Police Spying In Michigan

July 1978 © Michigan Coalition to End Government Spying Vol. 2, No. 4

Stop the Code NOW, or....?

It may already be too late to stop the Criminal Code while vulnerable in the House Judiciary Subcommittee on Criminal Justice. Please read through the following, however, to familiarize yourselves with how "our" Congress intends to legislate into oblivion many Constitutional rights You probably would like to keep. At the end of the article are suggestions for immediate action which may still allow you to have some impact on the outcome of this unprecedented attempt to re-write much of the Constitution.

Comprehensive revision of the federal criminal laws is a far-reaching enterprise. The reform process has already been underway for a decade but its history has been a troubled and disturbing one.

After a good start by the National Commission to Reform the Federal Criminal Law (the "Brown Commission"), the effort was set back for many years by the notorious S. 1, which was drafted by the Nixon Administration and amounted to a wholesale assault on civil liberties. Although S. 1 has been rejected by Congress, many of its vestiges remain in H.R. 6869, the proposal now pending in the House.

H.R. 6869 is opposed by the ACLU because it would significantly expand the federal criminal law at the expense of constitutional rights. The bill is not a codification of existing law, nor does it reform the criminal law in any meaningful way from a civil liberties point of view. A variety of crimes which threaten the exercise of First Amendment freedoms, for example, would be created or expanded by H.R. 6869. These include *Obstructing a Government Function by Fraud, Obstructing a Government Function by Physical Interference, Hindering Law Enforcement, Obstructing a Proceeding by Disorderly Conduct, Making a False Statement, Revealing Private Information Submitted for a Government Purpose, Extortion, Disseminating Obscene Material, Failing to Obey a Public Safety Order, Liability of an Accomplice,* and *Engaging in a Riot.*

H.R. 6869 would also effect a great expansion of federal criminal law by establishing for the first time that all but a few federal crimes and misdemeanors could be prosecuted as *attempt, conspiracy,* or *solicitation* without the underlying offense having been completed. For example, a person could be prosecuted for "soliciting the obstruction of a government function by physical interference" merely by attempting to persuade a friend to plan a demonstration blocking access to a government building. Even if the friend rejected the solicitation and the demonstration never occurred, the crime would have been committed.

Another damaging aspect of the bill is that in at least two ways it would erode Sixth Amendment rights by reducing the role of juries in trying criminal cases.

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MSU Student Convicted in Israel for Political Affiliation in Michigan

On June 12th Sami Esmail was sentenced to 15 months in prison for membership in an organization "hostile" to Israel. Apart from the appeal which Sami is now pursuing, the sentencing ended a complicated series of events which began with Sami's arrest by Israeli authorities when he arrived in Israel last December 22nd to visit his dying father in the occupied West Bank. After his arrest, Sami was held incognito and forced to confess his "crimes:" being a member of a Palestinian organization at Michigan State University (where he was a student), and having gone to Libya where he made "contact with a foreign agent."

Sami Esmail outside court in Israel

These actions are illegal under Israeli law and can be prosecuted in Israel even if "committed" outside Israel by someone who is not an Israeli citizen. Neither activity is illegal in the United States. Israeli authorities didn't even claim that Sami was engaged or would be engaged in any actions hostile to Israel while he was there. The judge who sentenced Sami expressed the Israeli reasoning: "(Sami) has a clear past and he is not a violent type. *But in order to set an example for others* the court has decided to make the sentence significant."

The case of Sami Esmail is very important to everyone concerned with the potential results of political surveillance. The FBI has admitted

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P.S.I.M. Case study:

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Near the front of my file cabinet is a folder labeled "Big Brother." It began years ago as a place to put clippings about television-guided bombs, infrared heat sensors, Cointelpro and the like. It's been fattened up lately by 176 pages of political surveillance files--100 from the FBI and 76 from the Michigan State Police.

How did I get so important? By speaking my mind and signing my name.

I've always taken the First Amendment very seriously. These files are an outrage to me, as an American citizen, as a taxpayer, and as a human being. Government spies had clearly obtained access to records from two universities, one public school system, a county clerk's office, and the state motor vehicle records. They even cited "sources within the radical community."

Some entries seem ridiculous to me. A special memo was sent "to the Director" to list "Chuck" as an alias for "Charles." They apparently tried to interview my grandparents. They "searched" for me one whole summer for "questioning" when my name was in the phone book.

It's not funny, however, to learn that the FBI has me listed as a "Classification III" in their Security Index.

It's unnerving to know that Michigan's Big Brothers refer to me as "951/43/---/324/461/410/119/814/1741---." My blood chills when I read that, "(t)wo copies of the LHM have been furnished to WFO for use of that office in the event WFO desires to ---."Then I get angry when I see large areas of many pages simply blanked out on the basis of twisted bureaucratic excuses literally used to "cover up" their most nefarious deeds.

Mauldin, Chicago Sun-Times

"Now let's roll him."

This unconstitutional spying is doubly insidious because much of it is just plain wrong, false, lies! My file contains items reprinted from the paranoiac, right-wing private spy-rag "Information Digest." Another page contains background information on my "educational status and plans." Every paragraph on this page is false. It seems like some joker just sat at a typewriter and typed whatever he or she thought I might reasonably have said or done. Every political spy or Big Brother government agency that ever sees my file will believe the reports, however. Who knows what has happened or may still happen to me as a result of this misinformation? I don't, and that bothers me.

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Forum Series Begun By MCEGS

The first forum in the series on Political Surveillance as Political Repression, sponsored by the Michigan Coalition to End Government Spying and the National Lawyers Guild (WSU Chapter), was held on March 24th, at Wayne State University.

Richard Gutman, attorney for the Alliance to End Repression in its lawsuit against the Chicago Red Squad, and Marv Davidov, long time activist from Minneapolis, discussed the effects of political surveillance on legitimate political activities. Gutman emphasized the long history of illegal political surveillance by local police and the FBI. He stressed the importance of winning courtroom battles and passing state legislation to get "some kind of rules which limit their activity." In Chicago, as one result of the *Alliance v. Red Squad* lawsuit, the police have been enjoined from engaging in political surveillance and maintaining files on people active in legal political movements.

