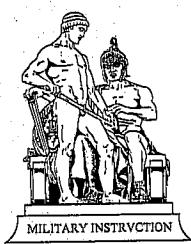


ARMY HISTORICAL SERIES

THE ROLE OF
FEDERAL MILITARY FORCES
IN DOMESTIC DISORDERS
1945–1992

by

Paul J. Scheips



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UNITED STATES ARMY
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had once justified the large augmentation force had significantly diminished while the general preparedness of federal, state, and local forces had steadily improved. But Beal's nonconcurrence reflected the fears of the Nixon administration that the domestic situation might well grow worse and that substantial reserves still needed to be available. As noted earlier, such concerns were reflected in the administration's planning for the November moratorium.

With this in mind, the civil disturbance directorate also developed a new civil disturbance command structure for the capital area that provided for a more orderly expansion of federal forces once intervention had been approved. A new arrangement, formalized on 29 December 1969, designated the commanding general of the XVIII Airborne Corps as commander of the augmentation force should those brigades be committed, with his headquarters and staff providing the necessary command and control support. The augmentation force, formerly called Task Force Washington, was now renamed Task Force Potomac to distinguish it more clearly from Task Force Military District of Washington.

Following the November moratorium, the civil disturbance directorate also concluded that it should have an advance command post. Subsequently, the directorate established it in the Washington, D.C., Municipal Building in rooms previously occupied by Task Force Washington, with the proviso that should Task Force Potomac be activated the directorate would relinquish the space. Communications for the new post were in place by 7 May 1970.³⁷

Political Surveillance Uncovered

As the year 1969 ended the Army's image was further tarnished by the My Lai massacre of 16 May 1968. On 13 November 1969, the day that the moratorium opened, a series of articles by journalist Seymour M. Hersh began to run in the press. Providing the first solid details of the massacre, they supplied the antiwar movement with yet another issue to wield. My Lai was, however, only the first in a succession of Vietnam-related disclosures and revelations that seriously embarrassed the government and the Army in the years to come.³⁸

A few months later, in the January and July 1970 issues of the *Washington Monthly*, articles by a former Army captain and instructor in the Army Intelligence School, Christopher H. Pyle, detailed the Army's role in recent domestic intelligence-gathering activities. Publication of Pyle's first article brought forth denials from senior Army officials together with inquiries from more than thirty senators and congressmen, including North Carolina Senator Samuel J. Ervin, Jr., chairman of the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary. In mid-January Robert E. Jordan, the Army's general counsel, wrote Deputy Attorney General Kleindienst, enclosing a copy of Pyle's article and suggesting that they resume discuss-

³⁷ DCDPO Historical Summary, July 1969-June 1970, chs. 4 (par. 10), 5 (par. 14), 6 (pars. 6-7); Msg, DAIN 275043, 21 Jan 70, RG 319, NARA.

³⁸ Halstead, *Out Now!* pp. 505-06; DeBenedetti and Chatfield, *An American Ordeal*, pp. 265-66, 294; Telford Taylor, *Nuremberg and Vietnam: An American Tragedy* (Chicago: Quadrangle Books, 1970), pp. 122-82; by the U.S. chief counsel at Nuremberg, who puts Son My (My Lai) in perspective.

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sions on transferring greater responsibility for civil disturbance intelligence activities to the Department of Justice. Unfortunately, however, the proposal came too late, and the public unraveling of the Army's role in domestic intelligence would be long and painful.³⁹

After visiting Fort Holabird, Jordan responded to the Army's congressional critics by asserting that the service had ordered the Intelligence Command to destroy its data bank at Fort Holabird and the 330 copies of its list of persons who might become involved in civil disturbances. He failed to mention, however, that a number of other intelligence resources remained, including the so-called compendium, a two-volume, loose-leaf reference collection on dissenters entitled "Counterintelligence Research Project: Cities and Organizations of Interest and Individuals of Interest." Included in the compendium were hundreds of organizations and persons, from the John Birch Society to the National Urban League and Martin Luther King, Jr. Another resource was a computer-indexed, 1½-foot thick, microfilm archive of intelligence reports, clippings, and other materials. A third, CONARC's computerized data bank on civil disturbances and political protests, included material on RITA activities. There were also noncomputerized regional data banks at each of the stateside Army commands and other military installations, and noncomputerized files at most of the 300 intelligence group offices within the continental United States.

