

**REVIEW OF MARYLAND STATE POLICE COVERT SURVEILLANCE
OF ANTI-DEATH PENALTY AND ANTI-WAR GROUPS
FROM MARCH 2005 TO MAY 2006**

STEPHEN H. SACHS

ASSISTED BY:

DEPUTY ATTORNEY GENERAL
JOHN B. HOWARD, JR.

ASSISTANT ATTORNEY GENERAL
JOSHUA N. AUERBACH

Stephen H. Sachs
5 Roland Mews
Baltimore, Maryland 21210

The Honorable Martin O'Malley
Governor
State House
Annapolis, MD 21401

September 29, 2008

Dear Governor O'Malley:

I am submitting herewith a report pursuant to your request that I conduct an independent and thorough review of all the facts and circumstances surrounding the covert surveillance by the Maryland State Police (MSP) in 2005 and 2006 of anti-death penalty and anti-war groups. Your July 31 letter of request is attached as Exhibit 1.

In the course of this review I have received the assistance of Deputy Attorney General John B. Howard, Jr. and Assistant Attorney General Joshua N. Auerbach. I am grateful to you and to Attorney General Gansler for making their assistance possible. I have worked with each of them in the past: with J.B. Howard when he was in private practice at Venable LLP and with Josh Auerbach during his term as the Francis D. Murnaghan, Jr. Fellow at the Public Justice Center. They are not only excellent lawyers; they are exemplary public servants. Our collaboration --- their assistance in interviewing witnesses, discovering and analyzing relevant legal authority and helping to

shape my recommendations --- has been indispensable. The report's content, conclusions and recommendations, however, are my sole responsibility.¹

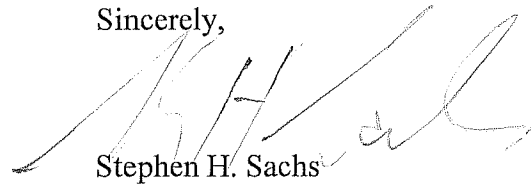
A word about the conduct of this review. As you know, I was not asked to conduct a formal investigation. I had no power to issue subpoenas and no authority to take testimony under oath. That said, my colleagues and I consider it important to note that we have received full cooperation from the State Police in seeking to make MSP personnel, including retired officers, available for interviews and giving us full access to all of the many documents we sought to examine, including access to documents stored electronically. Superintendent Terrence B. Sheridan and Special Assistant to the Superintendent Kevin J. Davis, have been particularly helpful. The American Civil Liberties Union of Maryland was also fully cooperative with our review. Its counsel, David Rocah, shared with us the concerns of the ACLU and its clients, furnished us numerous relevant documents and, most important, permitted us, with its clients' consent, to conduct lengthy interviews with a number of those clients.

I believe that this report is an accurate account of the operative facts of the events in question and the law and regulations applicable to the State Police's conduct. The report also makes observations and recommendations that I hope you will find constructive. I should add, however, that it was not possible in a short sixty-day period to

¹ Mr. Howard and Mr. Auerbach will not participate in any way in any and all matters in the Office of the Attorney General that arise from the events that are the subject of this report. They will be permanently screened and walled off from such matters.

run out every lead, to examine related investigative steps as fully as we would have preferred or to assess fully other potentially applicable remedial suggestions. I believe, however, that on the central assignment you have given me, the report gets it right.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. H. Sachs', written in a cursive style.

Stephen H. Sachs

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I. OVERVIEW AND RECOMMENDATIONS

From March 2005 to May 2006, the Maryland State Police (MSP) covertly monitored individuals and groups engaged in anti-death penalty and anti-war activism in Maryland. The surveillance was not predicated on any information indicating that those individuals or groups had committed or planned any criminal misconduct. The state trooper assigned to lead this surveillance was then a member of MSP's Homeland Security and Intelligence Division (HSID) and acted at the direction of HSID commanders. Using a false identity, the trooper attended more than two dozen protests and meetings. She took significant steps to build trust with the subjects of her surveillance. She reported on what she saw and heard at these meetings about the subjects' views and their plans to express those views publicly.

MSP surveillance revealed essentially no evidence of proposed criminal conduct or unlawful activity of any kind.¹ On the contrary, the trooper noted repeatedly the subjects' stated intentions *not* to violate the law during their planned protests. Nonetheless, MSP's covert activity continued for fourteen months. Furthermore, when entering information about its investigation into HSID's electronic database, MSP assigned labels such as "Security Threat Group" and "Terrorism - Anti-War Protestor" to certain groups and individuals.

¹ There was mention at one meeting, many months into the investigation, of a possible anti-war protest in Washington, D.C. at which protestors would attempt to hang photographs of American soldiers killed in Iraq on the fence at the White House and risk arrest for trespassing.

Supervisory officers then transmitted certain information about these groups and individuals – including, in some cases, the “terrorism” designation – to a federally-funded database.

At Governor O’Malley’s request, we reviewed this MSP surveillance of anti-death penalty and anti-war groups. We found no evidence that MSP targeted anti-death penalty and anti-war activists for monitoring because of any disagreement with, or desire to suppress, their political, ideological or moral beliefs. In our view, each officer who participated in or supervised the investigation believed that he or she was promoting and protecting public safety.

With respect to MSP’s surveillance of individuals and groups opposed to the death penalty, MSP’s principal purpose was to prepare for any civil disturbance that might occur in connection with the then-planned executions of death row inmates Wesley E. Baker and Vernon L. Evans, Jr., including any disturbance that might be caused by rival individuals or groups who support the death penalty.

As the trooper’s reports make clear, MSP’s monitoring of anti-war activists during this period grew out of, and overlapped with, its monitoring of death penalty activists. The reason for the overlap appears to have been the simultaneous embrace of both causes by some of the activists under surveillance. Though not as focused as its death penalty-related monitoring, MSP’s monitoring of pacifists and anti-war groups also appears to have been directed toward anticipating protests and civil disturbances.

Notwithstanding MSP's legitimate desire to anticipate possible civil disturbances, I believe that the MSP surveillance of these groups significantly overreached in the following respects:

First, I believe that MSP's surveillance intruded upon the ability of law-abiding Marylanders to associate and express themselves freely. While the case law does not precisely define the contours of the constitutional limitations on police infiltration of groups and associations in the absence of reasonable suspicion of wrongdoing,² I believe that the surveillance undertaken here is inconsistent with an overarching value in our democratic society – the free and unfettered debate of important public questions. Such police conduct ought to be prohibited as a matter of public policy.

Although MSP maintains that its undercover troopers attended only open meetings and public protests, its lead investigator, using a fictitious identity, posed as a supporter of the groups that were the subject of her monitoring. She took significant steps to infiltrate those groups, sent personal e-mail messages intended to demonstrate her commitment to their causes, and attended numerous small planning meetings, sometimes involving only four to eight people. On one occasion, she accepted an invitation from one of the activists to attend an anti-war art exhibit and reported back, in an e-mail signed with her pseudonym, that “everyone in the US” should see it and that “she got teary” telling her friends about it. Another MSP trooper was present in an undercover capacity at a meeting

² The relevant legal authorities are discussed in Section IV below.

styled by the activists as “Live from Death Row.” The meeting featured a brief telephone hookup with death row inmate Evans. Participants at the meeting, including the undercover trooper, offered words of comfort and support to Evans.

Not surprisingly, attendees at these meetings told us that when they subsequently learned that the meetings, some of which they regarded as “family gatherings,” had been covertly infiltrated by MSP, they felt “violated,” “lied to,” and “stigmatized as criminals” and “enemies of the state.” Representatives of one anti-death penalty group, which was not among those spied upon, told us that since the MSP surveillance has come to light it now takes “an act of courage” to take “an oppositional stance.” The American Civil Liberties Union (ACLU) also informs us that since MSP’s covert investigation has become known nearly fifty “political advocacy groups” have requested ACLU assistance in determining whether they have been the subject of MSP’s covert surveillance.

I do not doubt the commitment to service, and sincere desire to protect the public safety, of the men and women of the Maryland State Police whom we interviewed. They are professionals. I am also mindful of the importance of deception as a legitimate, often essential, law enforcement tool. “Drug buys” by undercover police officers are a classic example. An indication of pre-existing or ongoing criminal activity by the targeted individual or group, however, is almost always a predicate for such covert police activity. Where no such indication exists – especially where the covert activity intrudes upon rights of expression and association – responsible law enforcement, particularly supervisory personnel,

have, in my view, an obligation to assess the consequences of the deceptive conduct. That did not happen here.

With respect to the events of 2005-06 under review here, I found no evidence that anyone in the MSP chain of command – troopers, civilian intelligence analysts, supervisors, or the then-Superintendent – gave any thought whatever to the possibility that its covert surveillance of these groups, though not intended to suppress their rights of expression and association, was in any way inappropriate. Moreover, I found no evidence that anyone, at any time, questioned whether there was any reasonable suspicion of criminal activity or other compelling justification for the covert surveillance. Many of the MSP troopers and commanders whom we interviewed maintained, essentially, that it is better to be safe than sorry, and that even a remote risk to public safety justifies the infiltration of groups that plan lawful protests and demonstrations.

Such a justification proves too much. It would justify government infiltration, without limitation, of *any* group of people who seek to exercise publicly their rights of free expression and association. It encourages the over-investment of scarce police resources in investigations unlikely to contribute to public safety. It breeds public cynicism and lack of trust in law enforcement. Finally, infiltration justified by such an unfocused, abstract concern is likely to be of only marginal utility. A number of MSP witnesses acknowledged that MSP could have gathered much, if not all, of the information it sought about the plans

of these protest groups by examining “open sources” such as web sites or by making direct inquiry of the groups in question.

Second, MSP violated federal regulations when it transmitted some of its investigative findings to a database maintained by the Washington-Baltimore High Intensity Drug Trafficking Area (HIDTA) program, a federally-funded initiative to promote cooperation and information-sharing among federal, state, and local law enforcement agencies. Regulations promulgated by the United States Department of Justice permit MSP, when participating in the HIDTA project, to collect and maintain intelligence information concerning an individual “only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.” *See* 28 C.F.R. § 23.20(a). Again, no such reasonable suspicion existed with respect to the investigation at issue here. To its credit, in late 2005 MSP discontinued, on its own initiative, its practice of sharing this type of information with HIDTA.

While MSP was aware of the federal regulations concerning the electronic collection of intelligence information, and while it ultimately decided to discontinue the practice of sharing intelligence information with HIDTA, MSP either did not consider, or misunderstood, the constraints that the federal regulations impose on such intelligence-sharing. No one at MSP considered whether it was appropriate to transmit information about peaceful protest groups to a federally-funded criminal intelligence database.

Third, MSP showed a lack of judgment in labeling as “terrorism” – both in its own “Case Explorer” intelligence database and in the HIDTA database – the peaceful activism that was the subject of its investigation.³ MSP has suggested that certain technical constraints inherent in the two databases may have prevented its officers from applying a more accurate description to the conduct at issue. I accept that there were numerous problems with MSP’s Case Explorer database. Indeed, I recommend below that the development of a database better-suited to MSP’s intelligence-gathering work might assist the agency to guard against the kind of excess that occurred here. Nonetheless, I found no justification, technical or otherwise, for MSP’s decision to create the “terrorism” designations that it used in this case and to equate anti-death penalty and anti-war activism with “terrorism.”

While the MSP employees with whom we spoke recognized that the individuals and groups under investigation here were not “terrorists,” under any reasonable and accepted definition of that word, none who were aware of the use of the designation seemed to consider that a government agency’s decision to label someone a terrorist, particularly when that label is included in an external database, could cause serious harm to that person’s reputation, career, and standing in the community.

* * *

³ This report discusses HIDTA, Case Explorer, and their relationship in Section III below.

In an effort to ensure that the overreaching discussed above is unlikely to occur in the future, I make the following recommendations.

1. MSP should formulate binding regulations that govern covert surveillance of “advocacy” or “protest” groups. Those regulations should reflect these principles:

Individuals, groups of individuals and organizations whose purpose is to consider, debate and advocate points of view on issues of public policy – frequently referred to as “protest” or “advocacy” groups – are entitled to constitutional protection that must be respected.⁴ Covert surveillance of such individuals, groups, or organizations tantamount to the infiltration I have described above should be forbidden unless, at the threshold of such surveillance, there is a written finding by the Superintendent that the surveillance is justified because (a) it is based on a reasonable, articulable suspicion, founded on an identifiable indication, of a present or planned violation of the law *and* (b) a less intrusive method of investigation is not likely to yield equivalent results. Exceptions to such a threshold finding should be exceedingly rare and made only if the Superintendent finds that exigent circumstances, such as the reasonable possibility of an imminent threat to public safety, justified the intrusion.

⁴ I recognize that applying this definition is a judgment call. I believe that such groups would include, but are not necessarily limited to, groups that espouse positions on issues related to war and peace, right to life/abortion, the environment and animal rights, to identify only a few of those currently in the news. In applying these standards, I recommend that legitimate questions of whether a group falls within the “protest” or “advocacy” definition be resolved in favor of constitutional protection.

2. MSP should establish standards for the collection and dissemination of criminal intelligence information; provide for periodic auditing of the contents of MSP's intelligence database; and require that information inappropriately entered as criminal intelligence information be purged promptly and that other information be purged on an appropriate cycle. Numerous law enforcement agencies around the country, including in Maryland, have promulgated regulations that address these issues. In Section IV below, this report identifies several models from which MSP may choose to draw.

3. MSP should revise, and possibly discontinue, its use of the Case Explorer database in connection with its intelligence-gathering activities. If funds are available, it should separate its criminal intelligence database from the information that it maintains in Case Explorer for other purposes. As presently employed by MSP's Homeland Security and Intelligence Division, Case Explorer encourages the overinclusion of individuals and groups in the database, does not facilitate supervisory review of ongoing investigations, and, for a variety of technical reasons, frustrates the troopers, civilian analysts, and supervisors who have to use it on a regular basis.

4. MSP should contact all individuals who are presently described in the Case Explorer database as being suspected of involvement in "terrorism," but as to whom MSP has no evidence whatsoever of any involvement in violent crime. MSP should afford these individuals an opportunity to review the relevant Case

Explorer entries (withholding material as appropriate pursuant to the Maryland Public Information Act), and MSP should then purge these entries.

I cannot be certain that the current administration of the Maryland State Police will endorse all of these proposed reforms. But there is reason for optimism. Based on our many interviews with Superintendent Sheridan – a veteran law enforcement officer and a believer in tough-minded law enforcement⁵ – I am confident that he also knows that vigorous law enforcement is not inconsistent with protection of our citizens’ rights of expression and association. In short, I believe that he “gets it.” In his July 25 press conference he was critical of the events we have reviewed, stating that “these types of inquiries, with no nexus to criminal activity . . . will not be part of the future of the Maryland State Police.” State Police investigations of threats to public safety will continue, he said, but “will be connected to an identified allegation of criminal misconduct or threat to public safety, either ongoing or planned.”

* * *

The overreaching by the Maryland State Police described above – its apparent obliviousness to the consequences of its covert operation on the free exercise of expression and association by law-abiding citizens – should not have occurred. In substantial part, as noted above, it was the product of MSP’s laudable determination to protect public safety in the emotional context of anti- and pro-

⁵ Colonel Sheridan became Superintendent of the Maryland State Police in June of 2007. For the previous eleven years, he served as Chief of Police of Baltimore County. Before that, he had served for 30 years in the Maryland State Police.

death penalty demonstrations and similar controversy about the war in Iraq. It is also important to note that these events occurred in a new and challenging context – the dangerous reality of terrorism that struck home on 9/11 and our understandable insistence on homeland security. But it is against just such a background that those charged with our protection are sometimes blinded to the infringement of the rights of law-abiding citizens or, if aware of them at all, convince themselves that the end justifies the means.

The investigation of the 2005-2006 events at issue here, in which MSP spied upon a small group of peaceful activists and then designated them as potential terrorists, is an instructive example of the abuses that can result when the mere invocation of “terrorism” is understood to override constitutional protections. Many years ago, Justice Louis Brandeis warned against precisely such a danger: “Experience,” he wrote, “should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent The greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well-meaning but without understanding.”⁶

In making recommendations that would limit the use of infiltration as an investigative technique, I am mindful that, as the Supreme Court has said, our Constitution is not a “suicide pact,” committing our society to its own destruction because our solicitude for individual rights ties the hands of law enforcement.⁷

⁶ *Olmstead v. United States*, 277 U.S. 438, 429 (1928) (Brandeis, J., dissenting).