Marv Davidov, who has a history of commitment and works in a broad range of human rights issues, brought his own FBI file to document his personal experience with political surveillance. From 1968–75, he was involved in a public education campaign to expose the Honeywell Corporation as makers of anti-personnel weapons used in Vietnam. In Marv's file, it is proved that the FBI supplied information to Honeywell about Davidov and The Honeywell Project, the group which publicized Honeywell's role as producers of inhumane cluster bombs. The FBI also turned over informer's reports which informed Honeywell of the Project's strategies. The FBI gathered a four-foot tall stack of surveillance information on the Project. The recent release of this stack of files was used as an occasion to hold a mock trial in which government officials were found guilty of police-state political repression of the citizens of Minneapolis.

The second forum, held on April 21st, featured Perry Bullard, state representative from Ann Arbor. There was a general discussion of blacklisting of politically active employees and what can be done to limit it.

Representative Bullard is the sponsor of HB 5381, a bill purporting to open employee files and limit employer collection of information about employees' first amendment activities.

The March forum, which detailed the government strategy to chill debate on important national political issues, and the April forum, which described the problem of and one attempted solution to economic repression of politically active working people, successfully initiated the forum series. The series will continue on a schedule to be announced with a forum on the activities of "friendly" intelligence agencies (e.g., SAVAK, KCIA, DINA) in targetting American citizens for harassment and assassination.

Will Detroit Quit (or be Kicked Out of) Secret-Police "Club"?

On June 2, Detroit Police Commander Jesse Z. Coulter told the Detroit City Council that he had secretly turned in Detroit's Law Enforcement Intelligence Unit files to LEIU headquarters in California in April 1977. On May 25, 1978, Cmdr. Coulter's counterpart at the Seattle Police Department (i.e., the department LEIU operative) was relieved of his command for similarly surrendering LEIU files to his LEIU "zone chairman."

The Seattle operative, Lt. V. L. Bartley (who, like Cmdr. Coulter, has been a spy for the local "Red Squad,") surrendered the files because he was "worried about the security of our LEIU cards. It would not surprise me if the mayor seized our files at any time." At the time Coulter packed off Detroit's LEIU files, all LEIU records were the object of a subpoena in the Michigan "Red Squad" suit, making Coulter's actions subject to a possible contempt of court citation.

These and other matters concerning Detroit's membership in LEIU were heard by the City Council in discussions held May 10, May 12, and June 2, prompted by Michigan Coalition to End Government Spying and the American Civil Liberties Union of Michigan. The Council, which in the past routinely okayed funding for DPD participation in the LEIU, (see P.S.I.M., vol. 2, no. 2), now is demanding to know if Detroit tax dollars are being used for illegal purposes, i.e., the collection and dissemination of political information about Michigan citizens.

During the last 18 months, more has been learned about LIEU than in the 20 previous years of its existence. LEIU was founded by an ex-FBI agent for the purpose of allowing state and local police agencies with "an intelligence function" to gather, record and exchange "confidential information not available through regular police channels." (Constitution and Bylaws of LEIU). The LEIU describes itself as a "voluntary confederation of police agencies." Although its members are sworn police officers who do LEIU work while on tax-paid work time, the LEIU maintains that it is a private association. By using this definition of itself, the LEIU is not answerable to voters, taxpayers or elected officials.

Detroit City Councilperson Kenneth Cockrel, long a target of Michigan's political spies, led the Council's questioning of LEIU operative Coulter and DPD Chief Hart regarding Detroit's involvement in LEIU. Coulter and Hart both claimed that the DPD was not required to gather or exchange political information as a condition of continued LEIU membership.

However, one LEIU official's interpretation of the LEIU Constitution and Bylaws contradicts this assertion. Article VIII-C states that: "(w)henever a member becomes aware of an individual or an organization who, through their travels, activities or connections with organized crime, are of importance to LEIU, he shall submit the information in proper form to his Zone Chairman."

LEIU official Charles E. Casey (recently discovered to be California Governor Jerry Brown's brother-in-law) has said that "the LEIU data base is 100 percent organized crime, except for a few of what I would call arrested or 'identified' terrorists. I really couldn't explain the statement, right off the bat."

Donald H. Carroll, another LEIU official, explained the statement by defining an 'identified' terrorist as anyone the LEIU believes to be a terrorist. George O'Toole, a former CIA computer specialist who served as chief of its Problem Analysis Branch, has written:

"The disturbing thing about the LEIU files is that the criteria for opening a dossier on someone seems rather vague and subjective. If a person can be deemed a member of organized crime even though he doesn't belong to the Mafia, has never been arrested, one is moved to wonder whether the LEIU's definition of an 'identified terrorist' is broad enough to include people who simply disagree with the government." ("America's Secret *Police Network*," *Penthouse*, Dec. 1976).

Yale University law professor Frank Donner, who is also Director of the ACLU National Research Project on Political Surveillance, reports that contrary to their stated emphasis on "organized crime," "the LEIU was conceived primarily as a counter-subversive national structure, a network for the exchange of dossier-type information about radicals and radicalism." The LEIU successfully suppressed (or was not required to disprove) evidence of their focus on political activists when they applied for federal funding to pay for computerization of their files.