A staff member of Senator Ervin's Constitutional Rights Subcommittee learned about Pyle's article from a neighbor who was attending citizenship classes. He brought the matter up with Ervin who had been interested in questions of privacy and other constitutional rights for many years. The senator made inquiries and then, in 1971, held extensive hearings at which Pyle testified. Ervin also issued a staff-prepared documentary analysis in 1972 and, after a long delay in obtaining clearance, published a report in 1973 on revelations made to his committee. By so doing, he

³⁹ Christopher H. Pyle, "CONUS Intelligence: The Army Watches Civilian Politics," and "CONUS Revisited: The Army Covers Up," *Washington Monthly* 2 (January and July 1970): 4-16, 219-58, respectively, as reprinted in *Federal Data Banks, Computers and the Bill of Rights*, pt. 2, pp. 1683-99; Ltr, Jordan to Kleindienst, 16 Feb 70, DOJ Memoranda, OGC/DA, Background Papers, RG 319, NARA. According to Donner, *The Age of Surveillance*, p. 338, the Counterintelligence Analysis Division, which reported to the assistant chief of staff for intelligence, and the 108th Military Intelligence Group prevailed on the Internal Revenue Service (IRS) to audit Pyle's tax returns, which was done in late 1970, to ascertain whether his "disclosures had been secretly financed by a subversive principal." The only item discovered was that the IRS owed Pyle a refund of \$150. See also Lawrence Baskir, "Reflections on the Senate Investigation of Army Surveillance," *Indiana Law Journal* 49 (Summer 1974): 618-53.



SENATOR ERVIN

placed a considerable body of testimony and documentary material into the public record.⁴⁰

But the public airing of the Army's surveillance activities was by no means limited to official records. During the delay of over a year between Pyle's revelations and the Ervin subcommittee's hearings, in December 1970, NBC broadcast a television documentary entitled "The Man from Uncle (Sam)." A former Army intelligence sergeant who saw the NBC program, John O'Brien, wrote Senator Ervin to inform him that Army surveillance covered persons and groups in no way involved in political extremism and included Illinois Senator Adlai Stevenson III, former governor of Illinois Otto Kerner, and Illinois Congressman Abner J. Mikva, together with hundreds of others in Illinois alone. Ervin made the matter public in a speech. In a statement issued on 17 December 1970, Secretary of the Army Stanley R. Resor categorically denied the allegation concerning Army surveillance of Stevenson, Kerner, and Mikva. Resor, however, was not entirely accurate, for he did not mention intelligence clipping files on Stevenson and Mikva and an intelligence report that Mikva had attended an antiwar rally in 1970. In any case, the publicity resulting from O'Brien's letter persuaded Secretary of Defense Melvin R. Laird to give the matter his personal attention by placing his number one troubleshooter, Department of Defense General Counsel J. Fred Buzhardt, in charge of the military's defense. The appointment effectively relegated the Army to a secondary role in its own defense—which was perhaps a wise decision. Buzhardt, with the assistance of the military, prepared a long statement that Robert F. Froehlke, the assistant secretary of defense for administration, read at hearings on 2 March 1971.⁴¹

Although not without its telling points, Froehlke's statement was a partial disclosure and an extensive rationalization based on the need for adequate intelligence prior to the commitment of troops in a civil disturbance. There had been, Froehlke said, complaints about such a need as far back as 1963, which was probably a reference to the view that General Abrams expressed at that time. As for the statement being a partial disclosure, it could hardly have been otherwise given the difficult, if not impossible, task of both defending the Army and explaining what had actually happened. In addition, the assistant secretary did not always have all of the facts at his command. For example, the Army Security Agency failed to provide him with information concerning the electronic monitoring done in support of the 1968 Republican national convention. Ultimately, the matter was the subject of an Army inspector general investigation in 1972, which made the whole affair public.⁴²

⁴⁰ *Federal Data Banks, Computers and the Bill of Rights*, pts. 1 and 2; U.S. Congress, Senate, *Army Surveillance of Civilians: Documentary Analysis*, Staff of the Subcommittee on Constitutional Rights, Committee on the Judiciary, 92d Cong., 2d sess., 1972; U.S. Congress, Senate, *Military Surveillance of Civilian Politics*. Among those testifying, in addition to Pyle, were a number of former military intelligence agents who also provided Pyle with important material for his Ph.D. dissertation, "Military Surveillance of Civilian Politics, 1967-1970," the best available history of the subject. Donner, *The Age of Surveillance*, pp. 287-320, is a hard-hitting analysis and criticism of the military's surveillance of civilian politics.

