THE FBI AND THE FOIA: PROBLEMS OF ACCESS AND DESTRUCTION

ATHAN G. THEOHARIS

This article will address an issue of common concern to historians and archivists—namely, how to insure that records pertaining to the recent past will be preserved and accessioned into archival custody, and particularly as this relates to the opportunities provided under provisions of the Freedom of Information Act of 1966 (as amended in 1974). It will survey the ways in which the Freedom of Information Act (FOIA) extends scholarly research and accessioning bases and will discuss the problems attendant to the effective use of the FOIA. My remarks will be confined to the accessioning and preservation of the records of the Federal Bureau of Investigation (FBI).[1]

On first analysis, one might very well conclude that FBI records have limited research value—and would seem to be of interest primarily for those historians studying federal surveillance policy or particular internal security and criminal cases. However, FBI files can also be an invaluable research source for historians and archivists who are interested in broader questions of social change. Because of the scope and intensity of past FBI investigations of dissident activities—aptly characterized by Senators Walter Mondale and Philip Hart in 1975 as a "vacuum cleaner" approach[2]—FBI records offer unparalleled insights into the activities of American dissidents, particularly the inarticulate (inarticulate in terms of the creation of a permanent written record). The breadth of the FBI's definition of "subversive activities" demonstrates the research value of the resultant FBI records. They encompass the political spectrum from organizations such as the U.S. Communist Party and the Socialist Workers Party to the John Birch Society and the Klu Klux Klan, as well as moderate, more respectable organizations such as the American Friends Service Committee, the American Civil Liber-

ties Union, the Southern Christian Leadership Conference, the National Association for the Advancement of Colored People, and the National Organization of Women. I am not claiming that the FBI reports accurately record the targeted individuals' and organizations' political and nonpolitical activities—the biases of FBI agents and informants colored and perhaps distorted their reporting. The resultant records thus must be used with discretion and skepticism. Nor do I deny the attendant violation of privacy rights entailed in the fact that FBI agents and informants reported not only on merely political matters but also on extremely personal affairs. Nonetheless, FBI files do constitute a written record of incomparable scope and richness. Otherwise unobtainable pamphlets, otherwise unavailable written accounts of meetings and strategy, and an otherwise unattainable record of the concerns and activities of rank-and-file dissidents supplement those records which we normally obtain, preserve, and research. As such, FBI files complement the records that are created and maintained by dissident organizations, as well as press accounts which usually focus on prominent leaders and dramatic developments.

The FBI's past "vacuum cleaner" approach to investigating and recording dissident activities does not alone confirm the rich resource potential that can be tapped through use of the FOIA. Until quite recently, research into FBI files was impossible for the simple reason that FBI officials successfully classified all FBI records. Furthermore, FBI files, even for the pre-World War I period, were not deposited at the National Archives. Not only had the FBI retained control over all its own files, but during the 1960's FBI officials successfully pressured the National Archives to withdraw from circulation FBI documents or copies of documents pertaining to the Bureau's World War I investigative activities, which had been accessible until then because these documents were included in files of the Department of Justice and the American Protective League.[3]

Because of the FOIA, historians are now able to circumvent this obstacle to scholarly research in two ways. First, individuals can identify and request specific files; the FBI is required to search and release all relevant documents in these files, subject to certain prescribed exceptions. Second, the FBI can no longer unilaterally and automatically classify its files on "national security" grounds and thereby control their public release. Under the FOIA, such

"national security" claims are appealable, with the courts making the determinative ruling. This means that FBI officials no longer exclusively determine what is vital to "national security;" at the least, they must convince the court that such claims have merit. The FOIA has thereby made it possible for historians to obtain for the first time FBI records of "historic value"—records comparable to those which, for other agencies, are normally accessible at the National Archives or at regional federal depositories. The FOIA can have the additional effect of decentralizing FBI records—with local libraries (to date, principally universities such as Princeton, Marquette, and Harvard) becoming depositories for copies of certain FBI files of general interest. The local acquisition of these files has not been systematic, however, being due instead either to the research interests of faculty members (Princeton and Marquette) or to the inclusion of FBI files among the papers of individuals donated to a university (Harvard).[4]

The FOIA, then, permits the accessioning and dispersion of a valuable research resource. I hope that in the future archivists whose repositories hold the papers of, for example, Dorothy Day and the Catholic Worker Movement (Marquette) will request FBI files on these individuals and organizations for the express purpose of insuring a more complete record. Employing the FOIA, however, requires the resolution of very serious cost and record access and retention problems. The cost problems are readily apparent. The access and retention problems, it should be emphasized, go far beyond managing the size of these potential collections. These basic concerns will be discussed separately, beginning with cost.