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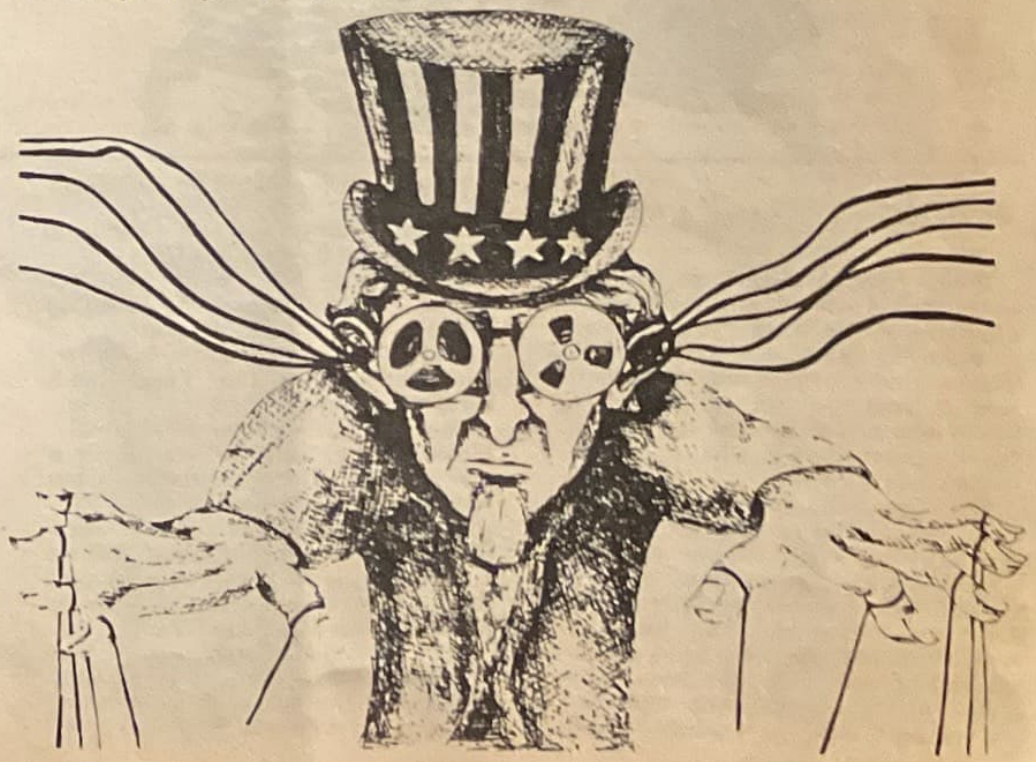


National Conference Set for Michigan
--Organize Against Spying Sept. 22-24--

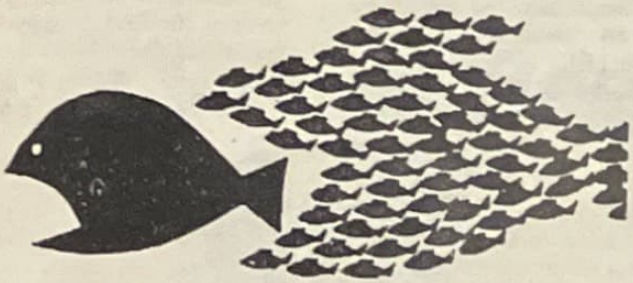
The National Campaign to Stop Government Spying is planning the first National Organizing Conference to Stop Government Spying, to be held at the University of Michigan in Ann Arbor the weekend of September 22-24 1978.

The purpose of the conference is to bring together grassroots organizers from throughout the country to share skills, ideas, tactics, and general organizing experiences on how to effectively combat political spying on the local, state and national level. The conference will be designed to emphasize skills training so as to enhance the work of local and national organizers in their work.

The conference will include the broadest participation by representatives of those who have been victims of intelligence abuse: Black, Chicano, Puerto Rican, Native American, Asian, gay, labor, peace, women, religious and legal groups. The emphasis of the conference will be on how to most effectively organize against spying. Local organizers will play a leading role in helping to determine conference content, structure and political scope. Moreover, they will be involved in leading all conference workshops and presentations.

The Conference will be open to all people interested in working around the issue of government spying and harassment. Organizers interested in attending should begin to make plans now for transportation to the Conference. The Campaign has scheduled the conference several months in advance to ensure maximum participation and to provide adequate time for raising funds to cover transportation and other expenses. Details on housing and other logistical arrangements will be provided as soon as they are available.

Within the past 4 years organized activity against government spying has reached an unprecedented level. During this period, the U.S. Public has witnessed countless disclosures of illegal spying and disruptive activities directed against political groups and individuals by many government agencies. In response to these disclosures and continued government harassment, several local and national groups have formed to organize to combat in various ways these illegal activities. An invaluable reservoir of organizing and litigation tactics, as well as information and experience has accumulated over the years through these efforts. *NOW* is the time to crystalize the movement around this issue, by providing an opportunity for organizers to meet, discuss, strategize and share important ideas on strengthening and furthering our work.



The Conference will begin with an introductory plenary session on Friday evening. Full and half day workshops are designed so that organizers who wish may spend an entire day discussing in depth particular topics of interest. Examples of these are: "Organizing Against Red Squads" and "Organizing Against Campus Spying." Specific subject areas will be addressed on a time schedule within the full day workshops. Half day workshops are designed to address specific areas such as organizing to deal with INS and how to do fund raising.

Time is specifically allotted on Sunday for various special interest workshops and group meetings. At least two "Basic Organizing Skills" workshops will be held on this day. We welcome any suggestions our readers may have about workshops, speakers, audio visuals, etc. Information on housing and other specific details will be available soon. For further information on how you can help, contact the Campaign office at 201 Massachusetts Ave, N.E. No. 112, Washington, D.C. 20002, (202) 547 4705, or the M.C.E.G.S. office, address on back page.

951/43/--- Cont'd. from p.2

These files have hurt me and my loved ones. I was refused admission to graduate school even though I had straight A's. I lost one factory job in 1968 because my name was on a "list" sent to employers in my town. A friend who was on this list was thrown out of a personnel office as soon as he wrote down his name.

Throughout my file there is consistent and obsessive interest in my former wife even though the file clearly states that she was *not* a radical. She had her teaching career destroyed. She had had beautiful evaluations but when she came up for tenure, she was fired. We know with certainty that intelligence agencies had contact with her school board members and told them that her husband was very dangerous--especially regarding students' rights. My wife sued for damages. She lost.

Beyond that, these surveillance activities have had a definite "chilling effect" on my political writing. I wanted to give myself a breather, shake them off the trail. I had seen a bit of what they could do.

Now I'd like to enter law school. However, I've recently heard that a law school graduate is having a big hassle getting accepted to the Michigan bar association because she had a file like mine. Should I even bother applying to, much less going through three years of law school only to be further haunted by these files?!

When you give money to spies you must expect them to meddle, provoke, and ignore the law. Truth becomes irrelevant. Who will ever check for accuracy? The bureaucratic impulse is to distort and magnify the need for more money in the next budget by exaggerating the importance of the work to be done. They create the need for their work, then fatten themselves from my taxes.