⁴¹ Baskir, "Reflections on the Senate Investigation of Army Surveillance," pp. 623-27, 629; Statement of Froehlke, in *Federal Data Banks, Computers and the Bill of Rights*, pt. 1, pp. 388-89; Statement of Secretary of the Army Stanley R. Resor, 17 Dec 70, in *Ibid.*, pt. 2, p. 1299.

⁴² Baskir, "Reflections on the Senate Investigation of Army Surveillance," p. 629; "Improper Surveillance of Private Citizens by the Military," in U.S. Congress, Senate, *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans*, Final Report of the Select Committee To Study Governmental Operations with Respect to Intelligence Activities, 94th Cong., 2d sess., 1976, S.R. 94-755, bk. 3, p. 808, including n148.

Admitting that intelligence collection had perhaps gone too far and listing corrective actions in progress or completed, Froehlke's testimony sought to place the surveillance program into the context of recent history. He emphasized that neither the White House nor the Department of Justice had provided the Army with clear guidance and that what direction the service had received "was too often general and oral rather than . . . written." Military resources, he continued, had been used for intelligence collection because of the inadequacy of federal, state, and local civilian agencies, but the effort itself had been coordinated with the Department of Justice under the Delimitations Agreement. Even so, to meet the need for information, the Army had come to rely more and more on direct agent observation. Distinguishing between the work of military investigative agencies and that of lower-level tactical intelligence units, Froehlke remarked that while only a few tactical intelligence units had been involved, "it appears that . . . [they] were less constrained in their methods of collection than were the investigative and counterintelligence organizations." He added that "civilian control or even knowledge of these few activities did not exist."

Continuing, Froehlke said that the products of the various collection efforts had been assembled in a variety of files. Field office files had included information on persons and organizations, both those with a potential for creating disturbances and those who might be able to prevent or end them. Those materials had been destroyed in the spring of 1970, and therefore could not be examined. The assistant secretary believed they had consisted mostly of newspaper clippings, reports from other agencies, and "to a lesser degree . . . direct agent observation reports." Voluminous material had been assembled in some headquarters, notably the Intelligence Command headquarters at Fort Holabird, where an effort had been made to reduce it to a computerized data system. Both the Navy and the Air Force had also developed filing systems, though none was as extensive as the Army's because those services lacked the Army's special civil disturbance responsibilities. The record revealed no participation in the creation of the data banks by senior civilian officials, Froehlke said, but several had known of their existence.

As the result of an internal review, Froehlke continued, in February 1970 the assistant chief of staff for intelligence ordered the destruction of the Fort Holabird data bank. About the same time, the assistant chief of staff had received instructions to take certain other actions that included the destruction of personality lists, the discontinuation of spot intelligence reports except when indicative of situations likely to require federal troops, and the termination of the daily civil disturbance summary. In the following month, authorities advised CONARC to destroy its civil disturbance data bank and moved to have all copies of the compendium destroyed. On 9 June the Army set forth a new policy on the collection, reporting, and handling of civil disturbance information. Henceforth, on the national level the service would routinely rely on the Department of Justice "for civil disturbance planning, threat, and early warning information." It would not participate in intelligence collection efforts unless the Directorate for Civil Disturbance Planning and Operations determined that a situation existed that could not be controlled with local and state forces. Except for federal, state, and local officials responsible in the field for the control of civil disturbances, all collection of civil disturbance information would stop, not to be resumed unless ordered by the Department of the Army. And whatever civil disturbance records remained would no longer include information on organizations and individuals unaffili-

ated with the Department of Defense. Finally, existing prohibited material would be destroyed. The appropriate restrictions, Froehlke said, were already set forth in new directives.⁴³

The Department of Defense had issued the new directives Froehlke mentioned in February and March 1971, shortly before he gave his testimony. The first directive, 5200.26, dated 17 February 1971, designated the assistant secretary of defense for administration to act for the secretary in all defense investigative matters. Its purpose, as Froehlke put it, was to "to ensure that . . . investigative and related counterintelligence activities are consistent with individual constitutional rights, legal provisions, and traditional understanding . . . of relationships of military investigative activities and the civilian community." The directive vested in the under secretary or a designated assistant secretary in each of the military departments responsibility for monitoring investigative activities within the guidelines of established policy. It also set up a Defense Investigative Review Council, which was to be chaired by the assistant secretary of defense and was to include the Defense Department's general counsel, the under secretary or a designated assistant secretary of each of the military departments, and the director of the Defense Intelligence Agency. One of the review council's first duties was to formulate and deliver recommendations regarding the acquisition of information on personnel and organizations unaffiliated with the Defense Department.⁴⁴

The second directive, 5200.27, dated 1 March 1971, was the first statement of defense policy on intelligence collection and handling with department-wide application. With certain exceptions relating to the protection of defense functions and property, personnel security, and civil disturbance operations, it prohibited the collection, reporting, processing, or storing of data on individuals or organizations unaffiliated with the Department of Defense. Information-gathering activities were henceforth to be "subject to overall civilian control, a high level of general supervision and frequent inspections at the field level." Where essential collection activities were authorized, maximum reliance was to be placed on domestic civilian investigative agencies, whether federal, state, or local. The directive recognized the attorney general as the chief civilian officer in charge of coordinating all federal government efforts involving civil disturbances. Should the threat of a problem arise that state and local law enforcement authorities could not control, the secretary of defense or his designee might authorize the collection of information essential to meet operational requirements flowing from assigned military missions.

There was to be no collection of information solely because some individual or group was lawfully advocating measures in opposition to government policy; no physical or electronic surveillance of officials or candidates for office at any level

⁴³ Quotes from Statement of Froehlke, in *Federal Data Banks, Computers and the Bill of Rights*, pt. 1, pp. 388, 389, 394, and see also pp. 370-87, 390-93, 395-409, 410-67 (for questions and answers following Froehlke's testimony).

⁴⁴ Quote from *Ibid.*, p. 395. DOD Directive 5200.26, *Defense Investigative Program*, 17 Feb 71, reproduced in *Federal Data Banks, Computers and the Bill of Rights*, pt. 2, pp. 1251-53. For an example of the attendant publicity, see Richard Halloran, "Army Spied on 18,000 Civilians in 2-Year Operation," *New York Times*, 18 Jan 71. For many other articles, editorials, and speeches on the subject, see *Federal Data Banks, Computers and the Bill of Rights*, pt. 2, pp. 1541ff.

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of government; and no covert surveillance or penetration of civilian organizations "unless specifically authorized by the Secretary of Defense or his designee." Even when the collection of information authorized by the directive was involved, the secretary or his designee would have to authorize in advance the assignment of personnel to attend public or private meetings, demonstrations, or other similar activities, except that a local commander could authorize attendance if a threat were direct and immediate. Finally, the directive stated categorically that no computerized data banks were to be maintained that had to do with individuals or organizations unaffiliated with the Defense Department, unless again authorized by the secretary of defense or his designee. The directive, however, did permit the listing of authorities having official responsibilities relating to civil disturbances and the collection of physical data on vital public or private institutions, facilities, highways, and utilities when appropriate to assigned missions. Materials that were gathered were to be destroyed within ninety days unless their retention was required by law or other specific authorization.⁴⁵

In his preface to the subcommittee staff's documentary analysis, Ervin emphasized that "the monitoring of individuals and organizations by military intelligence was of no practical value to military commanders charged with quelling civil disorders and safeguarding military security." The great bulk of the material collected, he declared, pertained "to the peaceful activities of nonviolent citizens lawfully exercising their constitutional rights of free speech, press, religion, association, and petition." According to the Army general counsel, whom Ervin quoted, the files, "were the most worthless damn things I had ever seen. . . . We said 'Burn 'em.'"

The great danger of such data lay in the fact that "Army intelligence, in the name of preparedness and security, had developed a massive system for monitoring virtually all political protest in the United States." Military agents had even assembled private information about the finances, psychiatric records, and sex lives of individuals. The data collection was enormous, with "virtually every major stateside unit" having its own set of files. Fourth U.S. Army headquarters at Fort Sam Houston, Texas, for example, had "the equivalent of 100,000 file cards on 'personalities of interest,'" and the III Corps at Fort Hood had computerized data on civilian political groups within its area. The size of the data banks demonstrated that the Army's domestic intelligence operations had been going on "in various degrees of intensity, since 1940," with roots extending back to World War I.

The record, Ervin said, did more than establish the lack of civilian control over the Army's surveillance prior to 1970. It also proved "the absence of central *military* control as well." Each major data bank had developed independently of the others, "in a milieu which showed little concern for the values of privacy, freedom, efficiency, or economy." At the same time, Ervin was careful to add that

⁴⁵ Quotes from DOD Directive 5200.27, *Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense*, 1 Mar 71, as reproduced in *Federal Data Banks, Computers and the Bill of Rights*, pt. 2, pp. 1253-55, and as summarized in Statement of Froehlke, in *Ibid.*, pt. 1, pp. 396-98. DOD Directive 5200.27, 8 Dec 75, was a revised edition. For the Army's own directives on the subject, see Ltr, Adjutant General, Department of the Army (AGDA), 1 Jun 71, and its later version, AR 380-13, *Security, Acquisition, and Storage of Information Concerning Non-Affiliated Persons and Organizations*, 30 Sep 74, RG 319, NARA.

the documents also demonstrated that the surveillance was not the result of any malevolent intent on the . . . [part] of military officers. They merely did what they thought was their job in the manner in which they drew a false analogy between foreign counterintelligence and counterinsurgency operations and the Army's role in domestic civil disturbances. The hypothesis that revolutionary groups might be behind the civil rights and anti-war movements became a presumption which infected the entire operation. Demonstrators and rioters were not regarded as American citizens with possibly legitimate grievances, but as "dissident forces" deployed against the established order. Given this conception of dissent, it is not surprising that Army intelligence would collect information on the political and private lives of dissenters. The military doctrines governing counterintelligence, counterinsurgency, and civil affairs operations demanded it.

To explain "the extraordinary growth" of the surveillance, however, one had to look to the civilian authorities in both the executive branch and in Congress. Ervin charged that "Pentagon civilians issued vague, mission-type orders which essentially gave intelligence officers a free hand in collecting whatever information they deemed necessary." Moreover, he added, "neither the Pentagon's civilian hierarchy nor the Congress had any routine means by which to review the appropriateness of those decisions until former agents came forward and blew the whistle in 1970." Since the subcommittee began its work in January 1970, Ervin concluded, "civilian officials . . . have worked hard to reestablish civilian control. The task has not been easy; bureaucracies in motion tend to stay in motion. Many of the records undoubtedly have been destroyed; many others undoubtedly have been hidden away. For the moment, however, it would appear that the systematic monitoring has ceased." The question for the committee, Ervin said, was whether the steps taken were adequate or whether "legislation modeled on the Defense Department's recent directives is needed to bar a recurrence."⁴⁶

Legal Aspects: Constitutional and Statutory

Shortly after Pyle brought the Army surveillance program to public attention, the American Civil Liberties Union filed suit in the U.S. District Court for the District of Columbia on behalf of several plaintiffs, alleging that the Army had invaded their rights by its "surveillance of lawful civilian political activity." The trial court denied the plaintiff's request for a preliminary injunction, denied them permission to proceed with discovery from the Army about its surveillance program, and dismissed the complaint. The civil liberties union appealed, and by the time the appeal was heard, considerable additional information had gone into the public record. Although divided, the appeals court reversed the lower court on grounds that the surveillance had "chilled" rights under the First Amendment. The government appealed to the U.S. Supreme Court to overturn the reversal of the court of appeals, which that body did by a five-man majority, on 26 June 1972. The Supreme Court's newest member, Justice William H. Rehnquist, cast the deciding vote. The court held that surveillance alone, in the absence of some concrete harm which the plaintiffs had not shown, provided insufficient grounds for bringing suit. However, the

⁴⁶ For Ervin's views as summarized and quoted in the above four paragraphs, see U.S. Congress, Senate, *Army Surveillance of Civilians: Documentary Analysis*, pp. iv-vi, 89. For domestic intelligence going back to World War I, including War Plan White and fears of communism, see Laurie and Cole, *Role of Federal Military Forces*.

court took note of the "traditional and strong resistance of Americans to any military intrusion into civilian affairs," and warned that future harmful effects of such intrusion would not "go unnoticed or unremediated."⁴⁷

From its "examination of the facts and law," the Ervin subcommittee believed that Army surveillance violated the First Amendment and for that reason it disagreed with the Supreme Court's decision. Senator Ervin was especially exercised by the position ("outraged" was the way his staff director described the senator's feelings) because he thought that Rehnquist, who cast the deciding vote, should have recused himself from the deliberations and the vote since he had had responsibilities for the legal defense of Army surveillance while serving as an official in the Department of Justice. "Military surveillance," in the view of the subcommittee, "inhibits the exercise of constitutionally guaranteed rights of free speech, free association, and privacy. . . . In short . . . [it] infringes upon the first amendment rights because it increases the reluctance of citizens to voice their opinions."