⁷ *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 150 (1963).

But I also know that the Constitution does not confer unlimited power on government whenever those in power claim that our safety requires it.⁸ My hope is that the experience of this investigation, its public exposure, and these recommendations for reform, will contribute to the collective wisdom that is our surest guide in our effort to balance the competing demands of security and liberty.

⁸ *See, e.g., United States v. Di Re*, 332 U.S. 581, 595 (1948) (The Constitution is designed “to place obstacles in the way of a too permeating police surveillance. . .”).

II. THE SCOPE OF THE REVIEW

A. The Governor's Request for an Independent Review

On July 31, 2008, at the request of Governor Martin O'Malley, I agreed to conduct an independent review of an intelligence-gathering operation undertaken by MSP from approximately March 2005 to May 2006. I have been ably assisted in this assignment by two excellent lawyers and dedicated public servants: Deputy Attorney General John B. Howard, Jr. and Assistant Attorney General Joshua N. Auerbach. Their help has been indispensable.

The impetus for the Governor's request was the revelation that MSP troopers had engaged in covert surveillance of certain anti-death penalty and anti-war groups in 2005 and 2006. This covert operation came to light in mid-July 2008, when MSP released 43 pages of documents in response to a Public Information Act request made by the ACLU.⁹

At the July 31 press conference announcing the commencement of this independent review and my appointment, the Governor emphasized that MSP's mission includes gathering intelligence on, and investigating, threats to public safety, but that the State has a "responsibility to investigate the scope and breadth of these intelligence-gathering activities" if questions arise about whether those

⁹ The documents, essentially a running account of MSP's 14-month covert surveillance, are attached hereto. MSP has redacted the names of MSP personnel and the arrest record of one of the individuals who was under surveillance. In my judgment, the redacted arrest record, which shows many arrests as "disposition unknown," deserves to remain redacted for legitimate reasons of privacy. These accommodations are not material in any way to the report's conclusions and recommendations. *See also* n.11 below.

activities had an impact on the First Amendment rights of individuals. Mindful that the public deserves answers to those questions, the Governor asked me to “conduct a thorough investigation of all the facts and circumstances surrounding these activities, and to review the constitutional provisions, laws, and regulations that apply to those activities.” He also requested recommendations for appropriate safeguards to help carry out the directive of Colonel Terrence Sheridan, the Superintendent of the Maryland State Police, that such activities not happen in the future.

B. Interviews Conducted

In the course of our review, we conducted at least one interview of 33 people we thought would have relevant information or be able to provide us with helpful context and background. In order to ensure a balanced perspective, we made every effort to interview people both from the world of law enforcement and government and from the community of activists who belonged to some of the groups subject to the covert surveillance, as well as lawyers from the ACLU.

We interviewed 15 present and former MSP officers and other personnel, many of them two or more times. From MSP, we interviewed:

- Colonel Terrence Sheridan;
- Lieutenant Colonel Thomas Coppinger;
- Lieutenant Colonel Matt Lawrence;
- Major Jack Simpson;
- Captain Mark Gabriele;

- Captain Tom McCord;
- Captain Linda Stascavage;
- Lieutenant Greg Mazzella;
- Lieutenant Jack Meakin;
- Analyst Tom Barbour;
- Analyst Allen Garey;
- Analyst Lynne Kelly;
- Analyst Kelly Sparwasser;
- Trooper No. 1 (T1), lead investigator;¹⁰
- Trooper No. 2 (T2);
- Trooper No. 3 (T3); and
- Trooper No. 4 (T4).

We sought an interview of Colonel Tim Hutchins, the Superintendent of MSP during 2005 and 2006, the period relevant to our inquiry. He declined, stating that he preferred to respond to questions concerning MSP's conduct at a hearing before the Senate Judicial Proceedings Committee scheduled for October 7, 2008. Because the events at issue took place during the administration of Governor Robert Ehrlich, I requested (through Jervis Finney, Esq., who served as his Chief Legal Counsel) a brief interview of Governor Ehrlich. Mr. Finney

¹⁰ The only MSP personnel whose names I do not reveal in this report are those of four undercover troopers, whom I have designated as T1, T2, T3, and T4. I have done so at the request of the current Superintendent who, although critical of the covert operation, makes the request in keeping with traditional law enforcement concerns.

informed me by phone on September 8 that Governor Ehrlich declined my invitation.

The 43 pages of documents released in mid-July occasionally referred to information-sharing with intelligence officers in the Baltimore City Police Department. We therefore interviewed a representative of that Department, Major David Engel, Chief of the Intelligence Unit. I also interviewed Governor Martin O'Malley, who was Mayor of Baltimore during the relevant time.

We interviewed representatives of other local law enforcement agencies: Roman Zaryk, Chief of the Baltimore County Police Department's Intelligence Section, and Tim Phelan, Chief of the Anne Arundel County Police Department's Intelligence Unit. We spoke with high-level personnel from two multijurisdictional criminal intelligence centers. We interviewed Tom Carr, Director of the Washington-Baltimore High Intensity Drug Trafficking Area program (HIDTA), and Bob Bouland, HIDTA's Network Operations Center Program Manager. We interviewed Assistant United States Attorney Harvey Eisenberg, Chairman of the Maryland Anti-Terrorism Advisory Council, who played a central role in establishing the Maryland Coordination and Analysis Center. We also interviewed three present and former Assistant Attorneys General: Deputy Counsel at MSP, Sharon Benzil; AAG at MSP, Mark Bowen; and former AAG for the Department of Public Safety and Correctional Services, Division of Correction, Scott Oakley.

We had several discussions with David Rocah, staff attorney at the ACLU. The activists whom we interviewed were Max Obuszewski (American Friends Service Committee, Baltimore Pledge of Resistance (BPR), Committee to Save Vernon Evans, and others); Maria Allwine (BPR); Ellen Barfield (BPR); Mike Stark and Terry Fitzgerald (Campaign to End the Death Penalty); and Jane Henderson and Stephanie Gibson (Maryland Citizens Against State Executions).

C. Document Review and Other Information-Gathering

We reviewed approximately 3,000 pages of paper and electronic documents. These included documents from MSP, both those in the public domain and those considered “Law Enforcement Sensitive.” We reviewed documents reflecting raw – *i.e.*, unanalyzed – intelligence information, as well as formal Intelligence Reports, Intelligence Bulletins, and other final products of the Analytical Section of MSP’s Homeland Security and Intelligence Division (HSID). We also reviewed internal memoranda, including legal memoranda; Special Orders; internal guidelines, procedures, and directives; organizational charts; training materials relating to intelligence methods and practices and to the maintenance and use of technological resources, including databases such as Case Explorer; and other documents. We were given access to HSID’s Case Explorer database and exhaustively searched for files related to this investigation, using dozens of queries formulated to disclose any information of interest to our review.

III. THE RESULTS OF THE REVIEW

A. MSP's Organizational Structure, the Relevant Chain of Command, and Key Personnel

To understand whose orders and whose supervision (or lapses in supervision) led to the events described in this report, it is necessary to identify both the chain of command and the functions of each Bureau, Division, and Section involved.

1. MSP's Bureaus and the Command of HSIB

MSP is divided into three Bureaus: the Homeland Security and Investigation Bureau (HSIB), the Field Operations Bureau (FOB),¹¹ and the Support Services Bureau (SSB).¹² The events at issue occurred within HSIB, with the important caveat, discussed below, that the Special Operations Division of the FOB had a critical role in setting the investigation in motion.

HSIB was created in March 2003, by order of then-Superintendent Ed Norris. Initially named the Homeland Security and *Intelligence* Bureau, the name

¹¹ According to the current version of the Maryland Manual Online, the FOB “provides investigations and certain specialized law enforcement statewide” and “protects life and property in Maryland by detecting and preventing crime and making road travel safe. It is responsible for traffic program planning and administers twenty-three field installations (barracks) in Maryland.” There are four commands within FOB: Aviation; Special Operations and Transportation Safety; and the Eastern and Western Commands of the State Police Barracks. Maryland Manual Online, <http://www.msa.md.gov/msa/mdmanual/23dsp/html/23agen.html#support> (last visited September 12, 2008).

¹² SSB “provides the materials and services needed for the Department and allied Maryland law enforcement agencies to perform their work”; “ensure[s] efficient information collection, and communications”; and “implements technological changes and manages the Department's information technology and communications systems.” There are three commands within the SSB: Logistics, Personnel, and Records. *Id.*

was changed to Homeland Security and *Investigation* Bureau in October 2004. Lieutenant Colonel Tom Coppinger exercised functional command over HSIB, first as Acting Bureau Chief, then as a Lieutenant Colonel and official Bureau Chief.¹³

2. HSIB's Divisions and Commanders

HSIB comprised four Divisions, two each under separate “commands”: then-Major Coppinger had the Homeland Security Command, which consisted of the Criminal Investigative Division and the Homeland Security and Intelligence Division – HSID. Major Matt Lawrence had the Investigation Command, covering the Drug Enforcement Division and the Forensic Sciences Division. When Coppinger took over all of HSIB, Lawrence had command of all four Divisions within HSIB for a period of time.

3. HSID's Sections and Commands

From approximately October 2004 until November 1, 2005, the Commander of HSID was Captain Mark Gabriele; for the balance of the time considered in this report, the HSID Commander was Captain Tom McCord. HSID had two units: the Analytical Section, staffed by civilian analysts and overseen by then-Lieutenant Linda Stascavage, and the Operations Section, consisting of troopers who served as intelligence officers and who were supervised by Lieutenant Greg Mazzella. On a day-to-day basis, Lieutenant Mazzella

¹³ Coppinger retired from MSP in this position on July 1, 2008, and Lieutenant Colonel Stewart Russell now commands the Homeland Security and Investigation Bureau.

(succeeded in January 2006 by Lieutenant Jack Meakin) gave the orders and approvals to the line troopers who did the intelligence gathering and whose covert surveillance is the subject of this report. Also, as discussed more fully below, Lieutenant Mazzella, perhaps assisted by then-Sergeant Meakin, reviewed the information entered into HSID's intelligence database, Case Explorer, and made judgments on what information obtained through the surveillance met the standards for transmittal to the external, federally-funded database at HIDTA.

B. HSID's Creation and Evolution

HSID was launched on March 19, 2003 and reflected the priorities of Colonel Ed Norris, who intended to reorient the State Police's traditional mission towards one focused primarily on counter-terrorism. After Norris departed in late 2003, Colonel Tim Hutchins substantially reduced the size of HSID, from approximately 60 employees under Norris to 10 to 15 employees. In 2004, Coppinger, Gabriele, Mazzella, and Stascavage inherited the task of, effectively, rebuilding a hollowed-out Division. Starting with a "desk audit" by Lieutenant Mazzella, this group worked to improve the operations at HSID and to refocus its mission. Across the board, those we interviewed praised their hard work in this effort; they were, in the words of one officer, "an enterprising bunch," determined to create an effective intelligence operation with severely limited resources.

On the operations side, a major part of their effort to improve HSID involved the implementation of the Division's first computer database, named Case Explorer. While the need for a database was urgent, Case Explorer was not

well-suited to all of the tasks for which HSID used it, including collection and analysis of the intelligence information that HSID gathered. As discussed more fully in Section III.E.1, these limitations were substantial factors in the impermissible sharing of such information with a centralized criminal intelligence database at HIDTA.¹⁴

In addition to improving the operations of HSID, Coppinger, Gabrielle, Mazzella, and Stascavage set about to redefine HSID's original counter-terrorism mission and focus on intelligence-gathering related to organized crime, narcotics enterprises, motorcycle gangs, street gangs, and, most relevantly, "protest groups." The protest group component of HSID's work is summarized in a preface to an HSID Intelligence Report:

The Maryland State Police Homeland Security and Intelligence Division (HSID) routinely monitors protest activity that may represent a threat to Maryland public safety or order. This monitoring activity encompasses all sources of information available to HSID. The scope of the monitoring involves the determination of an individual or group's propensity for violence or public disorder.

Although a "better safe than sorry" approach to protecting public safety can lead to the kind of indiscriminate surveillance and infiltration I describe, and criticize, in this report, MSP's monitoring of protest groups generally focuses, appropriately, on organizations that have a history of property crimes or violence. Such groups include environmental extremists; neo-Nazis and related white

¹⁴ As explained in Section III.E.2, while HIDTA maintains a database, law enforcement agencies that participate in HIDTA do not have electronic access to the database itself; rather, that database enables HIDTA personnel to "point" an agency making an inquiry to other agencies that have information relevant to the inquiry.

supremacist and hate groups; fringe animal rights groups; and others. Because MSP has not only a criminal investigative function, but also responsibilities for maintaining public safety and protecting public officials, it is important that MSP collect intelligence on groups that may pose genuine threats. As Coppinger told us, the purpose of gathering such information was for MSP to deploy the proper resources to handle any potential public disturbance: “[W]e don’t want to send two people where twenty are needed and don’t want to send twenty where two are needed” – such miscalculated deployments would not only be inefficient, but could be perceived as intimidation.

Nonetheless, it is critical that there be a sound basis for commencing and continuing the monitoring of a group. In this case, nothing about past experience with carrying out the death penalty in Maryland gave reason to believe that violent or disruptive conduct would attend the executions scheduled for 2005.

C. The Death Penalty in Maryland

In 1994, John Thanos became the first person executed in Maryland since 1961 and the first in what might be called the “modern era of the death penalty,” dating from 1976, when the Supreme Court resolved certain questions concerning the constitutionality of the death penalty.¹⁵ Since 1994, Maryland has executed

¹⁵ In 1972, the Supreme Court struck down Georgia’s death penalty statutes under the Eighth Amendment’s Cruel and Unusual Punishment clause, and thereby imposed a *de facto* moratorium on the death penalty as it was then implemented. *Furman v. Georgia*, 408 U.S. 238 (1972). Four years later, the Court upheld the constitutionality of laws that properly guided discretion in the imposition of the death penalty. *Gregg v. Georgia*, 428

four men in addition to Thanos: Flint Gregory Hunt (1997); Tyrone Gilliam (1998); Steven Oken (2004); and Wesley Baker (2005).

At each of these five executions, and especially those of John Thanos and Steven Oken, anti-death penalty groups staged protests in the period leading up to the execution. But, of great significance to this report, *none* of the dozens of witnesses we interviewed could recall any incidents of violence, disruption, or unlawful conduct by any of the anti-death penalty protest groups or by those who appeared in opposition to them. The closest any of these protest activities came to producing something like a disturbance occurred around the time of the Oken execution when a family member of Oken's victim engaged in a loud, but non-physical, confrontation with anti-death penalty activists. None of the officers whom we interviewed could point to historical evidence or current information that would support any reasonable, articulable suspicion that unlawful conduct or civil disturbances were likely to occur in connection with executions. The assertions we heard from some MSP witnesses that anti-death penalty protestors or counter-protestors posed a genuine threat to public safety were not supported by the evidence.

U.S. 153 (1976). In 1978, Maryland enacted a death penalty statute that satisfied the constitutional requirements of *Gregg*.

D. The Covert Surveillance

1. The request from Major Simpson and the intelligence report initiated by Analyst Sparwasser

The 43 pages of investigative files and surveillance reports released to the ACLU begin with notes of the lead investigator, T1, of the first meeting she attended, on March 14, 2005, and go on to detail what she learned in attending dozens more meetings and events over the next 14 months. The released documents do not, however, show how and why the investigation was commenced. Our review gave us an understanding of what preceded T1's covert investigation.

MSP's inquiry into anti-death penalty groups commenced with a request from Major Jack Simpson of the Field Operations Bureau's Special Operations Division to gather information relating to the upcoming executions of death row inmates Vernon Lee Evans, Jr. and Wesley Eugene Baker. Baker's was to occur during the week of December 5, 2005; Evans's was scheduled for the week of April 18 to 22, 2005, pursuant to a death warrant issued by the Circuit Court for Baltimore County on February 24, 2005.

Major Simpson had ultimate responsibility for preparing a "Special Order" that would govern MSP's staging and deployment of MSP "personnel and assets" to ensure public safety and an orderly process during the execution period. According to both Simpson and Scott Oakley, former Assistant Attorney General for the Division of Correction, planning for executions is a time-consuming,

detail-oriented process, requiring consultation and cooperation among government agencies and law enforcement. As Oakley said, the plan required “military precision.”

The potential for protests was an important consideration in such planning, though far from the only one. There is no indication in the Special Order of an intent to suppress or frustrate peaceful protest. In fact, Simpson told us that his draft was materially identical to one prepared for a previous execution, but that he added new language, which expressly ordered MSP to “[p]rotect the fundamental right of free speech” and permit protesters “to express opinions openly and without fear of reprisal when exercised within the spirit and intent of the law.”

Simpson called Lieutenant Mazzella and requested that HSID prepare a “threat assessment” on possible protest activities surrounding the Evans execution. Lieutenant Mazzella reported the request to Captain Gabriele, who then convened a meeting with Mazzella and Lieutenant Stascavage to discuss preparation of the threat assessment. The customary procedure for preparing a threat assessment, and the one followed here, was for Lieutenant Stascavage to assign the initial intelligence work to an analyst under her supervision; once that intelligence was gathered, Lieutenant Mazzella would assign a trooper in Operations to follow up on the leads that the analyst had identified. In this case, Lieutenant Stascavage assigned the initial intelligence-gathering to Analyst Kelly Sparwasser, who conducted research from “open sources” – *i.e.*, public records, web sites, and criminal information databases such as the National Crime Information Center and

the Criminal Justice Information Services, which, though not publicly available, could lawfully be accessed by MSP.

Sparwasser completed an initial report in early March, before T1 began attending anti-death penalty events, and updated it throughout the course of T1's investigation.¹⁶ Sparwasser's intelligence report described the brutal murders for which Baker and Evans had received the death penalty. Her report notes: "Marylanders vocally support both sides of the death penalty issue. Those who support the anti-death penalty cause are especially vocal." For example, she writes, "activists from the Maryland Coalition Against State Executions widely circulated e-mails on discussion boards pleading for people to take action and stop the execution of Wesley Baker" and "urged people to call or write to then Governor Glendening to protest the execution and circulated contact information for the Governor, Division of Parole and Probation and the Baltimore Sun." Although several MSP witnesses referred to the intense passions aroused by the death penalty, especially among members of the families of the victims and of the death row inmate, the intelligence report did not cite any evidence that this "vocal" opposition to the death penalty posed a threat to public safety.

Sparwasser's report did not identify any pro-death penalty groups, but did discuss some individual advocates. For example, the daughter of Wesley Baker's victim "challenged Governor Glendening to a face-to-face meeting to explain his

¹⁶ Sparwasser's report is referred to in the phrase "Supplement to Intelligence Report Initiated by Analyst Sparwasser," which appears at the top of the first page of the 43 pages released to the ACLU.

rationale for imposing a death penalty moratorium in May of 2002.” The report notes that she “has the potential to demonstrate if the death penalty of Wesley Baker is not upheld.” The report also notes that “a group of anti-death penalty protesters” attended Governor Robert Ehrlich’s January 2003 inauguration, “holding large signs and chanting” and advocating the continuation of the moratorium on the death penalty.

On these facts alone Sparwasser drew this conclusion:

There is a potential for disruption of both the scheduled executions of Wesley Eugene Baker and Vernon Lee Evans, Jr. Anti-death penalty activists are very vocal in Maryland and family members of both individuals may participate in the activism. On the opposite side will be family and friends of the victims of these two crimes. The family of Jane Tyson has vocalized their feelings about Wesley Baker and the death penalty in the past and will likely do the same in the future. Security and law enforcement presence will have to be high for both executions.

My colleagues and I believe it appropriate to add this subjective judgment based on our many in-depth interviews and our opportunity to assess the witnesses. Major Simpson is a hands-on commander. It is unlikely that he would have been satisfied with an analysis that played down the possibility of a threat. It is also our impression that Simpson’s forceful presence, and his rank, influenced Gabriele and Mazzella to launch the covert operation.

In sum, the initial gathering of information, appropriately undertaken by Analyst Sparwasser, did not identify any specific threat to public safety or reason to suspect that either pro- or anti-death penalty groups would engage in unlawful conduct in connection with the planned executions. It goes without saying that

law enforcement readiness, including contingency planning for possible civil disturbance in connection with the scheduled executions, was necessary and proper. But without reasonable, articulable suspicion of a threat to public safety, MSP lacked any substantial predicate for commencing the intrusive covert surveillance and infiltration of these groups that occurred here.

2. Planning for the first meetings

In the course of her research, Sparwasser “stumbled on,” as she put it, a group called the Campaign to End the Death Penalty. The report notes that another analyst, Lynne Kelly, “has a covert Internet account that allows her to view and interact through e-mail with the Washington, DC Campaign to End the Death Penalty (CEDP) Yahoo group.” Using information gathered through access to the Yahoo! Group, Sparwasser reported that “[a]n organizational meeting of the Takoma Park CEDP took place on Monday, March 7, 2005 to plan for an April 6th Takoma Park town meeting, an April 9th demonstration at the Supermax prison in Baltimore, and plans to get an anti-death penalty resolution passed in the Takoma City Council.”

A further “update” in Sparwasser’s report, on March 10, describes the covert e-mail account receiving “a message from the Washington, DC CEDP yahoo group [that] details how the Campaign to End the Death Penalty in Maryland will be organizing a series of what are called ‘Live from Death Rows’ over the next five (5) weeks,” which were to be “held on campuses and in communities where Vernon Lee Evans will call in on a speaker phone from death

row. Members of Vernon Evans' family will be present at each event." A March 11 update notes that a posting in the same Yahoo! Group site announced "an Organizing Meeting for Stop the April Execution of Vernon Lee Evans" scheduled for March 14, 2005 at 1900 hrs. [at] The Electric Maid (268 Carroll St. NW, Washington, DC)." This March 14, 2005 meeting was the first one T1 attended.

3. T1's 14-month surveillance

The details of T1's lengthy covert operation are set out in her reports, attached hereto, and there is no need to repeat them here. Several significant themes that emerge from her reports and the surrounding circumstances, however, that guided our review and that merit further comment.

a. The protest groups were committed to lawful, peaceful protest.

As noted, Analyst Sparwasser's report contained nothing to indicate that protests surrounding the planned executions posed a significant threat to public safety or that further intelligence-gathering by covert means was necessary or appropriate. To the extent MSP believed there was some need to gather more information, T1's observations from the first several meetings should have conclusively eliminated any genuine public safety concerns arising from the activities of the anti-death penalty groups under surveillance. Not only did T1 observe, and report, that there were no plans to engage in unlawful or disruptive conduct, her notes time and again record the groups' firm intentions to *avoid* doing anything that could create any sort of public disturbance.

The groups' intent to conduct themselves lawfully was evident at the very outset. At the second meeting T1 attended, on March 15, 2005, she reports that "[n]o intelligence has been gathered at this point that there are any illegal or disruptive actions planned for any of the scheduled events either to bring attention to the case or the issue generally." At her next meeting, on April 6, "no one advocated any kind of violence or civil disobedience" for a scheduled April 9 protest. And none occurred: T1 reports that "[t]here were approximately 75 to 80 protestors at the rally and none participated in any type of civil disobedience or illegal acts – protestors were even careful to move out of the way for Division of Correction employees who were going into the parking lot for work." Almost every report of the 29 events that T1 attended contains similar language. A few examples among many include:

- "Fitzgerald stressed that he wanted this demonstration along with the one the next day in Annapolis to be orderly and not an occasion for civil disobedience" (May 24, 2005 meeting);
- "The group was very firm about any protests being silent and non-disruptive because they were worried about damaging Evans' case" (same);
- There "were no problems observed at the [June 6, 2005] event," where the protestors held signs and handed out fliers;
- "A meeting to finalize the details was scheduled for August 23, 2005. There should be no disruptions at this event since it is being held for like-minded people.";
- "Fitzgerald said he knew the sign restrictions from the last protest and would instruct people outside of the courthouse where to stand" (August 23, 2005 meeting);

- “[A]vailable intelligence does not indicate there will be problems at the protests during the week of Baker’s scheduled execution” and “no members of protests groups have indicated they want to cause any problems” (December 3, 2005 meeting); when the protest actually occurred two days later, the group “lit candles and sang songs” until they received word that Baker had been executed; and
- Reporting on a January 2, 2006 rally at Lawyers Mall in Annapolis, T1 notes that there were no disturbances, and “no intelligence about any disturbances at upcoming protests...was discussed.”

One anti-death penalty group handed out a card to protestors that stated:

This is a nonviolent demonstration. In the spirit of Gandhi, Dorothy Day, Martin Luther King, Aung San Suu Kyi, and countless others we believe injustice must be met and challenged. We engage only with love and respect for the inherent dignity of all human beings.

A number of officers told us that the anti-death penalty surveillance went on for 14 months because the legal proceedings in Evans’s case altered the scheduled date of the execution more than once.¹⁷ Nonetheless, in light of the groups’ repeated professions of intent to obey the law and the evidence that they in fact did so, it is difficult to understand why anyone at MSP could have thought there was value in continued covert monitoring. The marginal utility of this monitoring makes it all the more perplexing, and troubling, that the troopers went back so frequently to intimate gatherings of the groups and made extraordinary efforts to win the confidence of group members, features of the investigation that are discussed below.

¹⁷ Evans’s case is pending as of this writing. Pursuant to a December 2006 ruling of the Maryland Court of Appeals, the State is developing new protocols for the use of lethal injections.

b. The infiltrated meetings were frequently very small groups of activists.

Many of the officers we spoke with emphasized that T1 attended only “open meetings” and, indeed, T1 did participate in some large gatherings of 70 or more people, such as “town-hall” meetings¹⁸ and outdoor protests.¹⁹ But the vast majority of the meetings T1 attended were very small, consisting of ten or fewer people and were “open” only in the sense that the groups holding them welcomed, and would not have excluded, “new faces.” In substance, these smaller meetings were gatherings of a core group of activists who knew each other, shared common beliefs, and came together to discuss how to engage in public expression of their views. As our investigation revealed, and as I report below in Section III.F., the activists present at these small meetings clearly would not have welcomed an agent of the police whose surreptitious mission was to report on their protest plans and strategies.²⁰

T1’s first two meetings were of this type. The first, on March 14, 2005, was attended by 10 people, including Ernest “Shujaa” Graham, an exonerated death row inmate and activist. In this small setting, the group members discussed

¹⁸ For example, on April 6, 2005, T1 attended a Takoma Park town hall meeting of about seventy people, at which speakers, including an exonerated death-row inmate and ACLU members, discussed their opposition to the death penalty.

¹⁹ T1 joined in an April 9 protest, consisting of 70 to 75 people, near the Maryland Correctional and Adjustment Center (Supermax), where Vernon Evans was on death row.

²⁰ It is not clear when T1 first had to make use of her cover identity, but she eventually became known to anti-death penalty activists as, first, Lucy McDonald and, later, Lucy Shoup (claiming that she recently married and took her husband’s name). Attendance records from a number of the activists’ meeting show that T1 signed in as “Lucy McDonald.”

the details of how they would organize their advocacy efforts – logistics and scheduling for upcoming events and protests; plans to distribute flyers and post notices; efforts to solicit money for administrative expenses; and sign-ups for the bus trip for Washington-area activists to travel to Baltimore for an April 9, 2005 protest. In short, they discussed the nuts and bolts of how the group would express their opposition to the death penalty in the public arena.

The next day, T1 attended another organizational meeting, this time of the Baltimore-based Committee to Save Vernon Evans (CSVE), where she was one of eight people, including three of Vernon Evans's sisters and a male relative of Evans. In this setting, Evans's family members spoke freely about what they perceived as the injustice of Evans's execution. The group also discussed plans to engage politicians, including then-Congressman Ben Cardin, then-Mayor Martin O'Malley, and former Congressman Kweisi Mfume, on anti-death penalty issues.

An unknown person attending such an intimate gathering would quite reasonably have been perceived as a compatriot, in sympathy with the causes the groups advanced, and sincerely interested in associating with the group. Nonetheless, T1 returned time and again to these small group meetings and made notes about the discussions – notes that have little or no intelligence or law-enforcement value, but that appear in MSP files. On May 24, 2005, for example, she attended a 12-person CSVE meeting, which, again, included members of Evans's family and involved discussions of who would speak at an upcoming event and how they would alert the media. Throughout the Summer of 2005, she

went to, and reported on, a series of four very small CSVE meetings,²¹ all of which were largely taken up with a discussion of plans for a forum at the American Friends Service Hall – an indoor venue of the Society of Friends (Quakers), as to which there could be no reasonable concern for public safety. She then attended the forum, having presumably already heard a great deal about what the indoor meeting would address. In the Fall of 2005, she attended a similar series of small CSVE meetings, which were now taken up with planning another indoor event – this time an event to be held in a church.²²

Covert infiltration into such small group settings can, and in this case did, draw the undercover trooper into participating inappropriately in the groups' expressive activities. At a meeting on May 2, 2006 in a church, undercover officer T2, who may have intended only to watch and listen, found himself sitting around a table with the ten attendees, when Vernon Evans was conferenced in by speakerphone. According to T2, the group members went around the table, each offering words of support to Evans. When T2's turn came, he said to Evans something like "Be strong."

My colleagues and I do not believe that T2 expected or desired to have personal contact with Evans. He believed his "cover" required him to do so. To us, however, the unseemly consequence is that an agent of a state that is intent on executing Evans must pretend to support and defend him.

²¹ June 21 – 4 people; July 5 – 4 people; August 3 – 8 people; August 23 – 6 people.

²² T1 attended meetings consisting of 4, 6, and 7 people on, respectively, September 20, October 3, and October 18.

c. T1 took significant steps to infiltrate her targets and gain their trust.

T1, as “Lucy,” engaged in a series of e-mail exchanges with some of the activists, and in particular Max Obuszewski, in an apparent effort to gain their friendship and trust. Such tactics certainly are warranted, indeed necessary, when, for example, law enforcement seeks to penetrate an organized crime enterprise or a drug conspiracy; here, where there was no evidence of any intent to violate the law – indeed, the evidence showed an intent *not* to violate the law – the tactics seem gratuitously invasive and offensive.

For example, T1 received an undated e-mail from Obuszewski to fellow activists, with the salutation “Friends,” in which Obuszewski encouraged all to attend an exhibit entitled “Eyes Wide Open Eyes Wide Open Beyond Fear - Towards Hope,” a “widely acclaimed” American Friends Service Committee exhibition designed to dramatize the human cost of the war in Iraq by displaying “a pair of boots honoring each U.S. military casualty”; other symbolic displays commemorated Iraqis who have died since the inception of the war. The announcement described the event as a peaceful one, with all-night vigils in the “reverential” setting of the memorial. For no apparent reason – and certainly none justified by any legitimate law enforcement purpose – T1 responded as follows:

Max,

Hi! I went to Eyes Wide open on Friday (saw Bernie there). It was stunning in its simplicity and impact. Everyone in the US should see this exhibit. I got teary just telling my friends about it.

Obuszewski replied: “Yes, last Monday was quite a special event. So many people have been very congratulatory, as it was truly exhilarating. . . . Always good to see your enthusiasm. Best wishes.”

This and other e-mails do not even attempt to solicit information about upcoming meetings or protests. After one meeting, for example, T1 writes anti-death penalty activist Mike Stark saying: “Thanks for a wonderful and inspiring program last night and the great treats! I had to leave a bit early but it certainly moved me to come out on Saturday . . . Lucy.” In another instance, instead of merely notifying Obuszewski of a change in e-mail address, T1 writes: “Due to a change in marital status, a good thing, my name and e-mail have changed Oops, forget to tell you my [married] name is Lucy Shoup, has a nice ring doesn’t it??” Obuszewski, thinking he was responding to a friend, writes: “I trust everything is going well for you despite your new situation: ‘Due to a change in marital status, a good thing,’ Yes, Lucy Shoup has a nice ring. However, a rose is a rose under any name. See you tomorrow. My best wishes.”