The FOIA requires that researchers, when seeking federal agency files, be prepared to pay all processing and search fees attendant to the review and release of documents pertaining to their request. Processing fees are the charges to photocopy FBI documents; the rate is 10¢ per page. The individual requester, moreover, after having submitted a FOIA request and before the FBI even begins to process it, must be prepared to pay one fourth of the total photocopying costs for that FBI file; the specific sum is based on the projected number of pages in the requested file(s). In contrast to normal research practices, the person who employs the FOIA must pay to copy every page in the particular FBI file—sight unseen with no opportunity to review the records and select particular doc-

uments. This requirement relates to the Bureau's document review and release procedure; since documents are not automatically released in their entirety, a researcher may not simply be handed a file for perusal.

Given the voluminous nature of FBI files, copying costs can be prohibitively expensive. Not only can these costs exceed the budget of the average researcher but, because unprecedented, they are not readily financed through normal scholarly research funding sources (such as American Philosophical Society research grants). This is a concern that warrants cooperation between archivists and historians. Why not, for example, consider funding such processing costs from library and archival funds available to purchase books and private papers? (I know of one instance where this has been done, involving the research of an historian at Michigan State University.)[5]

A second cost problem involves FBI search fees. Should the requestor seek specific FBI documents rather than the whole file, he or she not only must have the advance knowledge requisite to identifying the documents but also must pay the costs attendant to FBI records management personnel searching FBI files to recover the identified documents. Depending on the classification status of these document(s), these search costs range from $1.75 per quarter hour of search time, should a lower level FBI agent conduct the search, to $3.25 per quarter hour if done by a higher level agent. These search fees can also be prohibitively expensive; for example, I paid $23.00 to obtain one identified FBI memorandum during the course of my research involving the Alger Hiss case.

The cost problem, however, is not the sole obstacle to access that confronts the historian and/or archivist. The requestor's ignorance of the FBI's intentionally complex and closely-guarded filing systems is an equally important obstacle to obtaining a full record of FBI activities involving the identified case, individual, or organization. When filing FOIA requests, most researchers seek only the FBI's headquarters files. Yet not all information pertaining to an individual or organization that is obtained through the investigation conducted at the field office level is forwarded to Washington. First of all, FBI agent reports to Washington detail only what the agent has concluded are major and pertinent findings. Second, in the event that FBI agents had resorted to illegal investi-

gative techniques—such as break-ins or, before 1968, illegal wiretaps and bugs[6]—they intentionally disguised the source of this information in their reports as having been obtained from a "confidential informant" or a "generally reliable source." This reporting procedure, formalized in the requirement that such information should be forwarded to Washington headquarters through so-called Letterhead Memorandums (LHMs),[7] in effect means that many of the contents of the field office files are not duplicated in Washington headquarters files. Field office files are more detailed, so they alone provide a conclusive record of the investigative techniques which FBI agents employed in a particular case. While the magnitude of this information might not in every instance be of interest to the social historian, the historian of federal surveillance policy would find this detail to be crucial.

There is, moreover, another dimension, which involves the FBI's creation of a series of separate filing procedures, dating at least from 1940 and refined purposefully in succeeding years.[8] In devising these separate filing procedures, FBI officials intended to isolate particularly sensitive documents from the FBI's central records system, whether at headquarters or in field offices. To avert public discovery of those FBI activities that were illegal, embarrassing, or politically motivated, separate files were created either to store these purposefully isolated records or to control access to very sensitive records in the central records system.

Because it is *the* principal investigative agency of the federal government, the FBI has created a records system to insure the quick retrievability of its investigative reports. Such a system is essential to assure that prosecutors (United States attorneys or officials in the Justice Department) can be provided with full information during their presentation of a case to a grand jury to secure an indictment, as well as in preparing for and conducting a trial. This system is also required to enable the FBI to respond to court-ordered discovery motions for relevant FBI documents—for example, to determine whether the FBI had employed wiretaps during an investigation leading to an indictment. Accordingly, the FBI's central records purportedly confirm the existence of each and every document, and the number of pages of these documents, created during a particular investigation. When an FBI investigation is initiated, the first document is given a general serial number (100 if an internal

security matter, for example), then a second subcategory number for the specific investigation (such as 1066), and a third subcategory number beginning with 1. Succeeding documents pertaining to the investigation are numbered consecutively by page in the third subcategory. This serialized system thus creates a record of the total number of pages and documents retained in the central FBI file on a particular investigation.