My only "crimes" have involved using my freedoms of speech, press, and assembly. Because my beliefs were unpopular with the spies and their bosses, I and many like me now suffer unknown reprisals. We live in semi-ignorant limbo, never knowing for sure why things happen or don't happen. Big Brother is, in many ways, already with us. If we want to keep some semblance of our political freedoms we must continue the struggle to end government and private political spying. The choice is yours.

Blacklisting Still Possible, However

Employee-Records Bill Will Soon Be Law

The nation's first comprehensive legislation designed to prohibit employers from spying on employees engaging in first amendment activities and to permit employee access to files kept by employers has passed the Michigan legislature in a weakened form and is on its way to the Governor for final approval. The bill (HB 5381) passed the state House earlier this year by a vote of 65-30 and was in good shape until powerful big business interests mobilized to weaken it in the Senate Labor Committee chaired by Democratic Senator David Plawecki.

The bill was a response to recent disclosures of political spying on First Amendment activities of employees by private corporations, local "red squads", and the FBI. (For background on HB 5381, the use of labor spies and blacklists, see *PSIM*, Vol. 2, Nos. 2 & 3).

As it passed the House, the bill provided for maximum access to all employer held files, allowed employees to insert their own version if they disagreed with the employer's, and prohibited the employer from collecting information about employee First Amendment activities. Once in the Senate Labor Committee, however, corporate interests such as GM, Chrysler, Ford, Shell Oil, Michigan Manufacturers Association, and the Michigan Chamber of Commerce descended on it like a storm of locusts. The Labor Committee made outrageous concessions to the corporate interests and rejected out of hand strengthening amendments offered by the Coalition and the ACLU. The Democratically controlled Senate weakened the bill even further, then sent it to a conference committee with the House sponsors.

The following weakening amendments were made at the insistence of corporate power brokers (a/k/a "lobbyists"):

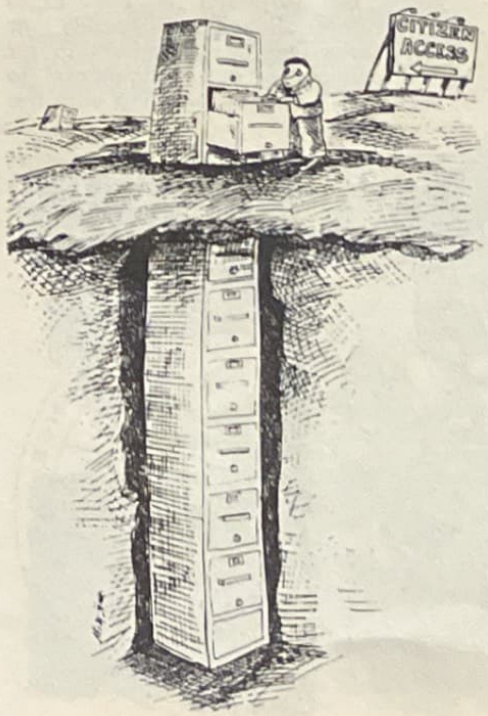
(1) Employers may keep records of any of an employees' "communications" (speech), "publications" (literature), and "associations" (friends and/or political affiliates) gathered while the employee is *on company property* or during working hours (*including meal and rest breaks*). If the "communications, publications or associations" are concerned with working conditions or employment duties, employers may keep records on the employee gathered from *anywhere, anytime, any source*.

(2) With one deceiving exception, employers will be allowed to secretly share *all* information from an employee's personnel record with *any* third party at *the employer's discretion*. The employee would *never* know what information was disseminated to whom. The one exception (for disciplinary reports) requires only that the employer notify the employee *after* sending the disciplinary report to a third party.

(3) Seven classifications of exemptions were added to the description of what is to be included in a personnel file. These exemptions serve to narrow the scope of records accessible to the employee, and widen the loopholes for the keeping of secret records by the employer.

(4) An employer may keep a separate, secret file on an employee if the employer "has reasonable cause (Ed. note: *not* "probable cause") to believe that an employee is engaged in criminal activity which *may* result in loss or damage to the employer's property or disruption of the employer's business operation." (Emphasis added.) To an employer, "reasonable cause" and "may result" are broad enough to include any rumor, threat, or fabrication.

(5) By eliminating a damage award for attorney's fees in all but "wilful and knowing" violations of the act, only the most flagrant, most abusive violations, if any, would be considered for litigation by an attorney approached by an employee. Employers could rest assured, therefore, that few, if any, lawsuits would ever be brought against them. Even for a "wilful and knowing" violation, the maximum punitive sanction against the employer would be a $200 award to the employee.



The Employee-records-access bill, while severely weakened, is one of the first in the country to undertake the ambitious task of protecting employees right to privacy in the work place. (California and Maine have enacted short provisions which, without much more, give an employee the right to see her/his personnel file.) Michigan's bill is viewed as part of a general trend to reassure citizens that their privacy is being protected--a response to a growing concern about individual privacy that is sweeping the country.

While the bill is a small step toward protecting that privacy, the fight for even this crumb was quite revealing. The fundamental contradiction between "democracy" and "private property" here has proved itself too true to deny. What it boiled down to was a contest between extending civil liberties to the work place and continuing the right of big business to the "corporate prerogatives" that come with private property rights. In this instance, ownership of the workplace by employers/investors seems to include the right to control even the free speech and association of the employees. While recent polls show that this concept of private property prerogatives is not shared by the majority of the people (*Privacy Journal*, Vol. IV, No. 8, June 1978) it is apparently acceptable to a majority of the legislators, who, as usual, are followers rather than leaders.

For the House and Senate voting record on H.B. 5381 see p. 10

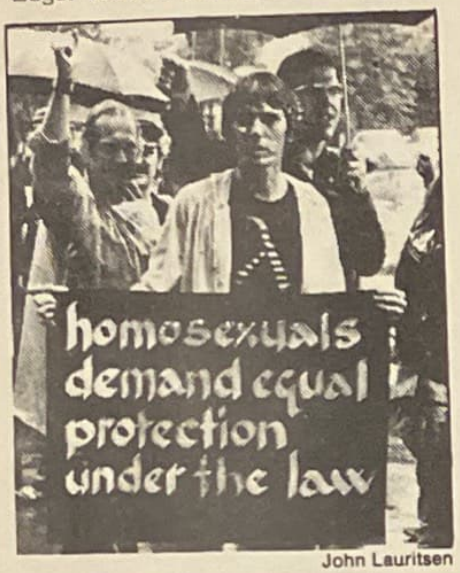
FBI Targets Gays in Ann Arbor

The FBI has recently admitted that at least during 1970 and 1971, it spied upon Ann Arbor's Gay Liberation Front, a recognized University of Michigan student organization. Among 25 pages of documents released to an Ann Arbor resident, were teletypes from the Detroit Special Agent in Charge to FBI headquarters concerning developments following a GLF demand for university approval to hold a midwest gay conference. Three sources are cited--one identified as "well placed."