In other instances, T1 uses the trust she gained to inquire about the activities of protest groups generally. In one message, T1 writes: “As work allows I want to get more involved in different causes . . . Animal rights are near and dear to me as is the death penalty, but I will help with any just cause. . . . Lucy.” In a similar vein, she writes Obuszewski saying: “I liked the people at the meeting and it seems like you do good work. I am still committed to the Vernon Evans protests but I am interested in a more varied platform which includes anti-death penalty,

anti-war and pro-animal actions!!!! How about the news about the ACLU and GreenPeace files being held - just what you said last week!"

- d. When MSP expanded the focus of its investigation to include anti-war groups and pacifists, the connection to crime prevention and public safety became even more tenuous.**

On April 9, 2005, after a rally outside of the Supermax facility in Baltimore, T1 identified Obuszewski as among the leaders of the anti-death penalty groups that she was investigating, made contact with him, and learned that he was a leader of an anti-war group known as Pledge of Resistance. At this point, MSP's investigation expanded to include anti-war groups and pacifists. The trooper repeatedly contacted Obuszewski by e-mail both to find out more about Pledge of Resistance and, as mentioned above, to let him know that she wanted "to get more involved in different causes," mentioning in particular "anti-death penalty, anti-war and pro-animal actions!!!" The trooper attended at least two anti-war events and two meetings of the Pledge of Resistance. During one of these meetings, she learned of the only plan for possible civil disobedience mentioned in her investigative report – a plan, detailed by Obuzewski, for protestors to place photos and name cards of soldiers killed in Iraq through the fence surrounding the White House. Obuszewski indicated that participation in this action could lead to an arrest for trespassing. The trooper also attended, in her covert capacity, a commemoration at Johns Hopkins University of the dropping of the atomic bomb on Nagasaki, which consisted of an anti-war protest where

participants “were careful not to block traffic or obstruct any pedestrians” and a sculpture garden ceremony involving poetry reading and songs.

The MSP commanders and troopers we interviewed could neither recall any contemporaneous discussions about the decision to expand the investigation to include anti-war groups and pacifists, nor could they articulate a sound law enforcement or public safety basis for doing so. Unlike the anti-death penalty context, where there was at least the initial desire to prevent any disruption of the executions of Vernon Evans and Wesley Baker, the investigation of anti-war groups does not appear to have been focused at any stage on any specific objective, much less on any criminal activity or identifiable threat to public safety.

The investigative reports reflect this lack of focus. While mainly concerned with relating plans for future protests, the reports frequently record observations that were not germane to that purpose, including occasional discussion of the subjects’ political, philosophical, and legal views.

e. MSP failed to supervise the undercover operation adequately.

In an effort to understand who actually gave the orders and which supervisors knew about and signed off on T1’s activities, we spoke with everyone in the chain of command above T1 – from Lieutenant Colonel Tom Coppinger, to Captains Mark Gabriele and Tom McCord, to Lieutenants Greg Mazzella and Jack Meakin. As noted, we asked to interview Colonel Hutchins, but he declined the request. Nonetheless, we know from the witnesses with whom we spoke that

Colonel Hutchins was aware of the covert surveillance; the extent of his knowledge is unclear.

At the time the investigation was occurring, Lieutenant Colonel Coppinger understood it to involve attendance at “public meetings” and the observation of public protests. Although I criticize above the failure to distinguish between, for example, a “public” town-hall meeting and an organizational meeting among ten or so activists, it does not appear that Coppinger knew at the time that the term “public meetings” denoted the infiltration of small groups that occurred here.

Coppinger first read the details of the investigation after the 43 pages of T1’s investigative reports were released to the public. His reaction – one that he emphasized was made in hindsight and without knowledge of all the circumstances – was that the documents reflected a lapse in supervision at the lieutenant level. In his view, a lieutenant should have scrutinized more closely whether this work was a wise expenditure of investigative time and should have had a strong justification for continuing past the initial stages. According to Coppinger, there was a need for a supervisor to reconsider or at least redirect and guide T1’s activities in a more assertive way than appears to have been done.

Captain Mark Gabriele, who was HSID Commander for most of the relevant time, first came to intelligence work after 21 years of service to MSP in areas largely collateral to the core law enforcement and investigative functions of MSP – with the Aviation Division for 15 years, then 6 years in human resources,

labor-management, and the Executive Office of the Superintendent.²³ He was asked to take over command at HSID, not because he had intelligence experience – he did not – but because he had served MSP well for a long time. According to some with whom we spoke, Gabriele’s relative inexperience in intelligence work may have contributed to some of the misjudgments made here concerning the value and propriety of much of T1’s work.

The picture that ultimately emerges of the thought processes, motives, and decisions behind the long-term covert surveillance is a complex one, and my attempt to describe it is necessarily based on inferences. First, there is no question that Major Simpson is a forceful personality, and his requests for intelligence, including the one he made in late February 2005 for information about anti-death penalty groups, had the effect of putting HSID in a reactive mode, responding to perceived pressure to respond quickly and thoroughly. Simpson placed the call not to Gabriele, but to Mazzella, with whom he frequently dealt. My colleagues and I believe that Simpson’s presence was intimidating; the anti-death penalty intelligence inquiry got underway with, I believe, an expectation that HSID would “leave no stone unturned.”

As the investigation moved forward, though, it moved beyond Simpson’s needs and appears to have taken on a life of its own. One meeting would yield some new information about another meeting or event, which T1 would attend –

²³ Gabriele was initially assigned to the larger intelligence operation that Colonel Norris created in 2003. He stayed on as Commander of HSID as it was reconstituted after Norris’s departure.

for no apparent reason other than that it was happening and that, perhaps, there might be some new lead about another upcoming event. There does not appear to have been an effort to step back and evaluate whether the continuation made sense from a public safety standpoint. As time went on, the operation took on a certain aimless drift.

However, T1 was not freelancing without the knowledge of her supervisors. Gabriele, Mazzella, and Stascavage would meet daily during the most active phase of the investigation, from March 2005 to November 2005, to review what the analysts and troopers were doing, and Gabriele was regularly briefed on T1's activities. Mazzella had the closest view during this period – as direct supervisor, he would read T1's reports. Usually, the reports would conclude with a recommendation to keep the case open.

It does not appear to have occurred to Mazzella (or any other supervisor) to question whether the recommendations to keep the case open made sense; in any event he gave the orders for T1 to keep going back. It is difficult to discern whether he actively considered whether attendance at each successive meeting was a productive use of investigative resources. There is little doubt that neither he nor Gabriele, nor their successors, Captain McCord and Lieutenant Meakin, paused to recognize the civil liberties implications of the infiltration.

Our inquiry suggests two reasons for this supervisory lapse. First, there seems to have been an institutional “blind spot” with regard to the importance of respecting the basic civil liberties of peaceful protest groups. Unlike many other

law enforcement agencies, no MSP regulations or guidelines addressed civil liberties concerns.²⁴ Little or no thought was given to the implications of MSP's course of conduct. None of the MSP officers whom we interviewed recalled considering or discussing the legality or propriety of this operation. Each of them believed that all of the protest-group monitoring in which they engaged was motivated – could *only* have been motivated – by concerns for public safety (“better safe than sorry”). I am convinced that MSP did not attempt to compile political “dossiers” on the participants, or otherwise suppress any particular viewpoint as subversive and threatening by virtue of its ideology. Still, the officers at HSID were oblivious to the larger implications of spying on peaceful protest groups.

There is a second explanation for the intensive and lengthy infiltration: at some point Gabriele and Mazzella made the judgment that T1's attendance at these meetings was a useful training exercise. Gabriele confirmed to us that training was one reason why T1 was sent back to meetings – the setting was known to pose a low risk to T1's personal safety, but gave her an opportunity to develop some skills in covert operations. In my view, however, the fundamental freedoms of our citizens to speak and assemble are far too vital to be laboratories for intelligence officers to learn the elements of spycraft.

²⁴ Some of the guidelines issued by other agencies are discussed in Section IV, below. MSP is now developing its own guidelines for intelligence-gathering that, in draft, are intended, at least in part, to address constitutional concerns. MSP personnel have also recently attended training sessions on the protection of civil liberties in intelligence investigations.

Gabriele also told us that it was important to him that all the meetings attended were open and that he was very conscious not to undertake some activity for which a warrant would be required. In my judgment that threshold is too high. It would give free rein to the kind of infiltration observed here and takes no account of the broad values rooted in the First Amendment's protections of free speech, association, and assembly. It should not fall to civil libertarians alone to defend those freedoms. Responsible law enforcement has a duty to respect them too.

- f. This MSP investigation, although atypically intrusive, was part of a broader MSP effort to gather information on protest groups.**

I was not asked to review MSP's intelligence-gathering on protest groups generally, nor did I undertake such a review. However, my colleagues and I did seek to learn more about the "protest groups" portfolio, so as to better understand the investigation at issue here and the broader context of HSID's efforts to gather information on such groups. During the 2005-2006 time period, protest groups were primarily assigned to T1. Her investigation of anti-death penalty and anti-war groups was part of this assignment. As I have already noted, MSP's primary purpose in gathering intelligence about these groups was, and is, to protect public safety by preparing for violent gatherings and civil disturbances.

It is our understanding that the majority of the work of gathering intelligence about political and protest groups consists of examining public sources of information, conducting interviews, and utilizing low-impact covert

techniques, such as observation of protests and demonstrations in plain clothes and use of nongovernmental e-mail addresses to join listservs and other mailing lists. My colleagues and I reviewed a number of “protest group” case files other than those at issue here. Although we learned that MSP occasionally sent troopers into the field with cover identities to make limited and transitory contact with political and protest groups, we did not learn of any other investigation of a political or protest group that approximated the level of intrusiveness that we have identified in the MSP investigation here. Again, however, MSP’s interest in other protest groups was not the focus of our review.

We also understand that, in late 2004, MSP may have decided to cast a relatively broad net in the “protest group” area, seeking to learn more about the activist community in general. For example, an e-mail message dated January 4, 2005, two months before the initiation of the anti-death penalty investigation at issue here, was sent from one of the e-mail accounts utilized by T1 to Red Emma’s, a bookstore and coffee house in Baltimore City frequented by political activists. The message indicates an intention to attend an anti-war event at Red Emma’s on February 6, 2005. T1 acknowledged to us that she has exclusive use of the e-mail account in question, but she could not recall sending the message or attending the event. MSP was not able to link the e-mail message to any case in its intelligence files. However, Lieutenant Mazzella acknowledged the existence of a somewhat broader effort to develop information about Maryland’s activist

community, and it is our belief that this message was likely part of that broader effort.

MSP's generalized interest in learning more about the activist community may account, at least in part, for the expansion of the investigation at issue here to include anti-war and pacifist groups.

g. MSP shared information, but did not collaborate, with other law enforcement agencies.

As reflected in investigative reports released by MSP to the public, MSP frequently shared information about anticipated protests with other law enforcement agencies. We spoke separately with representatives of the intelligence divisions of three of these agencies, the Baltimore City Police Department, the Baltimore County Police Department, and the Anne Arundel County Police Department. All three agencies acknowledged receipt of the information; none participated in any way in MSP's investigation. Major David Engel, chief of the intelligence division of the Baltimore City Police Department, acknowledged that he became aware that MSP's investigation involved undercover techniques.

During the time period at issue here, Major Engel provided a regular intelligence briefing to then-Mayor O'Malley. Major Engel stated that none of his briefings mentioned MSP's investigation or included information derived from the investigation. I interviewed Governor O'Malley. He stated that he had no

knowledge of MSP's undercover investigation until the investigation was publicly revealed in July 2008.

Both Major Engel and Captain Roman Zaryk, chief of the intelligence section of the Baltimore County Police Department, discussed with us the role of intelligence-gathering in law enforcement and the approach taken at their respective agencies to the anticipation of protests and demonstrations. Both stated that, based on what they understood from the public record, MSP's investigation would not have been consistent with the practice at their agencies. Both stated that their agencies do not consider an anticipated protest, by itself, to be a sufficient predicate for an undercover investigation. Both Major Engel and Captain Zaryk also told us that Max Obuszewski was well-known to local law enforcement – “Everybody knows Max,” as Major Engel put it – and that the protests that Obuszewski regularly organized in the area were known not to pose threats to public safety.

E. HSID's Use of Case Explorer Software and the Transmission of Information to HIDTA

MSP recorded the results of its investigation, including narrative reports and photographs taken by T1, in an internal database known as Case Explorer. MSP then transmitted some of this information to the federally-funded database maintained by the Washington-Baltimore HIDTA program. Some of the Case Explorer entries made by MSP were among the documents released to the ACLU.

These records state that “terrorism,” in various forms, was among the crimes under investigation.

1. Case Explorer

Case Explorer is a computerized relational database developed by HIDTA that provides “basic case management features with functionality focused towards information sharing.”²⁵ Among other features, it provides a means of relating, through searches and automated linkages, the diffuse data gathered in intelligence investigations about people, addresses, numbers, and other information. As a searchable, relational database, Case Explorer enables law enforcement personnel to “[e]asily collect, analyze, and disseminate intelligence within and between organizations.”²⁶

At an early stage in their efforts to improve the operations of HSID, Gabriele and Mazzella recognized the inadequacy of a paper-based filing system for intelligence analysis. The lack of any computerized “search” function severely impeded the analysts’ ability to access, collate, and identify relevant patterns in the data that the analysts and troopers would gather from open sources and otherwise.

In 2004, Gabriele and Mazzella commendably took the initiative to evaluate and price various “relational databases” with features suitable to the work of HSID. All options were prohibitively expensive, but HIDTA offered participating law enforcement agencies a free license to its proprietary Case Explorer database

²⁵ See <http://www.hidta.org/ce/index.asp> (last visited September 25, 2008).

²⁶ *Id.*

software. We were informed that HIDTA required, as a condition of using Case Explorer, that the agency transmit criminal intelligence information to HIDTA's database. MSP wished to use Case Explorer as an internal database, but it agreed to transmit information to HIDTA as required.

Case Explorer afforded the agencies to which it was licensed some limited ability to customize its features and fields. Working with HIDTA, Lieutenant Mazzella took the lead in customizing Case Explorer for MSP. Among the features that Mazzella customized were the drop-down menus for the "Primary Crime" and "Secondary Crime(s)" fields. In its default version, Case Explorer includes certain terrorism crimes, such as "Threats: Terroristic - State Offenses." Mazzella, perhaps mindful of HSID's monitoring of protest groups, added several others, including "Terrorism - White Supremacy/Hate Groups," "Terrorism - Anti-War Protestors," "Terrorism - Anti-Govern," "Terrorism - Pro-Life," "Terrorism - Animal Rights," "Terrorism - Environmental Extremists," and "Terrorism - Anarchists." Mazzella could not recall creating these categories but acknowledged that, if these were not part of the standard package offered by HIDTA (they were not), then he would have been their creator. MSP used a number of these crime categories in connection with the investigation at issue here.²⁷

²⁷ The "crimes" appear as "AA MSP: Terrorism - Anti-War," etc. The "AA" appears to have been inserted before MSP so that when the user opens the drop-down box that lists all crimes alphabetically, the MSP categories appear at the top.

The basic capabilities of Case Explorer seemed to suit HSID's needs for collection and analysis of information. However, HSID used it for other purposes, including as an archive of historical information and a management tool for supervisors to track the work of investigators.²⁸ HSID, which needed better information technology than it could afford in order to move away from a paper-based filing and management system, used Case Explorer as, in effect, an all-purpose database. Case Explorer could serve as a stand-alone system – information entered into it was not *automatically* transmitted to HIDTA (or anywhere else outside HSID), and the system was not otherwise accessible by external users. Nonetheless, Case Explorer had a secure outgoing connection to HIDTA through which criminal intelligence was transmitted.

Case Explorer, which HSID had just begun using during the relevant time period, created a number of frustrations for the analysts and troopers who used it regularly. Information is entered by moving through a series of screens, the first for basic information, and subsequent ones for addresses, associations, and other detailed information. In order to advance from the first screen, the analyst or trooper had to choose a “Primary Crime” (and could also enter “Secondary Crime(s)”) from drop-down boxes on the first screen. Thus, we were told, when

²⁸ For example, Case Explorer narrative entries would be used as a log book of investigative activities, and as shown in the released documents, investigators recorded their hours of investigative time in these narratives. Coppinger thought little of the practice of requiring these reports, with hours, to be recorded in Case Explorer: “[A]ny good supervisor should know how active his or her investigators are and what they’re working on without having to require that hours be shown.”

entering what they considered to be non-criminal information about a protest group, analysts and troopers were still required to choose a “Primary Crime.” Moreover, even after customization, none of the crime categories corresponded well with conduct typically associated with civil disobedience. The MSP-created “terrorism” categories identified above were regarded, at least by some, as the closest fit among the available choices.

During the relevant time period, HSID also lacked clear protocols about when to enter new information in Case Explorer as a new case file and when to enter the information as a continuation of a previous case file. Thus, information from the investigation at issue here appears in Case Explorer under six different case numbers.

Of the six Case Explorer case files, three were created by T1 and three by intelligence analysts. In two of the six, the person creating the file chose, from the “Primary Crime” drop-down menu, the MSP-created term “CM & D - Intelligence Bulletins.” In the other four, the “Primary Crime” and “Secondary Crime(s)” are the MSP-created terms “Terrorism - Anti-War Protestors” and “Terrorism - Anti-Govern.” Max Obuszewski is listed as the “suspect” or “primary” in two of the four “terrorism” case files. In one of these files, three other activists (two of them Catholic nuns) are also listed as “suspects.” In another of the “terrorism” case files, Obuszewski’s peace group, the Pledge of Resistance, is listed as a “security threat group.” And in the fourth “terrorism” case, the All People’s Congress, the American Friends Service Committee, an anti-war group known as A.N.S.W.E.R.,

and the Campaign to End the Death Penalty are all listed as “security threat groups.”

We believe that the proliferation of Case Explorer files related to this investigation was a symptom of, and perhaps even contributed to, the unfocused nature of the investigation itself. It may never have been clear to T1 and others involved whether the work of investigating anti-death penalty and anti-war groups constituted one case or a number of cases. A protocol that governed the assignment of Case Explorer case numbers might have encouraged reflection about the objective of compiling the information in the first place.

Case Explorer also allows the user to check a box designating an entry as “non-criminal.” The “non-criminal” box refers to “non-criminal identifying information,” which the Department of Justice has defined as “names of individuals, organizations, groups or businesses that are not suspected of criminal involvement but that provide descriptive identifying information regarding [a] criminal suspect.” Some at MSP misunderstood the significance of this box. The Department of Justice and HIDTA have not, through this category, endorsed the concept of law enforcement agencies conducting intelligence investigations for some purpose unrelated to the enforcement of the criminal law and the prevention of crime. Rather, the category recognizes that it is sometimes appropriate for law enforcement agencies, when conducting crime-related intelligence investigations, to gather intelligence about individuals and entities not suspected of crime. Some at MSP, however, rightly perceiving that the investigation at issue here was not

meaningfully focused on crime prevention, checked the “non-criminal” box to designate that fact. Case Explorer’s requirement that users enter a “Primary Crime,” even when they checked the “non-criminal” box, was therefore an additional source of confusion.²⁹

To his credit, Captain Gabriele sought legal advice from the Office of the Attorney General in November 2004, around the time that HSID acquired Case Explorer, on how federal regulations governing intelligence-sharing found in 28 C.F.R. Part 23 “pertain[ed] to the collection and storage of investigative records developed by sworn personnel; intelligence reports developed by intelligence analysts; and the research, bulletins, etc., associated with this type of work.”³⁰ Gabriele explained that he was moving forward with plans to convert HSID’s files from paper to electronic format by early 2005 and intended to use Case Explorer “in support of MSP investigations as well as intelligence inquiries requested by allied law enforcement agencies.” Specifically, Gabriele asked, “Does 28 CFR part 23 apply to the MSP HSID?” and “What is the difference between ‘criminal’

²⁹ There were other issues with Case Explorer. For example, when printing out a case report, Case Explorer printed a cover sheet bearing the legend “Washington/Baltimore HIDTA – High Intensity Drug Trafficking Area” – even though, in most instances, the case report being printed was maintained only internally within MSP. Such information simply had no connection with HIDTA, except that it was maintained in a HIDTA-developed database. Case Explorer, at least at the time, did not permit attaching word-processing documents.

MSP is attempting to address these problems with Case Explorer. It is investigating the acquisition of a different database that it believes would better ensure compliance with federal regulations.

³⁰ We discuss 28 C.F.R. Part 23 in more depth in Section IV.D below.

and ‘non-criminal’ information? (This will develop a working definition for troopers and analysts to allow them to determine how data should be marked.)”

Assistant Attorney General Mark Bowen responded to the inquiry. He provided Gabriele with information from relevant authorities suggesting that a key question, in determining whether 28 C.F.R. Part 23 applies to a particular intelligence system, is whether information from that system is shared with other agencies. The authorities noted by Bowen also explained that “criminal intelligence,” under 28 C.F.R. Part 23, is information with a nexus to criminal conduct, as to which there is a “reasonable suspicion.”³¹ It appears that Gabriele concluded from this advice that it was not necessary to comply with the federal regulations in entering information into Case Explorer. Nonetheless, perhaps in recognition of HSID’s transmission of certain data to HIDTA, Gabriele required all HSID personnel who used Case Explorer to receive training and materials from HIDTA on the Case Explorer software and on compliance with 28 C.F.R. Part 23.³²

³¹ We were unable to determine whether Bowen provided Gabriele with a legal memorandum. Gabriele recalls receiving one, but was unable to find it. Bowen recalls a conversation on the topic, and found some materials that he had assembled at the time of the conversation, but he does not recall a written memorandum.

³² When the controversy about the covert surveillance first arose in July 2008, there were allegations that the Office of the Attorney General knew about the operation and in fact approved its legality. My colleagues and I probed witnesses’ memories on this point and searched extensively for any evidence of knowledge or approval of the Attorney General’s Office. I found no such evidence, and am satisfied that there is none. No one at MSP requested such advice and the Office of the Attorney General gave no such advice.

2. HIDTA

The Washington-Baltimore High Intensity Drug Trafficking Area, one of a number of regional HIDTAs, provides federal funding and other support for cooperative efforts among participating law enforcement agencies in this region. HIDTA's mission is to reduce drug trafficking and assist other agencies in counterterrorism efforts. *See* 21 U.S.C. § 1706.

As relevant here, HIDTA provides investigative support through a "Watch Center," which serves as, in effect, a communications hub for law enforcement agencies. Federal, state, and local law enforcement agencies throughout Maryland, Virginia, and the District of Columbia participate in the HIDTA project.

HIDTA's Watch Center maintains a database of criminal intelligence information provided to it by participating agencies. HIDTA is not directly accessible to participating agencies, but functions as a "pointer index" system – when an agency transmits information to HIDTA about an investigative subject, HIDTA "points" the transmitting agency to other agencies that have previously transmitted information about that subject. In short, HIDTA does not share any case information with other law enforcement agencies, but acts as a "switchboard," connecting inquiring agencies with others who have relevant information. Those agencies may then communicate directly with each other.

Of the six Case Explorer case files that were created in connection with the investigation at issue here, MSP, through the electronic linkage between Case

Explorer and HIDTA, transmitted to HIDTA information from four case files, along with, in three of the cases, a “terrorism” crime designation. As a result of this transmission, HIDTA has in its database information listing Max Obuszewski as being under investigation for potential involvement in “terrorism,” and listing four groups, including the American Friends Service Committee and the Campaign to End the Death Penalty, as “security threat groups.” (MSP transmitted to HIDTA at least part of the case file in which three other activists, including two nuns, were also listed as suspects in a “terrorism” investigation, but HIDTA removed that case from its database earlier this year as result of its policy of purging old case files on a three-year cycle.)

In responding to Captain Gabriele’s November 2004 inquiry concerning the applicability of 28 C.F.R. Part 23 to HSID, AAG Bowen apparently advised that HIDTA had adopted those regulations as the standard for inclusion in the HIDTA database. During 2005, the process at HSID for transmitting data to HIDTA involved a weekly review by the Detective Sergeant – for most of the relevant time, Jack Meakin – of all case information entered. Following Meakin’s review, Mazzella would independently assess whether the information was “criminal intelligence” within the meaning of 28 C.F.R. Part 23 and therefore permissible to transmit to HIDTA, and Mazzella would then transmit the information. Nonetheless, Mazzella appears to have shared in the general confusion within MSP concerning what information was appropriate to send. None of the transmitted case files at issue here, in my view, met the standard set forth in the

federal regulations, because none involved an individual as to whom there was “reasonable suspicion” of present or planned involvement in crime. Moreover, there was no basis for sending information about Max Obuszewski, even though he had a history of civil disobedience. Tom Carr, Director of HIDTA, told us that an individual’s criminal history is not, by itself, sufficient to establish “reasonable suspicion” of present or ongoing criminal activity. He further explained that, though trespass is a crime, it is not sufficiently serious misconduct to establish a basis for the sharing of criminal intelligence information under 28 C.F.R. Part 23.

In November 2005, Tom Barbour, an experienced intelligence analyst, was promoted to Programs Manager. In this supervisory capacity, he instituted some important reforms. At Barbour’s direction, HSID altogether discontinued the practice of transmitting information to HIDTA. Barbour also brought his experience to bear to impose some needed discipline on HSID’s collection, analysis, and dissemination of intelligence.

F. The Effect of the Revelations of Undercover Investigation on Those under Surveillance

My colleagues and I met with a number of leaders of the groups that MSP was monitoring, including most of the people whose names appear in the investigatory records and reports. They told us that they were outraged and deeply troubled by the investigation.

The subjects of the investigation explained that, although many of the gatherings surveilled by MSP were protests, rallies, and public discussions of

issues, others were planning and organizational meetings, attended by only a handful of people, where participants sought to develop themes for future events, identified other organizations with which to collaborate, planned logistics, and delegated responsibility for various tasks. The subjects of the investigation particularly objected to MSP's surveillance of the latter type of meetings.

Terry Fitzgerald of the Campaign to End the Death Penalty explained that, at such meetings, it was understood that everyone present was committed to the cause, would be willing to accept responsibility for a delegated task, and could be counted on to fulfill that responsibility. Fitzgerald explained, similarly, that the purpose of the "Live from Death Row" meeting at Grace Memorial Baptist Church in Baltimore City, during which an undercover trooper spoke with Vernon Evans by telephone, was not for Evans to give a speech. Rather, according to Fitzgerald, the meeting was intended to be an opportunity for each person in attendance, all of whom were presumed to be committed opponents of the death penalty, to talk personally and supportively with Evans. One of the troopers who participated in the investigation, and one of the activists who was a subject of the investigation, used identical language in describing the atmosphere at these smaller meetings: both said that the people in attendance were "like a family."

Max Obuszewski and Terry Fitzgerald specifically recalled the person they knew as "Lucy McDonald" and "Lucy Shoup" as an enthusiastic woman, somewhat older than college age, who attended many meetings and rallies, but who, despite her enthusiasm, did not volunteer to take responsibility for specific

tasks. When asked what they would have done if they had known that “Lucy,” or some other person in attendance at one of these smaller planning meetings, was in fact an undercover state trooper, the subjects of the investigation said that the trooper would have been asked to leave the meeting, or that there would have been a discussion and a vote about whether to continue the meeting at all. All agreed that a MSP trooper on official business, not to mention an undercover spy, would not have been welcome.

No one denied that the meetings surveilled by MSP were all likely advertised on the internet or in some other fashion. Nonetheless, some of the meetings were more “public” than others. The presence of an undercover trooper at the smaller meetings was particularly offensive to the subjects of the investigation. One activist regarded the troopers’ attendance at the smaller meetings as an outrageous act of “lying” by the government; another said that the investigation had confirmed his fears about the government’s hostility to dissent and disrespect for civil liberties; another said that he felt branded as a criminal and as an “enemy of the state.” “None of us deserve to be spied on,” one woman said. Michael Stark and Jane Henderson, both leaders of anti-death penalty organizations, expressed particular surprise and outrage at the investigation because their organizations had an established practice, in connection with each anticipated execution, of informing the police in advance of all demonstrations that they were planning at the site of the execution.

Beyond the sense of outrage, the subjects of the investigation expressed concern about the harm that the investigation might cause to their work. They worried that, as a result of the investigation, members of the public would be unwilling to sign their petitions, join their mailing lists, participate in their rallies, and attend their meetings. Stark said that opponents of the death penalty are frequently caricatured as supporters of criminals, and that the additional stigma caused by the MSP investigation could be “potentially disastrous” to his organization’s ability to recruit new members.

Several activists also expressed personal concerns. A leader of one of the organizations under surveillance said that she was concerned about being terminated from her job. Others worried about consequences for professional licensure and federal security clearances. Max Obuszewski, whose file in the MSP Case Explorer database states that he is under investigation for potential involvement in terrorism, observed that it is impossible to know what uses will be made of such electronic data.

These organizational and personal concerns are, apparently, broadly shared among the activist community. David Rocah of the ACLU told us that, since the MSP investigation was revealed, his office has been contacted by approximately 50 organizations for assistance in learning whether they, too, were or are under investigation by the Maryland State Police.

IV. LEGAL ANALYSIS

A. Summary

Group advocacy and group dissent are part of the DNA of American democracy. Groups formed to express political and moral beliefs, and to seek changes in government policy, have long been viewed as guarantors of political and cultural diversity, as protectors of dissident ideas from suppression by the majority, and as agents of legal and social change. *See, e.g., Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984).

The rights guaranteed by the First Amendment to the United States Constitution, and Articles 13 and 40 of the Maryland Declaration of Rights, include what the courts have called a right of “expressive association” – a “right to associate with others in pursuit of a wide variety of political, economic, educational, religious, and cultural ends.” *Boy Scouts of America v. Dale*, 530 U.S. 640, 647 (2000) (quoting *Roberts*, 468 U.S. at 622). This right incorporates certain privacy protections as well, because “[i]nviolability of privacy in group association may in many circumstances be indispensable to the freedom of association, particularly where a group espouses dissident beliefs.” *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). Infringement of the right of expressive association “may take many forms, one of which is ‘intrusion into the internal structure or affairs of an association.’” *Boy Scouts*, 530 U.S. at 648 (quoting *Roberts*, 468 U.S. at 623).

The right of expressive association is not absolute. Large gatherings of people, particularly those involving the expression of passionately-held political and moral beliefs, pose an inherent risk to public safety. These gatherings are subject to reasonable time, place and manner regulations, *see, e.g., Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984), and it is fundamental that the police may take action to prepare in advance for them.

Although there is a substantial body of case law concerning the constitutionality of government monitoring of political and protest groups, the law is unsettled and uncertain. The case law is uncertain not only because of the urgency of the competing values at stake, but also because, as the cases reflect, any thoughtful attempt to balance those values requires the consideration of numerous issues, including: (1) the extent to which the surveillance targeted particular individuals or groups; (2) the intrusiveness of the surveillance; (3) the extent of dissemination of information learned from the surveillance; (4) the nature of any harm caused by those who conducted the surveillance; (5) the legitimacy and importance of the objective that the surveillance sought to achieve; and (6) the necessity of using covert surveillance, rather than some less intrusive method, to achieve that objective. While the case law unmistakably reflects that government infiltration of political and protest groups raises serious constitutional concerns, it also reflects that there is a broad zone within which, to prevent violence and protect against legitimate threats to public safety, the police may conduct covert investigations without running afoul of the Constitution.

There is a now well-established practice of law enforcement agencies issuing self-regulating guidelines in this area that attempt to define, with greater precision than the case law can provide, the zone of permissible conduct. These guidelines often attempt to ensure proper deliberation and accountability within the agency by requiring line-level officers and agents to obtain prior written approval for covert operations. Many agencies have also issued regulations and guidelines addressing the collection of intelligence information and the maintenance of intelligence files and databases. *See, e.g.*, 28 C.F.R. Part 23. The most comprehensive of these guidelines reflect the view that the function of law enforcement agencies is to investigate crimes and to prevent crime from occurring, not to monitor or suppress unpopular viewpoints. These guidelines tend to prohibit the monitoring of groups and associations in the absence of some nexus with crime or with some other serious threat to public safety.

Based on analysis of the relevant legal materials, I have concluded that MSP's investigation of anti-death penalty and anti-war groups during 2005 and 2006 was sufficiently intrusive that it implicated serious constitutional concerns. While the case law does not permit a definitive statement that the First Amendment prohibited the investigation, it is clear to me that the MSP investigation, which was not triggered by evidence of criminal conduct and which uncovered no evidence of any plan by any group to commit criminal acts or otherwise threaten public safety, would not have been permissible under guidelines issued by many other law enforcement agencies. I also believe that

MSP violated federal regulations governing the collection and maintenance of criminal intelligence information when it uploaded certain information about the subjects of its investigation to the database maintained by the Washington-Baltimore HIDTA program without having any “reasonable suspicion that the individual[s] [were] involved in criminal conduct or activity.” *See* 28 C.F.R. § 23.20. Finally, to the extent that MSP took seriously the contention that, as reflected in the materials it sent to HIDTA, the investigation was justified because of evidence that the subjects of the investigation were involved in the crime of “terrorism,” I am not aware of any responsible definition of terrorism that would support such a contention.

B. Constitutional Considerations

The First Amendment to the U.S. Constitution, applicable to the states through the Fourteenth Amendment, provides that “Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.” The Maryland Declaration of Rights similarly provides “[t]hat every man has a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner,” art. 13, and “that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege,” art. 40. The Maryland courts have held that the expressive rights protected by the First Amendment and those protected by Article 40 of the

Declaration of Rights are co-extensive. *See, e.g., Jakanna Woodworks, Inc. v. Montgomery County*, 344 Md. 584, 595 (1997).

Fifty years ago, in holding in *NAACP v. Alabama* that the State of Alabama could not compel the NAACP to disclose the identities of the members of its Alabama chapter, the U.S. Supreme Court, in an opinion written by Justice Harlan, provided what has become the classic articulation of the basis for, and extent of, the protections afforded by the First Amendment to the right of expressive association:

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association. . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

NAACP v. Alabama, 357 U.S. at 460-61 (citations omitted). The Court went on to recognize “the vital relationship between freedom to associate and privacy in one’s associations,” *id.* at 462, “particularly where a group espouses dissident beliefs,” *id.* Ultimately, the Court concluded that Alabama’s asserted regulatory interest in obtaining the NAACP’s membership list could not justify the infringement of the associational rights of NAACP members. *See id.* at 464-66.

The Supreme Court has only once decided a case involving the constitutionality of government surveillance of meetings and protests held by

political groups, but in that case, *Laird v. Tatum*, 408 U.S. 1 (1972), the Court did not reach the merits of the issue. In *Laird*, a challenge to the constitutionality of a U.S. Army program of monitoring domestic protest groups, the Court held instead that the plaintiffs did not have standing to raise the constitutional issue because they had not alleged that they had been objectively harmed by the monitoring program. In so holding, the Court observed that the plaintiffs did not complain of “any specific action of the Army against them,” *id.* at 3, that “the principal sources of information were the news media and publications in general circulation,” *id.* at 6, and that, although Army investigators submitted field reports concerning public meetings and protests, *see id.*, the plaintiffs had not “cited to any clandestine intrusion by a military agent,” *id.* at 9 (quoting decision of court of appeals). The *Laird* Court recognized the line of cases establishing “that constitutional violations may arise from the deterrent, or ‘chilling,’ effect of governmental regulations that fall short of a direct prohibition of First Amendment rights,” *id.* at 11, but the Court held that “[a]llegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific objective harm or a threat of specific future harm,” *id.* at 14-15.

Since *Laird*, lower courts addressing the constitutionality of government surveillance of groups and associations have applied the threshold requirement that the plaintiff allege a “specific objective harm,” not a mere “subjective chill” of free speech, and the cases have tended to turn on the resolution of that threshold issue. Few courts have had the opportunity to reach the merits of the underlying

constitutional question. *Laird*'s high threshold requirement for a court even to consider the constitutionality of government surveillance is among the reasons that the law remains opaque.

Nonetheless, it seems that, in determining whether government surveillance of a group unconstitutionally infringed group members' rights of expressive association, some form of the "traditional First Amendment analysis" set forth in *Boy Scouts v. Dale*, 530 U.S. at 659, would apply. That analysis involves a determination, first, "whether the group engages in 'expressive association,'" *id.* at 648; second, whether the surveillance "significantly affect[ed]" or "significantly burden[ed]" the group's ability to engage in expressive association, *see id.* at 650, 653, 659; and third, whether the government's interest in conducting the surveillance was "compelling," *see id.* at 658, and whether that interest "justif[ied] [the] intrusion on the [group's] rights to freedom of expressive association," *id.* at 659. *See also Roberts*, 468 U.S. at 623 ("Infringements on that right [of expressive association] may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.").³³ My analysis of MSP's monitoring of anti-death penalty and anti-war groups during 2005 and 2006, based on these three factors, follows:

³³ Among the few courts that, post-*Laird*, have articulated a test for determining the constitutionality of government surveillance of First Amendment activities, most have applied the "strict scrutiny" that the Supreme Court applied in the *Boy Scouts* case. *See Alliance to End Repression v. City of Chicago*, 627 F. Supp. 1044, 1054-57 (N.D. Ill.

1. The groups under investigation were “expressive associations.”

This issue merits no extended discussion. The groups that MSP was monitoring all exist for the precise purpose of engaging in political and moral advocacy on issues related to war or the death penalty. They are quintessential examples of “expressive associations.”

2. MSP’s infiltration of the groups under investigation may have “significantly burdened” group members’ First Amendment rights.

This is the issue that raises the most difficult analytical problems and issues. No case of which I am aware articulates a standard for determining whether MSP’s investigation “significantly burdened” the associational rights of the targets of the investigation. However, the post-*Laird* “objective chill” cases, while focused directly on the standing of the plaintiffs to challenge the surveillance, rather than on the constitutionality of the surveillance itself, provide important guidance, pointing to some of the basic values and protections of the First Amendment.

As an initial matter, in discussing and applying these cases, I have chosen to use the terms “undercover operation” and “infiltration” when referring to the MSP investigation at issue here. It may not be possible to describe with precision

1985) (government “must show a compelling state interest” and “must demonstrate that the means chosen to further its compelling interest are those least restrictive of freedom of belief and association”); *White v. Davis*, 533 P.2d 222, 232 (Cal. 1975) (same test); *but cf. United States v. Mayer*, 503 F.3d 740, 752 (9th Cir. 2007) (holding, in affirming lower court’s denial of motion to dismiss a criminal indictment on First Amendment grounds, that “the government can satisfy its burden by showing that its interests in pursuing legitimate law enforcement obligations outweigh any harm to First Amendment interests”).

the point when covert surveillance of a group becomes so intrusive that it can accurately be described as an “undercover operation” or as “infiltration,” but my use of these terms is consistent with both their common meaning and their usage in the law enforcement community.³⁴ The investigation at issue here was “infiltration,” because MSP’s intent in conducting it was to become associated with the anti-death penalty and anti-war groups that were the investigation’s subjects, as well as to identify the activities and members of the groups.

I raise this definitional issue at the outset of this discussion because the question when police surveillance becomes sufficiently intrusive to warrant the term “infiltration” overlaps substantively with some of the issues raised in the post-*Laird* case law concerning the objective harmfulness of government surveillance. The cases, both those distinguishing *Laird* and those following it, have focused primarily on the extent to which the surveillance targeted particular individuals or groups; the intrusiveness of the surveillance; the extent of dissemination of information learned from the surveillance; the motivation for the surveillance; and the nature of any economic or reputational harm caused by those who conducted the surveillance. See, e.g., *Alliance to End Repression v. City of Chicago*, 627 F. Supp. 1044, 1047-54 (N.D. Ill. 1985) (analyzing and applying

³⁴ For example, the Standard Operating Procedures for the Intelligence Section of the Baltimore County Police Department distinguish between “*undercover surveillance*,” which means “[t]o observe the activities of a group or individual who is believed to be involved with criminal activity,” but where “the intent is not to become closely associated with the target(s) of the investigation,” and “*undercover investigation*,” which means “[t]o actively infiltrate or attempt to infiltrate a group reasonably believed to involved in criminal activity for the purpose of identifying their activities, members, and associates.”

post-*Laird* case law). While mere “surveillance” may raise few concerns under this case law, “infiltration” may raise more substantial constitutional issues.

Thus, for example, in *Presbyterian Church v. United States*, 870 F.2d 518 (9th Cir. 1989), in which a group of Arizona churches sued the INS for covertly entering and recording their worship services, the court distinguished *Laird*, focusing on the targeted and intrusive nature of the surveillance, *see id.* at 522 (plaintiffs “fear the government is spying on them and taping their every utterance”), and on the specific harm that the plaintiffs claimed to have suffered, *see id.* (“they claim that the INS has chilled *individual congregants* from attending worship services, and that this effect on the congregants has in turn interfered with the churches’ ability to carry out their ministries”). The churches’ allegations of harm were sufficient to afford them standing to challenge the INS’s surveillance as violative of the First Amendment. In *Riggs v. City of Albuquerque*, 916 F.2d 582 (10th Cir. 1990), a group of lawyers, activists and political organizations brought suit after they discovered that, during a mayoral campaign, the police had targeted them for surveillance and had maintained investigative files on them. The *Riggs* court, in distinguishing *Laird*, focused on the fact that the plaintiffs alleged “that they were the actual targets of the illegal investigations” and that the defendants had caused “harm to [the plaintiffs’] personal, political, and professional reputations in the community.” *Id.* at 585.³⁵

³⁵ *See also Philadelphia Yearly Meeting of the Religious Society of Friends v. Tate*, 519 F.2d 1335, 1338-39 (3d Cir. 1975) (plaintiffs stated a claim of specific objective harm,

In *Alliance to End Repression v. City of Chicago*, perhaps the most comprehensive of the post-*Laird* cases, and one of the few that squarely addresses the constitutionality of the challenged surveillance, the court held that the “Security Section” of the Chicago Police Department had violated the First Amendment when it infiltrated two political associations and covertly surveilled an activist social worker. A police informer and an undercover police officer both became board members of one of the organizations and participated in its decision-making processes, *see id.*, 627 F. Supp. at 1050, and a police informer became the treasurer of the other organization, *see id.* at 1051. The police maintained extensive files on the individual plaintiff’s social activities and finances, including notes on conversations that took place at a cocktail party in her home, personal checks that she had drafted, and medical information about her husband and child. *See id.* at 1053-54. The police employed extensive photographing, filming, videotaping, and recording, covertly filming from an adjacent property a weekend conference on non-violent activism held at a summer camp. *See id.* at 1046. The police also invited a newspaper reporter to attend the

where they alleged that “Political Disobedience Unit” of Philadelphia Police Department had disseminated information learned from surveillance beyond the law enforcement community, including to a television station); *White v. Davis*, 533 P.2d 222, 229 (Cal. 1975) (“As a practical matter, the presence in a university classroom of undercover officers taking notes to be preserved in police dossiers must inevitably inhibit the exercise of free speech both by professors and students.”); *Handschu v. Special Servs. Div.*, 349 F. Supp. 766, 769-70 (S.D.N.Y. 1972) (“The complaint alleges that SIS regularly recruits paid and unpaid informers to join, and regularly assigns police officers to infiltrate, political and social organizations and report on the activities of such groups and their members. . . . [T]he complaint alleges that the informers and infiltrators provoked, solicited and induced members of lawful political and social groups to engage in unlawful activities.”).

weekend conference, and the reporter subsequently wrote a story describing what he called a “secret revolutionary planning session.” *See id.* at 1047. Two police officers and an informer inaccurately testified in a legislative hearing that one of the groups was a “Communist Party front group.” *See id.* Throughout their investigations, the police never developed reasonable suspicion of any criminal conduct. *See id.* at 1046.

The federal district court in Chicago held, per *Laird*, that the plaintiffs had suffered “specific objective harm.” *See id.* at 1050-52, 1053-54. In the same opinion, the court distinguished the cases of two other individual plaintiffs, whose police files consisted mainly of newspaper clippings, and who therefore had not been objectively harmed. *See id.* at 1052-53.

Even the cases that follow *Laird* in finding an absence of “specific objective harm” tend to focus on the same set of factors – the purpose of the surveillance, the extent to which it was targeted at specific individuals, its intrusiveness, and so on – as those cases that distinguish *Laird*. Thus, for example, in *Donohoe v. Duling*, 465 F.2d 196 (4th Cir. 1972), the court focused on the fact that the police surveillance of meetings and demonstrations was relatively unintrusive. The surveillance was conducted by uniformed officers, not undercover agents, *see id.* at 197, and, though the police took photographs of persons who attended meetings, the police did not attempt to have observers

present inside meetings that were held on private property, even those that were open to the public, *see id.* at 198-99.³⁶

I believe that MSP's 14-month undercover investigation of anti-death penalty and anti-war groups would fall somewhere in the middle (or muddle) of these cases with respect to the constitutional concerns that they raise. Unlike in *Laird*, but like many of the cases distinguishing it, MSP targeted a small number of groups and individuals for surveillance. On the other hand, there is no evidence, at least of which I am aware, that, as in *Alliance to End Repression*, MSP sought to suppress the views of these groups and individuals, or that MSP was motivated by anything other than a desire to protect the public safety. Unlike in *Alliance to End Repression* and some of the other more egregious cases, MSP at no time disseminated the information that it learned from its surveillance to journalists or anyone else outside of the law enforcement community. On the other hand, MSP did disseminate some of the information to the HIDTA database, and the information it disseminated inaccurately designated some of the subjects of the investigation as potentially involved in "terrorism." Such a designation, if more widely disseminated, could have caused significant harm.

³⁶ *See also Eaton v. Meneley*, 379 F.3d 949 (10th Cir. 2004) (holding that sheriff did not cause "specific objective harm" when he ran criminal background checks on individuals who signed petition supporting his recall); *Fifth Avenue Peace Parade Committee v. Gray*, 480 F.2d 326 (2d Cir. 1973) (holding that march organizers were not objectively harmed by FBI investigation, conducted immediately prior to march, that involved inquiries into organization's bank account balance and into number of buses that organizers had hired to transport marchers, as well as observation and photography of bus departures).

MSP's undercover investigation falls somewhere in the middle of the cases, too, in its degree of intrusiveness. Unlike in *Laird*, the 14-month investigation here, as detailed in Section III, above, did involve a clandestine operation that can accurately be called infiltration. Several MSP commanders and troopers maintained in interviews that the investigation was not highly intrusive because the investigators attended only public meetings. As the case law demonstrates, however, the intrusiveness of covertly monitoring a public meeting varies significantly depending on the nature of the meeting and the expectations of the participants; some meetings are more "public" than others. Compare *Presbyterian Church*, 870 F.2d at 518 (where INS agents covertly attended and surreptitiously recorded church services, plaintiffs could state a claim for relief, notwithstanding that services were open to the public) with *Donohoe v. Duling*, 465 F.2d at 197-98 (where uniformed police officers attended meetings held on public property, but where police declined to attempt to place observers in public church services, plaintiffs failed to state a claim).

Here, the investigators did not merely attend rallies, speeches, and panel discussions. As discussed in Section III, the lead investigator attended numerous small planning and organizational meetings, often convened in churches and other private venues, often in the company of only a handful of other people. Another investigator covertly attended a small meeting of the Committee to Save Vernon Evans, held at the Grace Memorial Baptist Church in Baltimore City, during which the participants offered support, via telephone, to Mr. Evans himself. These

meetings were intended to foster relationships of trust among members of the group. While all of these meetings may have been open to the public, and may even have been advertised on the internet, the presence of an undercover state trooper was far less welcome at these meetings than at a rally, speech, or panel discussion. The subjects of the investigation were unanimous in their strong belief that MSP's investigation had violated the bonds of personal trust upon which they relied in their group activities.

On the other hand, MSP's infiltration was significantly less intrusive than the infiltration in *Alliance to End Repression* and certain other cases. No investigator took a leadership position in any organization under investigation, as in *Alliance to End Repression*. MSP recorded far less information about its subjects' personal lives and political views. MSP's photographic surveillance was less extensive than in *Alliance to End Repression*. As discussed above, the motivation for MSP's investigation appears to have been far different, and far more related to legitimate public safety concerns, than the motivation for the investigation in *Alliance to End Repression*, which appears to have been motivated by a desire to suppress organizations that the Chicago Police Department regarded as "subversive." MSP certainly did not, as in the *Handschu* case from New York City, seek to convince the subjects of its investigation to engage in unlawful activity. *See Handschu v. Special Servs. Div.*, 349 F. Supp. at 769-70.