The very precision of this serialized system created real problems whenever FBI officials engaged in sensitive activities, either when authorizing illegal investigative techniques or when attempting to influence public opinion and national policy by leaking information to "friendly" reporters and congressmen. To address these problems and safeguard the resultant files from public discovery, FBI officials purposefully created separate, unserialized filing systems. Documents recording illegal investigative activities were not to be serialized (the Do Not File system[9] for break-in request and authorization memorandums, for example). Because they were not serialized, these documents would not be retrievable through a search of the Bureau's central records system and furthermore could be destroyed without the destruction being detected. Refining this practice, FBI officials ordered FBI agents to report information, which if publicly revealed could be "embarrassing" to the FBI, on the administrative pages of their report (appended to the back of the report and not numbered consecutively) and not within the text of the report.

In addition, FBI officials, such as director J. Edgar Hoover and assistant director Louis Nichols, maintained so-called "official and confidential files" in their offices.[11] These official and confidential (O&C) files were not serialized in the FBI's central records because they were used to store particularly sensitive documents. Furthermore, to insure that these sensitive documents were not accidentally serialized and thereby rendered vulnerable to public discovery, Hoover ordered FBI officials to prepare them on pink paper (in contrast to the use of white paper for memorandums which were to be serialized) and on special memorandums containing the following notation on the bottom of the first page: either "Informative Memorandum—Not to be Sent to Files Section" or "This Memorandum is for Administrative Purposes—To Be Destroyed after Action is Taken and not Sent to Files Section."[12]

An FBI memorandum of September 23, 1958, describes how this procedure was implemented: "Mr. Nichols had a stop up in the Records Branch and he reviewed all mail... and decided whether it should be kept in [Nichols's] O&C file... or up in Records."[13] Furthermore, to limit access by FBI and Department of Justice personnel to illegally obtained information—such as wiretap and break-in reports—Hoover created another separate filing system, "June mail," to permit the special handling and isolation "in a special file room under lock and key" of such documents.[14] Other sensitive records, such as copies of letters illegally intercepted by FBI agents or which FBI officials received from the CIA's illegal mail opening program, were also maintained in a "special file room."[15] Hoover's O&C files, moreover, were physically stored in a safe that was also used to store other sensitive documents, including some memorandums authorizing break-ins, carbon copies of COINTELPRO memorandums, and memorandums relating to foreign counterintelligence.[16]

The FBI's creation of these special filing procedures and systems insured that the most sensitive FBI documents were not filed and indexed in the Bureau's central records. This creates real difficulty for the individual seeking a *complete* record of FBI activities; separate filing procedures insure that the FBI's "central records" system does not fully record all FBI investigative activities and techniques. Furthermore, a full record of FBI activities relating to a given investigation will not be released under the FOIA unless the requestor demands a search of all FBI files and enumerates the various separate filing systems. Most requestors, however, lack this prerequisite knowledge of FBI filing procedures. I hasten to add that I am not so bold as to aver that I have successfully identified all FBI filing procedures and systems.* To an extent, then, seeking FBI

* My knowledge of these separate filing systems has been gained from a wide range of sources over an extended period. From research into FBI documents, reprinted or excerpted in the reports and hearings of the Senate Select Committee on Intelligence Activities and the House Subcommittee on Government Information and Individual Rights, which I began in 1976, I discerned an apparent pattern: whenever the FBI initiated an illegal or politically sensitive investigative program FBI officials ordered the creation of separate filing systems. Since 1978 I have focused my research into released FBI files on this question, and this pattern of operation continues to characterize FBI filing procedures.

files often resembles a game of cat and mouse, with the elusive mouse regularly evading its pursuer.