The first teletype of those released noted that GLF was composed of "both 'gave' (sic) and 'straight' persons working toward legalization of homosexuality," and described GLF as politically oriented toward the New Left. On June 17, 1970 Detroit FBI advised Headquarters that it would "through sources, follow activities of this group to determine whether it becomes a viable New Left organization at the University of Michigan."

An eight-page report on GLF attached to a memorandum gave a history of Students for a Democratic Society. The spies apparently thought that SDS was linked with GLF and accused a former chairperson of the SDS chapter on campus with having used GLF as a device to further New Left agitation. To the spies, it could only be a "device" since the source stated he was certain that "this individual and his girlfriend are heterosexual." The memo also noted that GLF took part in the occupation of the ROTC building on campus, and that "the National Liberation Front Flag flew from the flagpole."

A memorandum from the office of J. Edgar Hoover, dated June 30, 1970, ordered the Detroit office to "continue to obtain information" concerning the organization. It went on to order: "handle your investigation in accordance with instructions relating to investigations of organizations connected with institutions of learning."



John Lauritsen

Although later documents claim FBI surveillance ceased in 1971, when the FBI supposedly concluded GLF was just a "social" organization, Gay activists in Ann Arbor dispute the characterization and doubt that surveillance has ended, noting that the group has subsequently staged demonstrations at the American Psychiatric Association Convention at Cobo Hall in 1974, and also periodically at City Council meetings in Ann Arbor. They also recall that FBI agents have more recently scoured the Ann Arbor gay community searching for radical lesbian fugitives Katherine Power and Susan Saxe.

A move has been started to pressure the Michigan Student Assembly, the student government at the U of M, to take action against the surveillance of student organizations. Initially, the MSA would obtain copies of all the files the FBI holds on U of M student organizations. Updates will follow in future issues of PSIM.

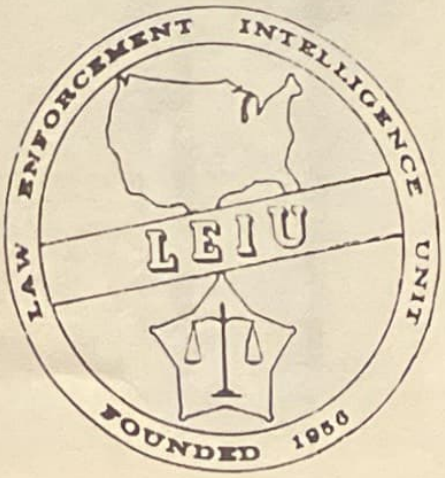
Secret Police Cont'd. from p.3

Most cities have had difficulty implementing successful oversight and control of their police departments' relationship with LEIU. The Bylaws of this "private club" spell out what has become the testing-ground for the true loyalty of member agencies. Bylaw I-G threatens suspension of membership for "(a) occurrences or acts detrimental to the LEIU, (b) improper handling or dissemination of LEIU information, or (c) a serious violation of LEIU policy." Bylaw I-H threatens termination of a member agency where "(l) its participation serves no useful purpose to LEIU; or (2) membership is detrimental to LEIU objectives or policy."

It now appears that a pattern is being established. The Seattle Police, and even earlier, the Chicago Police, and now the Detroit Police, have shown that loyalty to LEIU is more important than the rule of law. It is perhaps most telling that these police agencies show greater allegiance to a secret police intelligence organization than they do the nation's courts, laws and elected officials.

The Detroit City Council was not pleased to hear of Cmdr. Coulter's overriding loyalty to the LEIU. Further Council hearings and a full investigation into DPD membership in LEIU may occur over the summer. During the course of the investigation, don't be surprised if the LEIU "Executive Board" suspends or terminates Detroit's membership for "occurrances or acts detrimental to the LEIU," i.e., cooperating with the investigators.

If Cmdr. Coulter and his superiors continue to show such contempt for the City Council and the laws of the land, look for the Council to order Detroit out of the LEIU.



LEIU Update

The Detroit Board of Police Commissioners has been asked to investigate Detroit Police membership in LEIU. At the July 6th meeting, the Board, (Detroit's version of a "civilian review board") agreed to conduct an investigation to begin some time this summer.

The Board Chairman, Avern Cohn (Michigan's top Democratic Party fundraiser), repeatedly tried to sidetrack the presentations. Cohn ignored evidence of past political spying by LEIU and demanded evidence of *current* abuses.

LEIU operative, Jesse Coulter, however, claims he sent all the Detroit LEIU files back to California "for safekeeping." He says the files were shipped to Sacramento "by mutual agreement" with LEIU officials. Cohn had stated that he believed there was no political or personal information kept in LEIU files "because Coulter made a written statement to that effect."

Intelligence Agency "Reforms" Would Authorize Abuses

Executive Action

The Congressional investigations of Watergate and other intelligence agency abuses brought forth a nationwide clamor for intelligence agency reforms. Candidate Jimmy Carter promised an embarrassed and scandle weary electorate substantial controls. Nearly two years into his term of office, he has not only failed to provide Congressional leadership for tight legislative curbs but has personally mandated an interim Executive Order that, in a variety of circumstances, authorizes surveillance of Americans not suspected of breaking any law.

Executive Order 12036, issued January 24, 1978, Section 2-201(b), labelled, "Restrictions on Certain Collction Techniques," reads:

Activities described in sections 2-202 through 2-205 for which a warrant would be required if undertaken for law enforcement rather than intelligence purposes shall not be undertaken against a United States person without a judicial warrant, unless the President has authorized the type of activity involved and the Attorney General has both approved the particular activity and determined that there is probable cause to beleive that the United States person is an agent of a foreign power.

Mail opening and physical searches, for example, may be carried out against a citizen without a warrant and without evidence of criminal activity upon a mere suspicion that the person is an "agent of a foreign power." Nowhere in E.O. 12036 is "agent of a foreign power" defined.

The "foreign agent" exception to the Fourth Amendment of the Constitution is the new all-purpose loophole of the late seventies, the replacement for the previous claim of "national security interests" of the Watergate Era. The "national security" blanket came under so much criticism that it lost its capacity to either silence critics or justify dubious intelligence investigations.

The "agent of a foreign power" provision is an even more dangerous claim of inherent presidential power to violate constitutional rights on a secret executive branch finding of danger to the national security.

Morton Halperin of the Center for National Security Studies warns that Carter's Order contains "the most explicit and far reaching claim of an inherent presidential right to intrude without a warrant into areas protected by the Fourth Amendment ever stated publicly by an American President."

Since "agent of a foreign power" is not defined, the label can be applied to people other than foreign espionage agents. From the beginning of the United States, Presidents and their advisors have thought of their opponents as agents of foreign powers. Secrecy makes anything possible and leaves us all at the mercy of the good faith of the President, the Attorney General and other executive branch officials.

There is in Section 2-201(a) of this Order a provision that intelligence activities be conducted pursuant to procedures established by an agency head and approved by the Attorney General. It directs that in all cases the procedures shall "protect constitutional rights and privacy, ensure that information is gathered by the least intrusive means possible, and limit use of such information to lawful governmental purposes." This amounts to nothing but an admonishment that the laws of the land be respected.

The requirement that agents use "the least intrusive means possible," hailed as a great reform, will be read by the intelligence agencies as authorizing whatever means they deem necessary, if not otherwise prohibited. In E.O. 12036 *no* investigative technique is absolutely prohibited. There are only two flat prohibitions relating to surveillance of Americans: one prohibits CIA electronic surveillance within the United States, and the other prohibits any agency *other than* the FBI from engaging in unconsented searches within the United States. There is also a prohibition on getting others to do what an agency is prohibited from doing itself.

Also, infiltration of domestic organizations as agent provacateurs is prohibited to intelligence agencies *other than* the FBI--thus sanctioning such activity by the FBI.

Congressional Action

Because of the failure of the Carter Executive Order to control intelligence agencies, legislative efforts become important. The United States legislature is working on measures restoring the requirement of traditional warrant standards and criteria before intelligence agencies can surveil Americans.

In early February, Senate Bill 1566, the Administration's Foreign Intelligence Surveillance Act, which would limit *all* intelligence wiretaps to a criminal standard, was introduced. The bill was reported out of the Senate Intelligence Committee March 14th and was passed by the Senate April 20, 1978. It was referred to a subcommittee of the House Committee on Judiciary and awaits their action.

Meanwhile in the House, the Subcommittee on Legislation of the House Intelligence Committee made several changes in HR 7308, the House Intelligence wiretap bill, before

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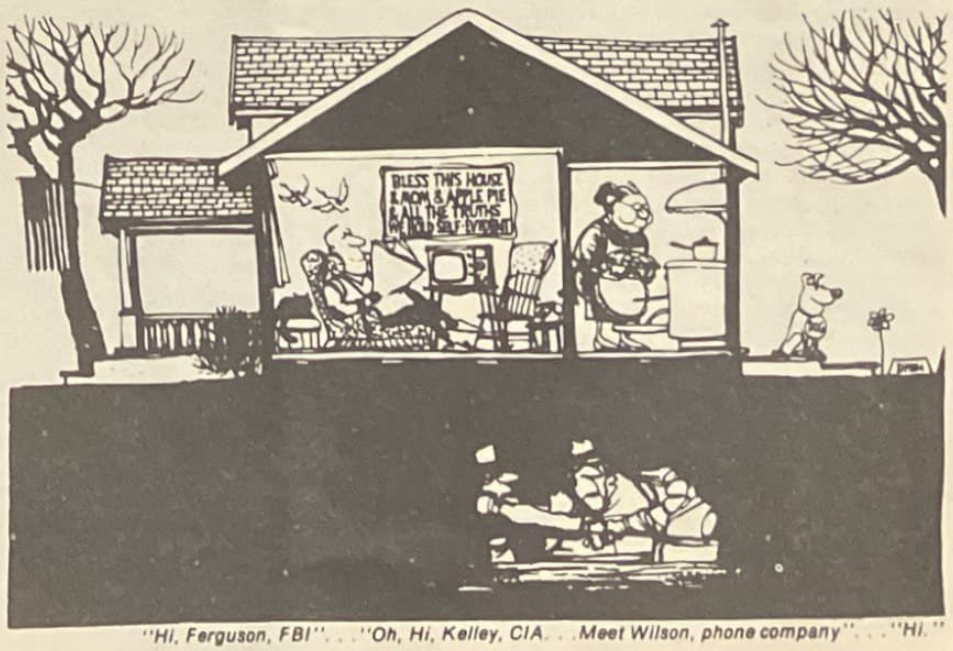

"Hi, Ferguson, FBI"...."Oh, Hi, Kelley, CIA...Meet Wilson, phone company"...."Hi."

High School Spying Prompts Walkout

Two hundred students at Cousino High School in Warren recently walked out of their classes after they learned that local police had placed an undercover agent in the classrooms of two of their teachers. The teachers, Gerald Eggen and Michael Gordon, are considered "radicals" by school administrators.

Top Warren School administrators apparently solicited the Warren Police Department to put the undercover agent into the school. The female undercover agent, passing for high school age, reportedly took copious notes in both classes and hung out with some of the students.

The student walkout was triggered when school administrators told students at a student council meeting that they would "do it again tomorrow" and even went so far as to tell students not to ask if there were other narcs still in the school at that very moment. The school administration tried to play on Warren's conservative, though working class, philosophy by exaggerating the "drug problem" to justify their actions after they were caught red handed. The only discovered "criminal" behavior resulted in one arrest for selling a bag of marijuana.

In explaining why the two "radical" teachers were singled out for undercover surveillance, school officials explained that sociology and psychology courses were ideal since students in such classes felt free to discuss their feelings without being intimidated. Eggen and Gordon have stated that they "would like the administration to state publicly that to protect the integrity of the classroom and the delicate fabric of mutual trust and respect among students and teachers, that these or no other classrooms be subjected to the insidious totalitarian mindset in this action.... If indeed there are few vestiges of humanness in the institution of school, let us not destroy it by creating a situation where students and teachers must maintain the frigid atmosphere that exists too often in education and elsewhere."

Eggen and Gordon have filed a grievance through their union asking for a cease and desist order along with damages. They are also contemplating additional legal action based on the surveillance itself and the resulting harassment from elements in the community who feel that if you're opposed to undercover agents in classrooms, you must support drug abuse. The school administration's position is: "If you have nothing to hide, the eyes of Big Brother would not bother you."

Readers interested in learning more about this situation and forming a group to support Eggen and Gordon should contact MCEGS at 961-7728.

"Reforms"

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referring it for full committee consideration. That bill, out of committee as of June 8, 1978, now awaits House action. Readers should encourage their U.S. Representatives to adopt a narrow criminal standard in S. 1566 and HR 7308.

Charters are proposed for each intelligence agency. They at least superficially recognize (1) a criminal standard for intrusive investigations, (2) a judicial warrant procedure, and (3) a limitation on the maintenance and dissemination of private information. The bill still pending before Congress falls short of achieving anything like true control of intelligence agencies. In fact as proposed they authroize the very abuses they are supposedly being drafted to outlaw. Many of the "prohibitions" have become weakened by exemptions and loopholes. For example, COINTELPRO type covert activity is prohibited when implemented solely on the basis of a person's exercise of their Constitutional rights. However, if an intelligence agency merely tacks on the justification of "preventing violence," the activities could be authorized.

In addition the "charters:"

1) authorize on-going potentially never-ending intelligence investigations of U.S. persons beyond an initial 180 day period, and even for years, as long as ther is a mere suspicion of crime;

2)authorize judges to issue warrants for multiple "surreptitious entries" of private premises in ways wholly objectionable under Fourth Amendment standards;

3) would for the first time legitimize the use of the super-secret National Security Agency to pinpoint Americans for surveillance and to continue to intercept routinely millions of untargeted private communications;

4) while explicitly prohibiting certain kinds of covert operations, would implicitly authorize special activities which are incompatible with democratic principles, such as destruction of property, causing energy shortages, para-military operations and the non-violent overthrow of democratic governments;

5) while purporting to prohibit intelligence agencies from using certain organizations for "cover" purposes, they would not prohibit the agencies from using journalists, academics and others who volunteer for clandestine intelligence activities.

Contact Senators Birch Bayh (D-IN) and Walter D. Huddleston (D-KY), the main sponsors of the charters. Express your outrage that corrective legislation is being used to legitimate and promote the very civil liberties abuses against which it was meant to protect. Having embarked on a legislative course, Congress is almost certain to pass some bill, however flawed.

"In the technotronic society the trend would seem to be towards the aggregation of the individual support of millions of uncoordinated citizens, easily within the reach of magnetic and attractive personalities effectively exploiting the latest communication techniques to manipulate emotions and control reason."

----Zbigniew Brzezinski, National Security Advisor to Jimmy Carter.

"Mafia/CIA Judge" on Bell Appeal

On July 6th, Federal District Judge Thomas P. Griesa held the Attorney General of the United States, Griffin B. Bell, in contempt of court for his refusal to give the Government's files on 18 unidentified informers to attorneys for the Socialist Workers Party. The files represent a small sample of the staggering 1,300 informers who spied on the Party over four decades. Such contempt orders are not generally appealable. However, in this case, the Government was able to find an appellate judge willing to overlook that rule.

An earlier attempt by U.S. attorneys to appeal this order was rejected because of the traditional non-appealability of such orders. In a classic case of judge shopping, the Government called in its debt from Judge Murray I. Gurfein of the United States Court of Appeals for the Second Circuit (N.Y.). Judge Gurfein stayed the one-day contempt order pending the Government's appeal of the dispute to the Supreme Court.

Readers of the last issue of *PSIM* (Vol. 2, No. 3) may remember that it was Murray Gurfein who, with then New York Governor Thomas Dewey, set up the deal between the United States Government and Lucky Luciano to "hire" the Mafia during World War II as port protectors and international spies. Luciano got a pardon from Dewey and Gurfein got a life-time seat on the Federal bench out of the deal.

Incredibly, the federal attorneys have argued their case on the grounds that *they* are concerned about confidentiality and the damage disclosure would have on the "nation's ability to protect itself." The better question is how does the nation protect itself from FBI and other spies? This same government used *criminal* tactics in its surveillance of the SWP. No criminal charges were ever lodged against the victims of forty years of intense surveillance.

The appeal to the appellate court could take several weeks, with the case headed eventually for the Supreme Court.

"Yes, your government may collect information concerning yourself! No, it does not have to reveal what that information is! This is a recording."

Snepp Gets Snipped While Nixon Profits

A Federal district court judge ruled July 7th that Frank W. Snepp III, a former agent of the CIA, violated his contract by writing an "unauthorized" book about the agency. The judge ordered that his "ill-gotten gains" be turned over to the Government.

Snepp's book deals with the CIA's evacuation of Saigon, now Ho Chi Minh City, at the end of the American troop involvement in the Vietnam War. Though the Government has not said the book contains any specific classified information, Judge Lewis ruled it had "caused the United States irreparable harm and loss" by impairing the ability of the CIA to gather and protect intelligence.

Snepp, a "whistle-blower", has had his freedom of speech curtailed while disgraced ex-President Nixon and his Secretary of State, Henry Kissinger, are lining their pockets and possibly campaign coffers with huge profits made from publication of *classified, secret* materials in high priced books selling without interference all over the country.

Random House chairperson and president Robert L. Bernstein com-

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ESMAIL

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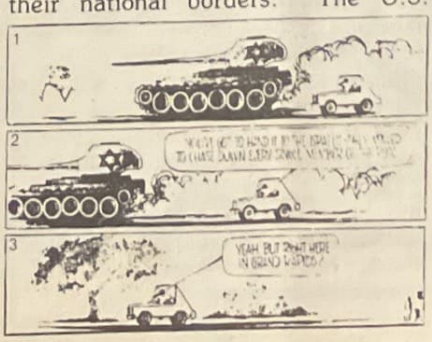
that it has maintained a file on Sami which noted his activities at MSU. A month before his hurried visit, Sami freely admitted to agents that he had gone to Libya. The FBI has also admitted that it shares political information on Americans with foreign intelligence agencies. In Sami's case however, the FBI has *refused* to confirm or deny that it turned over information to the Israeli authorities.

