

If Mr. Chiles makes good on his promise to follow the trail to its end, he will likely discover that the Moore murders were carefully planned, carefully carried out and, with the F.B.I.'s help, carefully covered up. □

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ENCLOSURE

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED