

view, and in a way that can win a political majority to their side as the expression of the "true will" and "true traditions" of the country. It is fairly evident that the government itself is too compromised to undertake such a public investigation of the thoroughness that is needed, although some partial efforts of this kind are underway.

There is only one institution that is both sufficiently powerful, sufficiently independent and also sufficiently identified with the whole society to undertake such an investigation, and that is the church. I would suggest that the National Council of Churches, together with the Jewish and Catholic and other national religious bodies, convene a national forum on war crimes and repression, to bring before the public both our real record in Vietnam and the actual picture of our distorted priorities in defense and political-repression spending at home. G.I.'s now in civilian life, F.B.I. agents under a cloud, and a whole host of other persons with knowledge of these activities, should come before this body to give us a clearer picture of our situation. Such a public forum could also be the place where a new self-understanding and a way to reorganize

our society around such a new self-understanding could be developed. Such a national forum must then feed into a political process which would have consequences both at the voting booth and in investigative and reorganizational activity within the government. But it seems that a forum that is truly radical and thoroughgoing, that will pull no punches, is necessary to provide the public discussion and pressure to create such a response.

I can see no other national institution of sufficient power, independence and concern for reconciliation capable of doing such a job, except that joint religious institution. I believe the religious institutions are moving to a point where they might see themselves as both capable and called to such a role, and it is up to many Christians and Jews who are concerned with the present trends to provide the stimulation needed to prod the churches and synagogues to play this important, even crucial corrective. It may be heroic to imagine oneself a Bonhoeffer, underground and in prison as a resister of the Confessing Church. Far more important is for the churches to act now to prevent the necessity for such an underground church.

## POLITICAL SURVEILLANCE AND THE CONSTITUTIONAL ORDER

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It is a truism that knowledge is power and that secret knowledge is secret power. Both are a threat to democratic governments. One of the reasons why the totalitarian governments of both Stalinist Russia and Nazi Germany were able to enslave their peoples was the fact that their security police and intelligence agencies expanded their legitimate security functions to include widespread political surveillance of all persons suspected of being "subversive."

Inevitably, in an atmosphere of heightened political and social tensions, one man's liberal is another man's subversive. The definition of "subversive" can easily be expanded to include anyone who in any way opposes government policy or criticizes the established political and social order. By deliberately creating spy scares, Red Scares or a combina-

tion of both, governments have been able to produce highly flammable mixtures of deep-seated fears, frustrations and patriotism. The unleashing of such dark forces led ultimately to such internal political holocausts as the Great Slave Labor camps of both Nazi Germany and the USSR under Stalin. While minor by comparison, the hysteria of the McCarthy period in the United States left deep scars in such key government agencies as the State Department.

It would be a mistake to dismiss this Orwellian prospect as irrelevant simply because these monumental examples of human folly took place in what today seems the remote past. As the American philosopher, George Santayana, has observed, those who refuse to learn from history are condemned to repeat its mistakes. What in essence were the mistakes? What are the legitimate functions of the intelligence and security police agencies in a democratic state and society? How do they differ from similar agencies in what we call totalitarian or

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police-states, and what are the constitutional safeguards against their unwarranted or illegitimate expansion?

These are the kinds of fundamental questions which have been raised but left unanswered by the recent hearings of Senator Sam J. Ervin's Subcommittee on Constitutional Rights, during which the charge was made that certain U.S. military counterintelligence agencies had expanded their normal, legal functions to include political surveillance of suspected "subversives."

The C.I.A. has had a bad press for some years. Unfortunately, the media at first mislabelled as simply "Army intelligence agencies," the counterintelligence units charged with "political spying." Hence, the public has been further confused as to the proper role of both intelligence and counterintelligence within the Government, and the reputation of the entire intelligence community has suffered. This situation urgently calls for clarification.

The United States intelligence community is made up principally of the separate agencies of such key government departments as State and Defense, the Atomic Energy Commission, and, within the Defense establishment, the G-2's or Intelligence Services of the Army, Navy, and Air Force. Under the authority of the National Security Act of 1947, the C.I.A. was given the overall responsibility for "coordinating, evaluating, and disseminating Intelligence affecting the national security."

It has often been said that "intelligence is the first line of national defense." Most citizens are vaguely aware that foreign policy and military decisions are made by the President with the advice of his Secretaries of State and Defense, based, in theory, on the best information available to experts throughout the government. The collection and evaluation of the information on which these decisions are based is one of the primary functions of intelligence. But in foreign and military affairs, strategic decisions should also take into account careful estimates of the capabilities and probable courses of action of friends, allies, neutrals and "enemies." The production of such national estimates is a second major function of the entire intelligence community, although the Board of Estimates in C.I.A. coordinates the individual agency contributions and publishes the final results.

In the course of normal relations, all states exchange ambassadors and military attachés who, in addition to representing their nations abroad, have the additional task of collecting political and military information of strategic importance to their respective countries. However, the same states clas-

sify as secret, and deny access to, official information concerning their strategic capabilities, vulnerabilities and intentions. Such classified information can only be obtained illegally by espionage agents ("spies," to most of us). To avoid detection and arrest, such agents must conceal or disguise their activities. The task of espionage agencies is to organize and manage networks of agents who collect information by clandestine methods. The task of counterintelligence or counterespionage agencies is to block such efforts. Whenever police agencies take over those functions they are called security police.

In each country the security police tries to prevent espionage and other clandestine activities such as kidnapping, assassination, and sabotage. The recent explosion of a bomb in the Capitol in Washington is a dramatic example of this type of activity. When such acts have been committed, they try to search out and arrest the agents responsible. Security police and counterespionage functions are performed in the United States by the F.B.I., which also has security officers stationed in most embassies abroad. The counterintelligence agencies of the Armed Forces are responsible for the security of military installations and for thwarting enemy espionage directed at military targets. Their mission includes blocking efforts to subvert the Armed Forces by political dissidents in the services on military posts. For this purpose, surveillance of individual suspects not only acts as a deterrent, but is also an indispensable means of gathering evidence for the prosecution of actual cases.

In the USSR these counterintelligence functions are carried out by the counterespionage divisions of the G.R.U. (the Chief Intelligence Directorate of the General Staff) and the civilian K.G.B. (Committee for State Security of the Council of Ministers), which is a combined national intelligence and security police organization. However, surveillance of political dissidents is widespread in the USSR, not only on military installations but throughout the entire state and society.

The amount or degree of such political surveillance is a basic criterion in distinguishing "police states" from open societies. Indeed, *any* such surveillance is rightly regarded as a threat to democratic freedoms. The authors of the United States Constitution and Bill of Rights cherished democratic freedoms so highly that they imposed restraints on the power of the President and the Congress even in matters affecting national security. For the protection of national security, the "founding fathers" relied mainly on the preservation of individual liberty and freedom in the belief that these were the

principal sources of national strength and unity. The Constitution and the Bill of Rights were meant to protect the privacy of the individual in his personal life and to guarantee his freedom from political surveillance by government agencies. Under the Fourth Amendment, the sanctity of the individual's home is guaranteed against illegal or unconstitutional search or seizure by the police—and by police there is no question that the intent was to include all police agencies, including what later became our national security police, the F.B.I.

During the hearings held by Senator Ervin's Subcommittee, Assistant Secretary of Defense Robert F. Froehlke testified that various military counterintelligence units have kept political card index files on 25 million American citizens and extensive dossiers on many thousands of others. Such a situation would have been considered "unthinkable" by the authors of the Constitution.

One can understand the justification offered for this infringement of constitutional rights without accepting it as valid. The explanation given was that the Defense Department needed files on "politically subversive elements" during the widespread civil disturbances and urban riots of 1967. These disturbances were sparked by popular opposition to the escalation of the war in Vietnam and the social protest movement of the so-called New Left on university campuses across the country. Ghettos were burned and buildings bombed. The media were skillfully exploited by avowed anarchists inflamed by their own rhetoric and such mindless slogans as "Burn, baby, burn!" Military forces were frequently called upon to intervene to restore order in the emergency situations thus created. This is a traditional, and perfectly legitimate, function of the armed forces. George Washington himself called upon the militia of several states to put down the Whisky Rebellion of 1794 and personally led the forces. These were military operations, and in theory such operations rely on intelligence—the collection of all the "facts bearing on the situation." In the normal course of affairs, military authorities call for the collection of all available information about civil disorders, including the leadership roles of extremists and other "subversive" elements. It is the Military counterintelligence units that have responded vigorously, penetrating extremist organizations, photographing protest demonstrations and setting up their own card index files of "political subversives." Undoubtedly, the military authorities involved gave little or no thought to the political implications of what they were doing, or to the fact that political surveillance exceeds the normal

function of counterintelligence units—that is, providing for the security of military installations. They were simply doing what they regarded as an essential task at the time—collecting the information needed for emergency operations. The job was done with characteristic zeal amounting at times to military "overkill." A classic case of such overkill was presented in testimony to Senator Ervin's Subcommittee by a former counterintelligence agent. A group of 119 anti-war demonstrators outside a gate at Fort Carson, Colorado, included 53 undercover agents from all the services plus a sprinkling of newsmen. Overhead, at least six helicopters hovered to watch and take pictures, and produced so much noise that the agents on the ground were unable to make tape recordings of the anti-war speeches of the agitators.

The situation would be ludicrous if it were not menacing. A basic principle is at stake which bears repeating: When either the military or civilian security police agencies of a democratic state expand the definition of "subversive" to include anyone who opposes government policy (no matter how mixed-up his emotions or reasoning may be), the "intelligence base" of these agencies becomes identical with that of comparable agencies in police-state dictatorships. When this happens, the constitutional framework of the democratic state and open society have in fact been eroded, regardless of the circumstances under which such erosion may have taken place, and whether or not (as in Nazi Germany) it was tacitly accepted by the public.

Obviously, some second thoughts along these lines must have taken place within the Defense Department, since Assistant Secretary Froehlke announced that the practice of political surveillance by counterintelligence units had been "sharply curtailed" by June, 1970, and that, in the future, the program would be limited to military installations—the proper area of military jurisdiction. According to Froehlke, on March 1, 1971 (the day before he testified at the Ervin Subcommittee hearings), the Defense Department issued a new directive limiting intelligence collection except in cases where there is "a distinct threat of civil disturbance exceeding the law enforcement capabilities of state and local authorities." The directive reportedly rules out electronic eavesdropping on officials, candidates for office and civilians. It also forbids "deceptive surveillance or penetration" of civilian groups and the use of computerized data banks on all persons or organizations except those specifically authorized by the Secretary of Defense.

"Deceptive surveillance or penetration" by agents

*provocateurs* are classic covert operational techniques which were developed into a fine art by the dreaded secret police of Soviet Russia and the Gestapo of Nazi Germany. The order banning their future use by military counterintelligence units implicitly recognizes that such police-state techniques have in fact been employed in the past. This does not mean that covert operational techniques do not have their proper uses by the law enforcement agencies of democratic states. They are indispensable tools without which neither the F.B.I. nor any other national security police can carry out its legitimate counterespionage functions. They are also indispensable in combatting such highly organized criminal enterprises as the narcotics traffic. However, they cannot be used for *political* purposes without subverting the constitutional foundations of the democratic state. It is with this threat to our traditionally open society that Senator Ervin's Subcommittee on Constitutional Rights has been deeply and properly concerned.

The computer-born revolution in storing and retrieving biographical information has led to an unprecedented invasion of privacy and has raised the problem of legitimate "data surveillance" over individual lives by either governmental or private agencies. By 1969, the F.B.I. central index contained over 53.3 million cards and more than 190 million fingerprint cards, to which 27,000 were added daily. At that time, the Pentagon had 14 million life histories in its security files and the Civil Service another eight million. There are also an additional 25.5 million cards in the military counterintelligence files, which are still being kept. The total in Federal Government files alone runs to well over 100 million. To this figure should be added the unknown number of cards kept in "subversive" files by state and local law enforcement agencies. For example, the Subversive Unit or so-called "Red Squad" of the Chicago City Police has kept such records since the early 1920's. If ten per cent of the Federal total is taken as a conservative estimate of State and local files, the total number of such records in the public or official sector would amount to roughly 110 million. National credit agencies also keep extensive personnel data, often collected by very dubious methods. The problem of access to all such data banks is crucial, and legislation limiting such access is currently being introduced in Congress.

The technological revolution has thus made possible such extensive data surveillance by the State over the lives of individual citizens that in some respects America is already over the threshold of

the "Big Brother Is Watching You" world envisioned in Orwell's *1984*. It has also provided police and other investigative agencies with sophisticated new equipment with which to probe into the private life of the citizen and keep him under almost constant surveillance if so desired. Much more is involved than a mere improvement of traditional eavesdropping devices such as wire taps, cameras, T.V. cameras, hidden microphones, tape recorders, etc. Microminiaturization of existing equipment and entirely new laser or radar beam devices have resulted in a whole new ballgame.

As with most weapons systems, the spectacular breakthroughs in offensive surveillance techniques have only been partially offset by defensive developments. Even the best electronic counter-devices and "sweep-tests" are of doubtful effectiveness against laser, radar or other equipment which has no electric circuitry of its own.

From this brief survey it is clear that along with pollution and related ecological problems, the technological revolution has opened up another Pandora's box—the invasion of privacy and a partial erosion of the constitutional rights which are the underpinning of the democratic state and society. As in the case of environmental pollution there are no simple, clear-cut solutions to the dilemmas raised. Surveillance within the carefully prescribed limits of the Constitution is a legitimate and necessary tool of both Federal and State law enforcement agencies. It is indispensable if the F.B.I. and military counterintelligence agencies are to carry out their proper counterespionage missions.

Surveillance is also essential to the deterrence and suppression of organized crime. But, for whatever motives, the unwarranted extension of criminal surveillance into the realm of the private and the political inevitably erodes the foundations of the democratic state and its constitutional framework. Like the traditional road to Hell, the path leading in this direction is deceptively wide and paved with good intentions. In times of civil disorder the use of police-state techniques is at first tolerated as a means of repressing "subversive" elements. Later, the pressures to extend their use into every phase of public and private life are virtually irresistible.

The admitted use of covert operational techniques by military counterintelligence units proves that what has happened elsewhere has already happened here, under a cloak of secrecy and without the knowledge of the public. The incident should serve as a clear warning that eternal vigilance, especially in the light of the new technology, is the only safeguard of liberty and privacy under the Constitution.