The charge that Sami was a member of an Israeli-outlawed group in East Lansing, Michigan had to be based on information from somewhere. How could this information wind up in the hands of the Israelis? If it didn't come from American intelligence agencies, then the Israeli intelligence service, Beth Shin, is operating inside the United States. In recent years, we have witnessed the U.S. sanctioned actions of both Iranian (SAVAK) and Chilean (DINA) intelligence agencies inside the United States, sometimes directed at American citizens. The case of Sami Esmail points out another type of government-sponsored attack on the rights of the American people, with help in this case from a foreign country.

What role did the U.S. government play after Sami's arrest? At first it was disinterested in the case; only after much public pressure was brought on State Department officials did the government begin to take a more active role. Still the government refused to allow a U.S. consul to testify about Sami's condition while in jail before he signed the "confessions." After more pressure was placed on American authorities, the Consul prepared a sworn affidavit. When the affidavit was offered as evidence, the Israeli court refused to accept it. There has been considerable reluctance on the part of the U.S. State Department to get involved in this "political" matter "internal" to Israel.

The charges, the trial and now the sentencing constitute a threat of prosecution to all Americans who may travel to Israel or other countries that claim prosecutorial jurisdiction beyond their national borders. The U.S. government showed its lack of concern for Sami's freedom; would they do any more for you? Is this a policy agreement between the U.S. and Israel to chill free speech and association within the United States through threats from abroad? These are questions which must be answered.



The Israeli attempt to make Sami "an example" may have done just that, but in other ways. Since his arrest, a Committee has been organized in East Lansing to Free Sami Esmail. There are other Committees in many other American cities, including Detroit. Through the work of the Committee, the State Department has been deluged with mail and telegrams concerning Sami; when the trial was held, a delegation of Americans went to Israel for the public sessions. The movement to Free Sami Esmail has awakened many to the crimes of American and foreign intelligence agencies.

The Sami Esmail matter has been viewed cautiously by many opponents of political surveillance who are also supporters of Israel. This is unfortunate and unnecessary. The issue is not the existence of Israel, or the PLO, or "terrorism." The question is: How are U.S. and foreign political spies cooperating to violate rights of American citizens?

STOP THE CODE

Cont'd. from front page

First, jurisdiction would be eliminated as an element of the offense and would therefore be determined by the judge rather than the jury. Second, other important fact issues would be eliminated as elements of the offenses and reduced to "grading" questions. For example, the new offense of obstructing a government function by physical interference is a misdemeanor unless the offense was committed in the course of constitutionally protected activity, was non-violent and did not "significantly obstruct or impair" a government function—in which case it is only an infraction. Here again, the judge, not the jury, would determine these critical fact issues.

In addition to broadly expanding the federal criminal law, H.R. 6869 revises and reenacts numerous provisions of existing law which impinge on civil liberties and have been repeatedly and demonstrably abused by law enforcement officials and prosecutors. Although the bill repeals the Smith Act, improves the definition of rape and expands the civil rights laws, it fails to eliminate or narrow many other long recognized civil liberties dangers. These include provisions variously criticized by the Brown Commission, the American Bar Association, the ACLU and others, such as those involving *Co-Conspirator Liability, Sabotage, Impairing Military Effectiveness, Espionage, Obstructing Military Recruitment, Inciting or Aiding Mutiny, Insubordination or Desertion, Demonstrating to Influence a Judicial Proceeding, Criminal Contempt, Retaliating Against a Public Servant, Drug Offenses, Interception of Communications (wiretapping), Compulsion of Testimony (grand jury immunity),* and *Admissibility of Confessions.*

The greatest threat posed by H.R. 6869, however, is its dangerous expansion of federal criminal law. In section after section, the bill either creates new law, broadens existing law, or erodes various procedural protections for defendants. It invites abuse by law enforcement officials and prosecutors and raises serious questions of due process and notice. The tone of the bill is set by its revision of the time-honored maxim that penal statutes are to be strictly construed. In its place a principle is adopted that criminal statutes should be construed *"in accordance with the fair import of their terms to effectuate the general purposes of this title."*

Impact on Dissent

Beyond the new rule of construction, H.R. 6869 would create or expand many crimes affecting the exercise of constitutional rights. Most of these would have the effect of giving the government new protections against political dissent. For example, a person would be guilty of an offense "if he *intentionally obstructs or impairs a government function by defrauding the government*" in any manner. As the Senate Report on the bill notes: "It is designed to fill a gap in existing law by reaching all conduct by which a person intentionally obstructs or impairs a government function by fraudulent means."

Another new crime makes *"physical interference" with federal government functions* a felony, covering any obstruction or impairing of "the performance by a federal public servant of an official duty." Under the sweeping terms of this provision it would be up to the prosecutor to determine whether a large demonstration on federal grounds or near federal buildings was or was not "physically interfering" with the performance by a federal public servant of an official duty. Moreover, the demonstrators would not have to intend to impair or obstruct a *government* function, but only a function of some kind.

Many of the other new provisions listed above would have a similar negative impact on free speech and assembly.

On balance, therefore, both H.R. 6869 and S. 1437 as passed by the Senate are a serious threat to individual rights, and bear a striking resemblance to their predecessor, S. 1. The choice facing Congress is whether, for the sake of streamlining the criminal law, it will compromise civil liberties or will finally begin the process of real reform.

●●●

On June 28, the House Judiciary Subcommittee on Criminal Justice, chaired by South Carolina Democrat James R. Mann, released a 479-page Tentative Draft (T.D.) of their version of the Recodification of Federal Criminal Law. The subterfuge perpetrated by the Subcommittee, however, is manifest in: (1) allowing only a mere two-week period for public comment, and (2) making only 500 copies of the T.D. available to "the public."

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Names in **bold** indicate member of Subcommittee on Criminal Justice.

M.C.E.G.S.
234 State, #808
DETROIT, MI 48226
(313) 961-7728

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