The Ervin subcommittee emphasized in its final report that "The sense of panic and crisis felt throughout the government during the period of extremely vocal dissent . . . and what at the time seemed the inauguration of a period of widespread anarchy" appeared to officials testifying before the subcommittee to justify the surveillance. In carrying it out, permitting it, or winking at it, however, "they failed to recognize that the rights guaranteed by the Constitution are constant and unbending to the temper of the times," a point made one hundred years earlier in *Ex Parte Milligan* (1866), which grew out of a suspension of rights during the Civil War.⁴⁸

Besides strongly asserting that military surveillance infringes upon First Amendment rights, Ervin's subcommittee concluded that "there is no question that military surveillance of civilian political activity is illegal, at least in the sense that it was not authorized by law." Since it could find "no explicit sanction" for the surveillance in the constitutional authority for suppressing violence or in the statutes based on it, the subcommittee was unable to supply a need for it "from the military's limited domestic mission." In much this same vein the civil rights attorney Frank J. Donner asserts that "all American intelligence programs are, in varying degrees, maimed by the Achilles' heel of illegitimacy," an example of which was the Army's surveillance of civilian politics, in as much as the Army's "power generally to intervene . . . is severely limited." In Donner's view "the only authority to collect information about civilians and their politics that may be implied from . . . [the] civil disturbance mission is tightly confined to tactical and reconnaissance data, not political and ideological intelligence of the sort that has obsessed the Army."⁴⁹

Convinced that only legislation could erect proper long-term safeguards against political surveillance by the military despite the self-restraint written into the new prohibitory regulations of the Army and the Department of Defense, Ervin in 1972

⁴⁷ Baskir, "Reflections on the Senate Investigation of Army Surveillance," pp. 637-46. Quotes from *Laird v. Tatum*, 408 U.S. 1-40 (1972).

⁴⁸ Second quote from Baskir, "Reflections on the Senate Investigation of Army Surveillance," p. 645, and see also pp. 642-44, 646. Other quotes from U.S. Congress, Senate, *Military Surveillance of Civilian Politics*, pp. 4, 8, 9.

⁴⁹ First, second, and third quotes from U.S. Congress, Senate, *Military Surveillance of Civilian Politics*, pp. 4, 7, 8. Other quotes from Donner, *The Age of Surveillance*, p. 288, and see also pp. 289, 305, 306.

introduced a bill to prohibit such surveillance. Referred to an unfriendly Senate Armed Services Committee, it died at the end of the 92d Congress.⁵⁰

Eight months later, amid the Watergate controversy and attendant public concern, Ervin introduced another bill (S. 2318). Unlike its predecessor, it went to the Judiciary Committee and Ervin's own Constitutional Rights Subcommittee that held hearings on it in 1974. The bill forbade military officers to "conduct investigations into, maintain surveillance over, or record or maintain information regarding, the beliefs, associations, or political activities of any person not a member of the Armed Forces . . . or of any civilian organization," under penalty of a \$10,000 fine or imprisonment for not more than two years, or both.⁵¹ Although the measure was sponsored by thirty-four senators and supported in principle by Robert E. Jordan III, David E. McGiffert, and Cyrus R. Vance, all of whom were in private life by the time of the 1974 hearings, the Department of Defense adamantly opposed the bill on grounds that it was unnecessary, would interfere with authorized functions, and presented "insuperable drafting difficulties."⁵² On account of this opposition, S. 2318 never went beyond the Judiciary Committee, where it died at the end of the 93d Congress. With Senator Ervin in retirement, Maryland Senator Charles Mathias, Jr., introduced a similar bill on 15 January 1975, which also died in committee when the 94th Congress expired.⁵³

The issue of unauthorized or illegal domestic intelligence gathering continued to attract congressional interest for several years. In 1975 President Gerald R. Ford appointed a Commission on CIA Activities Within the United States, headed by Vice President Nelson A. Rockefeller, and the Senate established a Select Committee To Study Governmental Operations with Respect to Intelligence Activities, chaired by Idaho Senator Frank F. Church. Both bodies looked into domestic surveillance relating to civil disturbances, among many other topics. The Rockefeller Commission found invasions of the rights of Americans by the CIA that were "plainly unlawful," including eavesdropping without warrants and amassing thousands of files on individuals.⁵⁴