The right of expressive association incorporates an aspect of privacy. *See, e.g., NAACP v. Alabama*, 357 U.S. at 462. Infringement of the right of expressive

association “may take many forms, one of which is ‘intrusion into the internal structure or affairs of an association.’” *Boy Scouts*, 530 U.S. at 648 (quoting *Roberts*, 468 U.S. at 623). In the absence of definitive case law, the answer to the question whether the investigation at issue here imposed a “significant burden” on the subjects’ exercise of their First Amendment rights necessarily depends, in the final analysis, on one’s instincts about human behavior. If the members of a political group know that, for 14 months, a person who had frequently attended their group meetings, and whom they knew as “Lucy,” was in fact a police spy reporting in some detail on their activities, would they feel significantly burdened in their ability either to continue to express their views or to convince new members to join the group? On these facts, reasonable people may well differ.

While I cannot state that the case law brands such conduct a constitutionally impermissible “significant burden” on First Amendment freedoms, I can offer my opinion that when the police infiltrate a political group without reason to believe that the group may be engaged in criminal activity or that the group otherwise poses a significant threat to public safety, such infiltration implicates First Amendment concerns. Public policy, in any event, should condemn such infiltration.

My conclusion that MSP’s investigation implicates constitutional concerns is consistent with the U.S. Attorney General’s investigative guidelines for the FBI, including the version of those guidelines promulgated by Attorney General

Ashcroft in May 2002.³⁷ The Attorney General’s guidelines impose a number of procedural constraints on the FBI whenever an agent proposes to undertake an “*undercover operation*,” which is a defined term. The guidelines define an “*undercover activity*” as an activity “involving the use of an assumed name or cover identity by an employee . . . of the law enforcement organization.” An “*undercover operation*,” under the guidelines, is “a series of related undercover activities . . . generally consist[ing] of more than three substantive contacts by an undercover employee with the individual(s) under investigation.” For purposes of the definition, “[a] contact is ‘substantive’ if it is a communication with another person, whether by oral, written, wire, or electronic means, which includes information of investigative interest,” but not “[m]ere incidental contact, e.g., a conversation that establishes an agreed time and location for another meeting.”

Under the Attorney General’s guidelines, an undercover operation may not be initiated without the prior written approval of the special-agent-in-charge of the FBI district. As part of this approval process, formal consideration must be given to First Amendment and privacy-related concerns. During MSP’s investigation of anti-death penalty and anti-war groups, the lead investigator had more than three substantive contacts with the subjects of her investigation under the guise of her

³⁷ The Attorney General’s Guidelines on Federal Bureau of Investigations Undercover Operations are available at <http://www.usdoj.gov/olp/fbiundercover.pdf>. This document is one of four sets of investigative guidelines issued simultaneously by Attorney General Ashcroft. The Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations also address issues related to those discussed here. The Department of Justice has announced its intention to consolidate and revise these guidelines shortly.

cover identity. Even assuming the constitutional legitimacy of the initial contacts, at this point serious consideration should have been given to the First Amendment interests of the subjects of the investigation, because MSP had no reason to believe that the subjects were involved in criminal activity or otherwise posed a significant threat to public safety.

3. No “compelling interest” justified the infiltration.

Although it is not possible to offer a definitive view concerning the second step in the constitutional analysis, I have no trouble concluding with respect to the third step that, assuming for purposes of discussion that MSP “significantly burdened” the First Amendment rights of the subjects of its investigation, that burden was not justified by any compelling governmental interest. MSP’s 14-month covert investigation uncovered no evidence of criminal activity or of any other threat to public safety. At a relatively early stage in the investigation, after MSP had learned little or nothing of value from its undercover activities to assist it in preparing for possible protests or demonstrations, and after the undercover trooper heard group members repeatedly and specifically state that they intended to adhere scrupulously to the law when engaging in protests, continued undercover investigation plainly did not serve a “compelling” interest. Whatever interest the investigation served certainly did not justify any further intrusion on First Amendment rights.

Even at the outset of the investigation, it is not at all clear that any significant intrusion on First Amendment rights was justified. I accept that, in the

abstract, MSP had a “compelling” interest in planning for any protests that might have disrupted the anticipated executions of Wesley Baker and Vernon Evans. But MSP had no indication that anti-death penalty groups were planning any disruptions, nor did they have any reason to believe that infiltrating these groups would be necessary, or even particularly helpful, in gathering information about planned protests. As I understand it, by the time that the executions of Baker and Evans were in the planning stages, the anti-death penalty groups had an established practice of directly informing the police about any protests they were planning at the site of the execution. Thus, though I fully respect both the profound significance of an execution and the desire of MSP and other State agencies to carry off a planned execution with “military precision,” I doubt that those interests, under the circumstances presented here, justified any significant burden on the First Amendment rights of those who happened to oppose the death penalty, even at the initial stages of the investigation.

In considering this third step in the constitutional analysis, and what “compelling governmental interests” might suffice to justify governmental infringement of First Amendment rights, I am mindful of changes in the legal landscape that have accompanied the growing awareness of the threats posed by domestic and international terrorism. In January 2001, after two decades of federal judicial supervision of the Chicago Police Department through the *Alliance to End Repression* case, the Seventh Circuit allowed the removal of significant restrictions from the consent decree to which the police had earlier agreed. *See*

Alliance to End Repression v. City of Chicago, 237 F.3d 799 (7th Cir. 2001). Judge Posner, writing for the court, cited the new threats posed by terrorism, and he expressed particular concern about provisions of the consent decree that prevented the police from conducting investigations of groups advocating violence, but as to which the police had no “reasonable suspicion of imminent criminal activity.” *Id.* at 802. “If police get wind that a group of people have begun meeting and discussing the desirability of committing acts of violence in pursuit of an ideological agenda,” Judge Posner wrote, “a due regard for the public safety counsels allowing the police department to monitor the statements of the group’s members, to build a file, perhaps to plant an undercover agent.” *Id.*

As Judge Posner’s opinion underscores, the police have a broader function than the investigation of crimes that have already occurred. The challenges posed by terrorism have brought renewed attention to the role of law enforcement in *preventing* crimes from occurring. In my view, however, police infiltration of advocacy groups should be prohibited unless it is based on a reasonable suspicion of present or planned violation of the law and no less intrusive investigation is likely to yield equivalent results. Only an exigent threat to public safety should justify an exception.

C. Investigative Guidelines Applicable to Other Law Enforcement Agencies

Recognizing the importance and difficulty of these issues, law enforcement agencies around the country, including those in Baltimore City, Baltimore County,

and Montgomery County, have issued guidelines concerning the initiation and continuation of undercover operations in the intelligence-gathering context. My conclusion that MSP overreached in its infiltration of anti-death penalty and anti-war groups has been strongly reinforced by my review of these guidelines. Under some of them, the investigation at issue here would have been flatly impermissible; under others, the investigation would at least have triggered a formalized process of review by command-level staff.

The most comprehensive of these investigative and intelligence-gathering guidelines achieve three things pertinent to this discussion. First, they establish that the agency conducts investigations for the purposes of solving crime, preventing crime, and addressing threats to public safety, not for any other purpose. Second, they set forth informational or evidentiary standards for the initiation and continuation of investigative activities that implicate First Amendment rights. In some of these guidelines, such as those governing the Los Angeles Police Department (LAPD) and those promulgated for the FBI by the U.S. Attorney General, the standard is a graduated one – requiring less information about possible criminality at earlier or less intrusive stages of the investigation, or in emergency situations; requiring a stronger evidentiary basis as the investigation lengthens or becomes more intrusive. Third, these guidelines require command-level approval for investigations that implicate First Amendment rights and expressly condition such approval on consideration of the constitutional issues.

The investigation at issue here would not have been permissible under the Standards and Procedures issued by LAPD in March 2003 to govern its intelligence functions.³⁸ Those guidelines, which identify “the prevention of terrorist activity” as the “primary objective” of LAPD’s intelligence operation, establish that the purpose of conducting intelligence investigations is “the detection, collection, analysis and dissemination of information for the purpose of crime prevention.” The guidelines expressly recognize “the right of public expression through demonstration,” and they state flatly that “[t]he mere fact of a potentially large demonstration shall not, by itself, constitute a significant disruption of the public order” that would permit the initiation of an intelligence investigation.

The LAPD guidelines define three increasingly intrusive investigative methods: *monitoring*, *surveillance*, and *undercover investigation*. *Monitoring* is “observing or watching the activities of an individual or organization” in a manner that does “not rise to the level of ‘Surveillance.’” *Surveillance* is “continuous or prolonged observation of a group by clandestine means.” An *undercover investigation* is an “investigation involving the use of an undercover officer who clandestinely obtains information about individuals or organizations through the development of ongoing relationships with such individuals or organizations.” MSP’s investigation of anti-death penalty and anti-war groups was an *undercover*

³⁸ The LAPD Major Crimes Division Standards and Procedures are available at http://www.lapdonline.org/search_results/content_basic_view/27435.

investigation under these guidelines, because it involved the development of ongoing relationships, not merely clandestine observation.

The LAPD guidelines prohibit the use of both *surveillance* and *undercover investigation* in the absence of *reasonable suspicion* of criminal activity, which is defined as “[a]n honest belief based on known articulable circumstances which would cause a reasonable and trained law enforcement officer to believe that some activity relating to a definable criminal activity or enterprise may be occurring or has a potential to occur.”³⁹ Where an investigator wishes to move beyond *surveillance* to *undercover investigation*, the LAPD guidelines further require that the investigator obtain approval from the chain of command. Explicitly recognizing that “the infiltration of an organization . . . by an undercover officer is the most reliable tool for information gathering by law enforcement,” the LAPD guidelines nonetheless state that “[i]t is imperative that constitutionally guaranteed rights remain the focal point when utilizing these investigative methods.” Thus, in addition to the threshold requirement that there be *reasonable suspicion* of criminal activity, an *undercover investigation* may not be undertaken without the prior written approval of both the Chief of Police and a member of the Board of Police Commissioners (except in an emergency involving a “life threatening situation,” where approval must be requested within 72 hours after the initiation of the investigation). Investigators must submit an application signed by the

³⁹ The guidelines go on to note that this definition of *reasonable suspicion* “is in accordance with . . . 28 CFR Part 23.”

intelligence section and major crimes division commanders with information bearing upon, among other things, the existence of reasonable suspicion of criminal activity, and explaining why the intelligence section “believes that an undercover investigation is the only practical means to accomplish the objectives of the investigation.” Even further procedural safeguards are imposed where the organization to be infiltrated is not the target of the investigation.

Closer to home, the Montgomery County Police Department has issued guidelines for its Vice and Intelligence Section, revised most recently in July 2008, that repeatedly emphasize that intelligence investigations may not be initiated in the absence of a nexus with criminal activity. The Montgomery County guidelines establish that “[c]riminal intelligence operations will focus on the collection, evaluation, analysis, and dissemination of data on any and all person(s) and/or group(s) or organizations which engage in activities defined as criminal by federal, state, and County legislative bodies.” The guidelines further provide that, because of the “paramount need to protect [constitutional] rights, intelligence operations will be confined to those situations which require a legitimate law enforcement response to a criminal threat or potential threat.” Specifically, the Montgomery County guidelines permit “[p]hysical infiltration of any organization or attendance at any public meeting of an organization for intelligence collection purposes” (1) only with prior approval of the supervisor of the Vice and Intelligence Section or a higher-ranking officer, (2) only where the infiltration or attendance at a public meeting is “designed to collect information on

the potential or actual criminal activities of the organization,” and (3) only where that criminal activity “requires proactive measures to diminish the threat to public safety.”

It is my view that MSP’s investigation of anti-death penalty and anti-war groups would not have been permissible under the Montgomery County guidelines, just as it would not have been permissible under the LAPD guidelines and those of many other law enforcement agencies around the country.⁴⁰

D. 28 C.F.R. Part 23

In many of the constitutional cases discussed in Part A, above, the plaintiffs challenged not only the law enforcement agency’s monitoring of First Amendment activities, but also the agency’s basic practice of maintaining open files on those who exercise their First Amendment rights. *See, e.g., Laird*, 408 U.S. at 6. Though there is of course a long history of privacy- and liberty-related concern,

⁴⁰ In Seattle, Washington, the City Council has enacted an ordinance that addresses the issue of police infiltration. *See* Seattle Municipal Code, ch. 14.12 (“Collection of Information for Law Enforcement Purposes”). The ordinance contains all of the salient features of the guidelines discussed above. It defines the term *infiltrator* as one who “poses or acts as a member or associate . . . of a political or religious organization, an organization formed for the protection or advancement of civil rights or civil liberties, or an organization formed for community purposes.” *Id.* § 14.12.030(E). It establishes “reasonable suspicion” of criminal activity as a threshold for undertaking a range of intrusive investigative activities, including infiltration. *See id.* §§ 14.12.150(C), 14.12.230(B)(4), 14.12.250(A). And it requires written approval of the chief of police before undertaking infiltration. *See id.* § 14.12.250(B).

In my view, it may be more beneficial, at this stage, for MSP to adopt its own binding rules than for the General Assembly to impose rules on MSP. The process of promulgating such rules would afford MSP an opportunity for deliberation about the purposes of its intelligence-gathering activities and for internalization of the constitutional values that are implicated by such activities. Ultimately, such deliberation and internalization might be nearly as important as the contents of any written rules themselves in ensuring an enduring institutional respect for constitutional norms.

both in this country and abroad, about governments maintaining files on their citizens, that concern has not translated, at least in this country, into a substantial amount of case law on the subject, perhaps because, as the Court found in *Laird*, it is difficult to specify the harm that accrues to a specific individual from the mere maintenance of an investigative file.⁴¹

As with the issues raised by undercover operations and infiltration, law enforcement agencies have themselves often recognized the constitutional concerns and have therefore issued regulations and guidelines. The regulations of most immediate relevance here, because they apply directly to MSP, are those promulgated by the U.S. Department of Justice to govern state and local law enforcement agencies that participate in federally-funded “projects” for the interjurisdictional collection and maintenance of criminal intelligence information. *See* 28 C.F.R. Part 23. The regulations provide that “[a] project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.” 28 C.F.R. § 23.20(a).

⁴¹ *But see Alliance to End Repression*, 627 F. Supp. at 1056 (“[T]he police maintenance of a dossier . . . which was so extensive as to create an entire portrait of [plaintiff’s] personal, family, financial, and political life, violated her first amendment rights in the absence of a reasonable suspicion of criminal conduct, and in the absence of any evidence that the information came from exclusively public sources.”). Some legal scholars have argued that the proliferation of public and private sector databases, and the expanding interconnection among them, require renewed attention to the nature of the potential harm caused by database maintenance and to the sufficiency of existing legal protections. *See, e.g.,* Daniel J. Solove, *Privacy and Power: Computer Databases and Metaphors for Information Privacy*, 53 *Stan. L. Rev.* 1393 (2001).

Both MSP's own intelligence division and the Washington-Baltimore HIDTA are "projects" as defined in the regulation. *See* 28 C.F.R. § 23.3(b)(5) (defining "project" as "the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of agencies"). The regulations explicitly recognize that privacy concerns are implicated when law enforcement agencies maintain electronic files on individuals. *See* 28 C.F.R. § 23.2 ("[B]ecause the collection and exchange of intelligence data . . . may represent potential threats to the privacy of individuals to whom such data relates, policy guidelines for Federally funded projects are required.").

MSP violated these regulations when, as discussed in Section III, it transmitted information to HIDTA from four of the six Case Explorer case files that it had opened in connection with the investigation at issue here. MSP did not, as to any of the individuals or groups that were the subjects of its investigation, have any "reasonable suspicion that the individual is involved in criminal conduct or activity." 28 C.F.R. § 23.20(a). Therefore, MSP could not, in connection with its participation in the HIDTA "project," "collect" or "maintain" in the HIDTA database any information from any of these case files. *See id.*

Some MSP employees we interviewed suggested that the information contained in the case files met the standards set forth in 28 C.F.R. Part 23 because one of the individuals that was a subject of the investigation has a record of

criminal convictions related to past acts of civil disobedience. I disagree. A record of a past criminal conviction should not, standing alone, constitute “reasonable suspicion” of present or planned involvement in criminal activity. Tom Carr, the director of the Washington-Baltimore HIDTA, told us that HIDTA, too, does not regard an individual having a criminal record as a sufficient basis under 28 C.F.R. Part 23 for inclusion of information about that individual in its criminal intelligence database.