These separate filing systems are important for another reason. When creating these systems, FBI officials intended to permit the destruction of sensitive records. Since these documents had not been serialized, no record of their existence had been created. Despite the clearly stated intent of the system, there were political reasons which led FBI officials to preserve those Do Not File documents that have now been released. However, just because some sensitive records have been released does not mean that all Do Not File documents have been, in fact, retained. The existence of the separate filing process suggests that some or most of such documents have indeed been destroyed. For example, released FBI files involving the Alger Hiss case confirm that certain documents pertaining to FBI activities in 1947 had been destroyed.[17] Nor have only selected documents been destroyed. The voluminous so-called "personal files" of former FBI director Hoover, also maintained physically in his office, were destroyed by his personal secretary, Helen Gandy, shortly after his death.[18] Hoover's "personal files", however, were not strictly personal—indirectly confirmed by the fact that in October 1971 Hoover ordered the transfer of eight case folders from his "personal" to his "official and confidential" files. One of these eight transferred folders contained a July 1966 memorandum describing the Do Not File procedure for break-ins; clearly this was not a "personal" matter. Employing the FOIA, I have obtained the release of the other seven transferred case folders and can report that all of them involved official policy matters and thus should not have been filed originally in Hoover's "personal" files.[19] I can cite, moreover, a number of other instances of the FBI purging its files—this knowledge having been gained from research into released FBI files.[20]

There is the further disturbing revelation, which came to light in 1980, that the FBI had dissembled to the Senate Select Committee on Intelligence Activities. In September 1975, as part of its investigation into abusive practices by the FBI, the Church Committee requested a statistical listing of past FBI domestic break-ins. Responding, FBI officials claimed that they could only provide the Committee with approximate figures of past FBI break-ins. These officials explained: "There is no central index file, or document

listing surreptitious entries conducted against domestic targets. To reconstruct these activities, it is necessary to rely upon recollections of Special Agents who have knowledge of such activities, and review of those files identified by recollection as being targets of surreptitious entries."[21] The FBI's claim that there was no "central" break-in index, however, clearly misled the Committee, since "prior to July 1966, surreptitious entries which were authorized by FBI Headquarters were recorded in a symbol number sensitive source index maintained in the Intelligence Division. In 1970, the index was divided into two parts, . . ."[22] The FBI's dissembling about this index at a time of an intensive congressional investigation of FBI practices raises very serious questions both about the FBI's responsiveness to FIA requests and about the present retention of sensitive, unserialized files. (As recently as 1973–1976, I might add, FBI officials lied about past FBI break-ins to a federal court, responsible Department of Justice personnel, and the General Accounting Office while it was auditing FBI files at the request of the chairman of the House Committee on the Judiciary.)[23] Can historians and archivists confidently expect the FBI to comply with FOIA requests and release all relevant FBI files, particularly those that are politically explosive? One need not be a cynic to be skeptical.

Recent FBI record retention plans further complicate this story, while raising questions about the FBI's willingness to preserve a complete record of past Bureau practices and procedures. Under the Federal Records Act of 1950, and relevant provisions of the Code of Federal Regulations, all federal agencies are required to preserve documents of "historic value." Prior to the 1974 amendments to the FOIA, however, FBI officials were not troubled by these record retention requirements and did not release any FBI files to the National Archives. Because of the 1974 amendments, particularly the amendment authorizing court review of agency non-disclosure claims and narrowing the exemptive provisions of the 1966 Act, and the resultant inevitability that FBI files would be publicly released under the FOIA, FBI officials have recently drafted and submitted to the National Archives, on two separate dates, plans to destroy FBI field office files in their entirety and then to purge FBI headquarters files. An FBI internal memorandum of June 7, 1976, starkly documents the FBI's strategy in drafting these record destruction plans, namely, to capitalize on the unwillingness of responsible National

Archives personnel to meet their record retention responsibilities:

> It now appears timely for the Bureau to reevaluate requirements for the retention of file material at FBIHQ... The Bureau has not previously sought destruction of investigative records of substance at FBIHQ on the basis they were needed for reference... Additionally the National Archives and Records Service (NARS) placed an indefinite retention period on all basic violation categories because of their historical significance. NARS is now reluctant to accession records in large volume due to complications encountered as a result of the Freedom of Information and Privacy Acts and records they previously felt should be retained for historical reasons are now being reevaluated since they would be responsible for responding to requests if they took control of the records...[24]

In May 1975, FBI officials submitted to NARS a plan to destroy FBI field office files, claiming then that the most important information from these files was duplicated in the headquarters files. On March 26, 1976, NARS approved this plan, without having conducted an independent inquiry to ascertain whether under its terms documents of "historic value" would be destroyed.[26] NARS's decision was not publicized and my accidental discovery of this agreement, publicly reported in my article in *The Nation* "Bureaucrats Above the Law: Double-Entry Intelligenge Files" (October 22, 1977, p. 394) first led individual historians and the organized historical profession to pressure the National Archives to rescind its approval. In time, a number of historians and activist organizations initiated a court suit to enjoin the FBI and the National Archives from implementing this field office destruction plan. In January 1980, federal judge Harold Greene found in favor of the plaintiffs and enjoined the FBI and the National Archives from further destruction of FBI field office files. Judge Greene further directed NARS officials to devise a new plan, after consultation with historians and archivists, which would ensure the preservation of a complete historic record.[26] Concurrently, moreover, FBI officials had devised, and on May 4, 1977, submitted to NARS, another plan to "purge" FBI headquarters files. NARS deferred action on this plan, first soliciting the advice and guidance of the Congress.[27] This plan is pending, although action has been deferred because relevant congressional committees have given priority to drafting FBI char-

ter legislation.

Significantly, the proposed FBI charter bills—S. 1612, which the FBI drafted and which FBI officials are now lobbying Congress to enact, and S. 2928, drafted by conservatives and introduced by Senator Paul Laxalt on July 2, 1980, contain an apparently innocent and limited provision which, in fact, would repeal the external review authority over FBI record retention decisions that the National Archives now possesses under the Federal Records Act of 1950. S. 1612 would empower the FBI to render the exclusive and unreviewable judgment to "destroy records compiled in connection with an investigation... or deposit them in the Archives... for historic preservation... ten years after termination of the investigation if there is no prosecution or ten years after termination of prosecution..." S. 2928 repeats this authorization, eliminating only the ten year record retention requirement.[28] In addition, the FBI in 1980 also supported legislative measures exempting FBI files from the mandatory search and disclosure provisions of the FOIA.[29]

If, then, my remarks about the FBI and the FOIA began on an optimistic note, I must close on a note of pessimism and concern. There is no assurance that a full record of past FBI practices has been or will be preserved, or that the extant records will remain accessible to scholarly research. Perhaps scholars need not learn, from FBI files at least, about the personal and political indiscretions of individuals and organizations whose privacy rights were violated by the FBI in the recent past. Yet this detailed personal information does constitute an inportant source for the social historian and can be likened to personal diaries and, more, to census data, in that it provides documentation essential to understanding the social, educational, ethnic, and age background of members of dissident organizations. The destruction or non-availability of these files, moreover, will constitute a real loss for historians of federal surveillance policy and, in the process, will deny to the public and to responsible public officials the detailed knowledge of past FBI activities that is essential to preserving a democratic system of constitutionally defined powers and authority.

FOOTNOTES

1. The author expresses his appreciation to the Field Foundation, Warsh-Mott Funds, and Marquette University for their support of his research involving FBI files.

2. U.S. Senate, Select Committee to Study Governmental Operations with respect to Intelligence Activities, *Hearings on Intelligence Activities* (henceforth *HIA*), Vol. 6, Federal Bureau of Investigation, 94th Cong., 1st sess., 1975, pp. 135–140, 323.

3. Joan Jensen, *The Price of Vigilance*(Chicago: Rand McNally, 1968), p. 314; Melvyn Dubofsky, *We Shall Be All* (Chicago: Quadrangle, 1969), p. 539.

4. Professors H. H. Wilson of Princeton and Athan Theoharis of Marquette have purposefully sought to obtain FBI files for deposit at their universities' libraries. FBI files on Alger Hiss are included among the Alter Hiss Papers to be donated to the Harvard University Library.

5. The Michigan State University Library helped defray FBI processing costs which enabled Michigan State historian Kenneth Waltzer to obtain FBI files on the American Labor Party and on former U.S. Congressman Vito Marcantonio.

6. The Federal Communications Act of 1934 contained a provision, Section 605, prohibiting the interception and divulgence of any wire and radio communication. In 1968, Congress repealed this prohibition against wiretapping. The Omnibus Crime Control and Safe Streets Act of 1968 permitted electronic surveillance during criminal and national security investigations subject to a warrant requirement. The Act, however, qualified the warrant requirement during "national security" investigations, conceding "inherent" presidential powers "to take such measures as he deems necessary."

7. FBI agents were required to employ Letterhead Memorandums for reports which were to be disseminated outside the FBI. In these instances, FBI agents were to disguise information obtained through illegal investigative techniques (e.g., wiretaps or break-ins) as having been acquired from a "confidential informant" or an "usually reliable source." John Elliff, "The FBI and Domestic Intelligence," in Richard Blum, (ed.), *Surveillance and Espionage in a Free Society* (New York: Praeger, 1972), pp. 26–27, 30–31.

8. U.S. House, Committee on Government Operations, Subcommittee on Government Information and Individual Rights, *Hearings into the Destruction of Former FBI Director Hoover's Files and FBI Recordkeeping* (henceforth *HD-FBI*), 94th Cong., 1st sess., 1975, pp. 96–99, 103–104, 116–118, 123–146, 154-170, 173.

9. Conceding that break-ins were "clearly illegal" but considering them an invaluable investigative technique, FBI officials in 1942 authorized a "Do Not File" system for break-in request and authorization memorandums. Marked "Do Not File," such memorandums were not to be serialized or filed in the FBI's central records system but were to be filed separately in the field offices and Washington headquarters. Accordingly, these memorandums could safely be, and were to be, destroyed. This procedure is fully described in a July 16, 1966, FBI memorandum. In 1975 testimony and memorandums to the Church Committee, FBI officials affirmed that this memorandum accurately described how the FBI officials affirmed that this memorandum accurately described how the FBI authorized, monitored, and safeguarded documents pertaining to break-ins since 1942. *HIA*, Vol. 2, The Huston Plan, pp. 97–99, 129–131, 273–280.

10. Memo, FBI Director to Special Agent in Charge (SAC) Boston, October 13, 1949, FBI 4062, Alger Hiss Papers (currently accessible at the offices of the Emergency Civil Liberties Committee in New York City but to be deposited at the Harvard University Library). In a recent court deposition, FBI agent Martin Wood admitted that "administrative pages are always kept with the [FBI agent's] report unless it is sent outside of the Bureau. If the report is sent outside the Bureau, the administrative pages are generally detached." Deposition of Martin Wood, April 28, 1978, *Salant v. U.S. Department of Justice*, Ca 77-893, pp. 25-26.
11. Hoover's official and confidential file was created in the 1920's. In October 1941, Hoover advised FBI officials of his decision to create another official and confidential file to be maintained in the office of FBI assistant director Louis Nichols. *HDFBI*, pp. 154-155. U.S. House, Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, *Hearings on FBI Oversight*, ser. no. 2, pt. 1, 94th Cong., 1st sess., 1975, pp. 4-11, 15-19, 34.
12. *HDFBI*, pp. 96-99, 103-104, 116-118, 123-146, 154-170, 173.
13. Blind memo [identifying neither the sender nor the recipient], marked fml, September 28, 1958, Morris Ernst folder, unserialized Official and Confidential files of FBI Assistant Director Louis Nichols (obtained by the author under the FOIA and to be deposited at the Marquette University Archives).
14. Memo, W. A. Branigan to A. H. Belmont, May 28, 1954, FBI 66-1372-11; Memo, W. R. Wannall to W. C. Sullivan, January 17, 1969, FBI 66-1372-49; and SAC Letter No. 69, June 29, 1949, FBI 66-1372-1 (released in response to court order in a suit brought by a number of Chicago-based activist organizations against the FBI; photocopies in author's possession.)
15. U.S. Senate, Select Committee to Study Governmental Operations with respect to Intelligence Activities, Final Report, *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans*, Book III (henceforth *SDSR*), 94th Cong., 2nd sess., 1976, pp. 562, 628, 632, 658-659, 675-676.
16. Report, FBI Director William Webster to Attorney General Benjamin Civiletti, February 19, 1980, p. 25 (publicly released in July 1980, copy in author's possession).
17. Fred Cook, "The Coram Nobis Apeal: Alger Hiss—A New Ball Game," *The Nation* (October 11, 1980), p. 341; Edith Tiger (ed.), *In Re Alger Hiss, Volume II* (New York: Hill & Want, 1980), pp. 120, 122-124, 129-133, 280, 286-287, 374.
18. *HIA*, Vol. 6, Federal Bureau of Investigation, pp. 12-14, 351-359; *HDFBI*, pp. 2-19, 34-74, 84-146, 173-177, 203-205, 220-225.
19. *Ibid.*
20. When FBI Director Hoover's official and confidential files were incorporated in the FBI's central records system after his death in May 1972, three folders were discovered to be missing. Listed on an October 1971 inventory, these folders were captioned with the names of three high level FBI officials. *HIA*, Vol. 6 Federal Bureau of Investigation, p. 353. On February 19, 1972, responding to FBI Director Hoover's request for guidance as to how to handle policy documents pertaining to the FBI's preventive detention program, Assistant Attorney General Robert Mardian ordered their destruction. *SDSR*, p. 545. In 1958, the FBI destroyed a December 5, 1950, letter from Whittaker Chambers to Henry Julian Wadleigh and an accompanying check made out by Chambers to Wadleigh. Inventory, Baltimore, Maryland, September 13, 1949, addendum 123,