The Church committee, which sat for fifteen months, had a much broader focus than either the Ervin subcommittee or the Rockefeller Commission. Among its other interests, it gave considerable attention to improper military activities relating to civil disturbances,

⁵⁰ Baskir, "Reflections on the Senate Investigation of Army Surveillance," p. 649. This bill, S. 3750, 92d Cong., 2d sess., 1972, would prohibit using "the land or naval forces of the United States or the militia of any State against civilians," except when properly authorized by the president in a civil disturbance, or placing civilians under surveillance. Without commenting on the surveillance portion of the bill, the DA Office of the General Counsel opposed it on grounds that it went beyond the Posse Comitatus Act. In short, it was "unnecessary and unduly restrictive." Memo, William C. Woolridge, Asst to CG, DA, for Maj John F. Naughton, Judge Advocate General's Office, 13 Jul 72, sub: S3750, Ervin Bill To Prohibit Military Law Enforcement, Historian's files, CMH.

⁵¹ U.S. Congress, Senate, *Military Surveillance*, p. 9, and see also pp. 8, 10-13.

⁵² Quote from Baskir, "Reflections on the Senate Investigation of Army Surveillance," pp. 649-51 (quote at n97). The testimony of David O. Cooke, the Department of Defense witness, is in U.S. Congress, Senate, *Military Surveillance*, pp. 103-24. For an editorial supporting the bill, see "Ending Army Spying at Home," *Washington Post*, 12 May 76.

⁵³ This bill, a copy of which was provided the author by Senator Tunney's office, was similar, but not identical, to S. 2318 of 1 August 1973. For its introduction on 15 January 1975, see *Congressional Record*, 94th Cong., 1st sess., 1975, 121, pt. 1:531.

⁵⁴ *Report to the President by the Commission on CIA Activities Within the United States* (New York: Manor Books, 1975), p. 10, and see also chronology at pp. 285-91.

paying special attention to the Army's electronic surveillance and turning up additional materials of considerable interest. It also explored the intelligence assistance the Army had given to other agencies and revealed that following the 1971 ban on keeping files and the simultaneous order to destroy existing files, several Army intelligence units, including the 109th, 113th, and 116th Military Intelligence Groups, instead of destroying their files, had turned them over to various state, county, and city police officials, including Washington, D.C., authorities. The Church committee was critical of the lack of any statute expressly forbidding the military to investigate private citizens, although it acknowledged that several laws, including the Posse Comitatus Act would probably prevent criminal prosecution of civilians by the military. The recently passed Privacy Act of 1974 also had some relevance.⁵⁵

Overall, the Army's venture into domestic surveillance generated a substantial backlash in the form of public and congressional criticism, while contributing little or nothing to the suppression of civil unrest. In some ways the Army's tendency to apply foreign intelligence-gathering methods to domestic situations reflected its earlier error of applying the standards of foreign war to the control of domestic disturbances. The basic problem was a mind-set in the intelligence community that saw conspiracy in protest and the threat of revolution in disorder. It was this way of thinking that led to an improper gathering and storage of a great quantity of information on American citizens that was seriously at odds with the tenets of a democratic society. In doing this, the Army failed to maintain a constitutional discipline over itself, and the civilian leadership was much too slow in calling it to task. It was a dark chapter in the Army's history of dealing with civil disturbances, which otherwise had been quite good during this troubled decade.

By the early seventies the era of unrest seemed to be drawing to a close, and it seemed a time for sober reflection on the achievements and failings of the Army during the Vietnam era. On the home front, if the Army's domestic intelligence-gathering activities reflected poorly on its overall character, its conduct in helping to steer the nation through its many domestic crises during the past decade had been highly commendable. Yet the future promised to be far from quiet, and the service still had much to learn about such tasks, however distasteful they might sometimes be to soldiers of all ranks.

⁵⁵ John P. MacKenzie, "Hill Praises Panel, Urges CIA Reforms," *Washington Post*, 12 Jun 75; U.S. Congress, Senate, *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans*, Final Report of the Select Committee To Study Governmental Operations with Respect to Intelligence Activities, 94th Cong., 2d sess., 1976, S.R. 94-755, bks. 1-6; "Improper Surveillance of Private Citizens by the Military," in *Ibid.*, bk. 3, pp. 823, 833-34.

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