FBI 65-1642-1B, Sect. 5 (destroyed by FBI agent Bernard Norton, June 4, 1958). Memo, SAC Baltmore to FBI Director, December 18, 1951, FBI 4707. Memo (registered mail), FBI Director to SAC Baltimore, December 27, 1950. Defendant Federal Bureau of Investigation's Answers to Plaintiff's First Series of Interrogatories to the United States Department of Justice, (Special Agent Martin Wood), March 8, 1978, *Salant v. U.S. Department of Justice, et al.*, Ca 77-893, pp. 14, 15–16, 23–26. Supplemental FBI Response to Plaintiff's Interrogatories (Special Agent Martin Wood), March 30, 1978, *Salant v. U.S. Department of Justice, et al.*, Ca 77-893. The FBI also destroyed 42 files documenting its investigation of Julius and Ethel Rosenberg, *FOIA, INC. Update*, Vol. I, No. 2 (February 1979), p. 2.

21. Report, FBI Director William Webster to Attorney General Benjamin Civiletti, February 19, 1980, pp. 20–22.
22. *Ibid.*, p. 22.
23. When responding to court-ordered discovery motions of 1973, 1974, and 1975 for any documents pertaining to FBI break-ins involving the Socialist Workers Party (SWP), FBI officials falsely denied to the Department of Justice, and in turn to the federal court, that break-ins had been employed against the SWP. Further, when responding to informational requests involving an audit of past FBI domestic security investigations conducted by the General Accounting Office (GAO), initiated in June 1974 at the request of the chairman of the House Committee on the Judiciary, FBI officials prepared one case summary for the GAO which did not report FBI break-ins employed in this case. *Ibid.*, pp. 3–6, 8–16. James Reynolds and Danile Freedman, "Summary of [Justice Department] Inquiry into the Nondisclosure of FBI Bag Jobs in the Socialist Workers Party Civil Litigation," June 25, 1980, pp. 9, 11, 15, 16, 32.
24. Memo, A. J. Decker to Jenkins, June 7, 1976, FBI 66-??86-1197x, produced in response to discovery motion in *American Friends Service Committee et al. v. William Webster et al.*, Civ 79-1655, June 1979.
25. Letter, Bella Abzug (Chairwoman, House Subcommittee on Government Information and Individual Rights) to Daniel Inouye (Chairman, Senate Select Committee on Intelligence), June 4, 1976, p. 4 (photocopy in author's possession).
26. *Milwaukee Journal*, January 11, 1980, p. 2; *The Chronicle of Higher Education*, January 21, 1980, pp. 1–4.
27. Athan Theoharis, "The Problem of Purging FBI Files," *USA Today*, (November 1978), pp. 48–50; John Rosenberg, "The FBI Would Shred the Past," *The Nation* (June 3, 1978), p. 653 and "Follow-Up: the F.B.I.'s Field Files," *The Nation* (March 3, 1979), pp. 231–232; *Los Angeles Times*, March 13, 1978, pt. II, p. 8. Cf.; Office of Federal Records Centers (National Archives and Records Service), "Disposition of Federal Bureau of Investigation Field Office Investiative Files," December 1978.
28. S. 1612, Federal Bureau of Investigation Charter Act of 1979, July 31, 1979, p. 27, lines 5–22; S. 2928, Federal Bureau of Investigation Charter Act, July 2, 1980, p. 10, lines 17–22.
29. This exemptive provision was included in S. 2216, Intelligence Reform Act of 1980, January 24, 1980, pp. 2–3; S. 2284, National Intelligence Act of 1980, February 8, 1980, pp. 89–90; H. R. 7055, To Amend the Freedom of Information Act, April 15, 1980; and H.R. 7056, To Amend the Freedom of Information Act, April 15, 1980.