Moreover, even if MSP had learned information sufficient to establish a “reasonable suspicion” of plans to engage in civil disobedience, transmission of the information to HIDTA would not have been appropriate. The regulations permit interjurisdictional collection and maintenance of intelligence information only with regard to offenses that constitute significant and recognized threats to the community. *See* 28 C.F.R. § 23.2 (giving as examples “loan sharking, drug trafficking, trafficking in stolen property, gambling, extortion, smuggling, bribery, and corruption of public officials”). Trespassing, unlawful assembly, and other crimes associated with civil disobedience are not such offenses.

MSP described the potential offenses at issue here, both in its own Case Explorer database and in the HIDTA database, as “terrorism” offenses, which, if true, and upon reasonable suspicion, would have justified inclusion in the HIDTA database. However, as discussed more fully below, this was not a terrorism investigation. MSP’s use of the “terrorism” designation likely made it difficult for HIDTA to detect that it had accepted information into its database that was not in

compliance with 28 C.F.R. Part 23 and that was wholly unrelated to HIDTA's statutory mission to reduce drug trafficking and assist in counterterrorism efforts. *See* 21 U.S.C. § 1706.

Several MSP commanders, including some who were directly involved in customizing Case Explorer for use by MSP and in sending the information at issue here to HIDTA, incorrectly understood that MSP was not subject to 28 CFR Part 23 at all because MSP did not use technology that would implicate the regulations. The language of the regulations does not support this view. HIDTA maintains an "interjurisdictional intelligence system." MSP is a "participating agency" under the regulations because it is "authorized to submit and receive criminal intelligence information through an interjurisdictional intelligence system [HIDTA]." 28 C.F.R. § 23.3(b)(4). The regulations applied to MSP's participation in HIDTA.

In November 2005, while the investigation of anti-death penalty and anti-war groups was still ongoing, MSP's intelligence division discontinued its practice of uploading information to HIDTA from Case Explorer. I did not learn of any subsequent improper use of the HIDTA database.

E. Database Guidelines Applicable to Other Law Enforcement Agencies

A more difficult set of privacy-related issues is presented by the MSP intelligence division's inclusion of information unrelated to criminal activity in its Case Explorer database. Many agencies have published guidelines that adopt

standards, similar to those imposed by 28 C.F.R. Part 23, requiring reasonable suspicion of involvement in criminal activity before information may be collected or maintained in their own criminal intelligence files and databases. Some of these regulations, also like 28 C.F.R. Part 23, provide for periodic auditing and purging of the contents of intelligence files. *See* 28 C.F.R. § 23.20(h) (“All projects shall adopt procedures [that] provide for the periodic review and the destruction of any information which is misleading, obsolete or otherwise unreliable . . . Information retained in the system must be reviewed and validated for continuing compliance with system submission criteria before the expiration of its retention period, which in no event shall be longer than five (5) years.”).

The LAPD guidelines state that it is “both unnecessary and wrong to maintain an intelligence file on any individual or organization” in the absence of “reasonable suspicion” of criminal activity. The Montgomery County Police Department similarly limits inclusion in its intelligence files “to persons or organizations which are involved in or suspected of being involved in criminal activity or present a threat to the community.” Both the LAPD and Montgomery County guidelines provide for the auditing and purging of intelligence files on a regular cycle. Although the federal regulations require auditing on a five-year cycle, *see* 28 C.F.R. § 23.20(h), the Washington-Baltimore HIDTA audits its files every three years (resulting in the purging of one of the case files transmitted by MSP in connection with the investigation at issue here).

The difficulty in attempting to apply such guidelines to MSP's Case Explorer system is that MSP seems to use the Case Explorer system simultaneously as a criminal intelligence database, a case management database, an archive of past investigations, and a means of keeping track of the activities of its intelligence staff. Where, as in this case, an investigator conducts a thorough investigation but uncovers no evidence of criminal activity, MSP nonetheless understandably wishes to have a record of what its investigator did and of any conclusions drawn. It would be preferable if MSP maintained separate systems for these functions, adopted a "reasonable suspicion" standard for inclusion in its criminal intelligence database, and subjected that separate criminal intelligence database to a regular process of audit and purging. However, the law does not appear to require MSP to separate criminal intelligence information from case management, personnel-related, and archival information, all of which it now stores in Case Explorer, and MSP's budget may not permit it to do so.

At a minimum, though, MSP should take steps to ensure that information contained in Case Explorer cannot be misinterpreted or misused. To the extent that MSP continues to use Case Explorer as a criminal intelligence database and for these various other functions, it should ensure that information maintained solely for personnel-related or historical purposes cannot be mistaken for criminal intelligence information. If a trooper opens an investigation but finds no evidence of criminal activity, all Case Explorer records of that investigation should indicate that the subjects of the investigation are not suspected of involvement in crime. In

addition, MSP should adopt a regular cycle of purging unneeded files from Case Explorer.

F. “Terrorism”

Case Explorer requires the user to enter, as part of a case file, a “Primary Crime.” This requirement could, in theory, instill a beneficial discipline in MSP’s intelligence-gathering practices: it could have the effect of requiring investigators and supervisory officers to consider whether an investigation does, in fact, have some meaningful nexus with crime prevention, and whether the crime being investigated justifies the resources being devoted to it. Thus, if MSP decided to gather intelligence on a political group that it had learned might be planning a disorderly protest, the investigator would enter in Case Explorer, as the “primary crime” for the investigation, something like unlawful assembly, disorderly conduct, obstruction of traffic, or trespassing.

That is not what occurred here, however. MSP created its own crime categories for use in Case Explorer. However, it did not create crime categories that would be applicable to the investigation of political groups potentially engaged in civil disobedience. The crime categories that MSP did create often focused on terrorism – “terrorism – anti-war protestors” and “terrorism – anti govern,” among others. MSP appears to have used these “terrorism” designations indiscriminately. As discussed, we were unable to learn anything about MSP’s reasons for developing these categories, because neither the likely creator of the categories nor any of his colleagues could recall developing them.

The troopers and analysts who created Case Explorer files for the investigation at issue here used the MSP-created “terrorism” categories, not because they felt that these categories applied particularly well to the subjects of the investigation, but because they felt that these categories were the best designations among those that Case Explorer allowed. When MSP commanders, including those who created the “terrorism” crime categories, later reviewed the entries and transmitted some of them to HIDTA, no consideration appears to have been given to whether the “terrorism” designation was accurate in this case, nor was any consideration given to the harm that might accrue to the subjects of these investigative records from a suggestion that they were under investigation for terrorism-related offenses.

There was, of course, no basis for suggesting that the subjects of the investigation at issue here had any involvement in terrorism. For conduct to qualify as “*domestic terrorism*” under the definition in federal criminal law, for example, there must be, within the territory of the United States, (a) “acts dangerous to human life that are a violation of the criminal laws of the United States or of any State” and (b) an intent to “intimidate or coerce” a civilian population or a government or an intent to “affect the conduct of a government by mass destruction, assassination, or kidnapping.” 18 U.S.C. § 2331(5). Here, there was no criminal conduct at all, and no planning for criminal conduct.

The subjects of MSP's investigation are, in a particularly meaningful respect, the opposite of terrorists: they are individuals committed to changing the policies or conduct of the government through strictly non-violent means.

EXHIBIT 1

STATE OF MARYLAND
OFFICE OF THE GOVERNOR



MARTIN O'MALLEY
GOVERNOR

STATE HOUSE
100 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401-1925
410-974-3901
TOLL FREE: 1-800-811-8336

TTY USERS CALL VIA MD RELAY

July 31, 2008

Stephen H. Sachs
Wilmer Cutler Pickering, LLP
1875 Pennsylvania Avenue, N.W.
Washington, District of Columbia 20006

Dear Mr. Sachs:

Thank you for agreeing to conduct an independent review of the events that occurred at the Maryland State Police in 2005 and 2006 that are the subject of documents recently released in response to a Public Information Act request. I would request that you conduct a thorough review of all the facts and circumstances surrounding these activities, and review the constitutional provisions, laws, and regulations that apply to those activities. As part of that review, I would like recommendations for appropriate safeguards to help carry out Colonel Sheridan's directive that such activities are not happening and will not happen in the future. The Office of the Attorney General has approved this review and stands ready to assist you, and the State will provide you with the resources and personnel you may need in this effort. The State of Maryland and the Maryland State Police will give you full cooperation in this effort. Your public service is appreciated.

Sincerely,

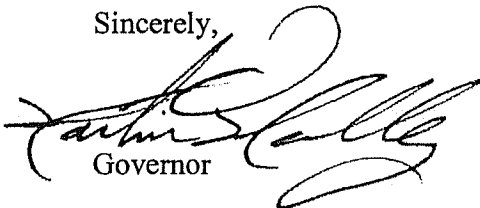

Governor

EXHIBIT 2

Supplement to Intelligence Report Initiated by Analyst Sparwasser

March 16, 2005: Entry made by [REDACTED]

On March 14, 2005 [REDACTED] attended an organizational meeting in Takoma Park - in an undercover capacity as [REDACTED] - which was called to coordinate activist events for Vernon Evans' upcoming execution. Governor Ehrlich signed the death warrant and Evans' execution is scheduled for the week of April 18th 2005.

Approximately 10 people attended the meeting at the Electric Maid activist center in Takoma Park. Attending were several unidentified people, freed death row inmate Ernest "Shujaa" Graham, Martine Zundmaris, Nancy Golden, Dave Z. and a representative from American University's chapter of Amnesty International. The meeting was primarily concerned with getting people to put up fliers and getting information out to local businesses and churches about the upcoming events pertaining to the execution. The attendees talked about the Takoma Park Town Hall Meeting and speakers which will include Graham, Evans' legal team, a taped statement from Evans and several other people. The group discussed soliciting donations for signs, flyers and other administrative expenses. Finally, attendees talked about renting buses for Washington area activists to travel to Baltimore on April 9th 2005. Sign up sheets will be at the April 6th town hall meeting in Takoma Park and also a table will set up at the Sunday Takoma Park Farmer's Market to promote the events and their cause. No other pertinent intelligence information was obtained.

After the meeting, [REDACTED] set up a covert e-mail account, was accepted on the Maryland Campaign to End the Death Penalty Yahoo List Serve and also contacted a man who attended the Takoma Park meeting about attending future meetings. [REDACTED] was advised that the group had set up an Internet site - www.stopexecutionsinmaryland - which updated the case and information about advents.

The following events have been scheduled:

- 3/21/05 - Mt. St. Mary's College, Town Hall Meeting
- 3/23/05 - Georgetown University, Town Hall Meeting
- 3/24/05 - American University, Town Hall Meeting
- 3/30/05 - University of Maryland College Park, Town Hall Meeting, HSID will attend
- 4/06/05 - Takoma Park Presbyterian Church, Town Hall Meeting, [REDACTED] will attend
- 4/08/05 - Supermax Prison in Baltimore, Tentatively scheduled for 1500 hours
- 4/09/05 - Supermax Prison in Baltimore, [REDACTED] HSID will attend
- 4/12/05 - Statehouse in Annapolis, National Can Governor Ehrlich Day, Executive Protection Section has been notified
- 4/18/05 - 4/22/05 - Supermax Prison in Baltimore, Execution of Vernon Evans

On 03/15/05, [REDACTED] attended an anti-death penalty organizational meeting in Baltimore at the American Friends Service Committee headquarters on York Road. There were eight people who attended the meeting including three of Evans' sisters, an unidentified male relative and a representative from the Catholic Church. The group discussed Evans' case, his history and his current situation. Attendees decided to organize a press conference with politicians and activists for April 8th 2005 to try and

gain support for the protest scheduled for the next day. Evans' sisters said they were contacting public officials to speak at the event including Kwcisi Mfume, Rep. Ben Cardin and Elijah Cummings and Mayor Martin O'Malley. They also discussed holding a Town Hall Meeting in Maryland but no details were agreed upon at that time.

Evans' sisters were articulate and said they, along with other members of Evans' extensive family, are going to be very active in any events held for Evans and will be vocal in their opposition to the death penalty and Evans' execution. They maintain that Evans was not the trigger man and is innocent.

Another topic discussed in the meeting was that none of the victim's family members seem to be involved in the case. The attendees said they were caught off guard at the June 2004 execution of Steven Oken at the vehemence of some family members of the victim in support of the execution. One of the Evans' sisters said that the sister of one of the victims in this case was the only person who had spoke about the case in the past and attorneys currently do not know her whereabouts. Most other family members of the victims are dead or haven't been involved actively in the case, she said.

The potential for problems still does exist though at the April 9th rally between supporters and opponents of the death penalty. At the Oken execution, one of the victim's brothers, Fred Romano, tried to aggressively engage anti-death penalty activists about the case and the execution. Romano was forceful and loud in his opinions and made signs he displayed outside of Supermax which included "Give Oken the Juice". Other members of the victims' families also appealed to the public to support Oken's execution and had frequent contact with the media. Lengthy articles were printed in the Baltimore Sun about the case and the victims prior to the execution.

Although the facts in Evans' case are also horrific - he was convicted of being hired and then killing two federal witnesses with a machine gun but mistakenly killing the sister of one of the witnesses - the case has not generated much publicity thus far. There has yet to be any public outcry or sympathy for any of the principal people involved in the case. There has not been a push in the media by anyone other than prosecutors for the execution to move forward. Much of the media attention to date has been on appeals filed by Evans' legal team.

Another issue which will likely raise tensions and could make any gatherings about the execution contentious and possibly violent is race. Evans, his legal team, family and his supporters have raised the racial disparity in executions as a reason that his execution should not go forward. Evans is black and his victims were white. Evans' family members said they feel very strongly that he was discriminated against.

No intelligence has been gathered at this point that there are any illegal or disruptive actions planned for any of the scheduled events either to bring attention to the case or the issue generally. Many of the people attending both organizational meetings said they were involved not specifically because of the circumstances of Evans' case but rather because they were opposed to the death penalty in all cases. The goal which many of the attendees stated was a moratorium on executions until a study promised by Governor Ehrlich about racial disparity in the judicial system was completed.

Further intelligence will be added as it is developed. The above information was relayed to MSP Executive Protection Section and Baltimore City Police Intelligence Section on 03/16/05 by [REDACTED]

April 7, 2005: Entry made by [REDACTED]

On April 6, 2005, [REDACTED] attended in a covert capacity the Takoma Park Town Hall Meeting which was organized to protest the execution of Vernon Evans. Approximately 70 people attended the event which lasted more than 1 ½ hours. The program started with singing and then one of Vernon Evans' attorneys gave an update on the appeals process. She said a hearing is scheduled before the Court of Appeals in Annapolis for June 7, 2005. A female then spoke about her opposition to the death penalty and she was followed by Mike Stark, a socialist and organizing member of the Maryland Campaign to End the Death Penalty. A taped statement was played from Evans and his sister, Gwen Bates, addressed the gathering. The final speakers were a representative from the American Civil Liberties Union and exonerated inmate Shujaa Graham. Each speaker mentioned the April 9th rally at Supermax but no one advocated any kind of violence or civil disobedience.

During the meeting, tickets were being sold for a bus that will be taking people from Takoma Park to Baltimore on April 9th. It appeared as if most of the tickets had been sold by the end of the event so it is likely that at least 40 people will be attending the event from that area. It is unknown at this point how many other people will attend the rally but a crowd of at least 70 to 75 people could be anticipated from intelligence gathered thus far.

On April 7, 2005 [REDACTED] contacted [REDACTED] from the Baltimore City Police Intelligence Unit who is currently working domestic terrorism cases for the Joint Terrorism Task Force. [REDACTED] was advised of the intelligence gathered by MSP and said that there would not be covert officers present from BPD but that tactical teams from that department would be on standby and would be told about the above information. [REDACTED] said [REDACTED] would also advise the uniformed supervisor at the event, [REDACTED] that [REDACTED] and [REDACTED] would be at the rally in a cover capacity and give him [REDACTED] cellular telephone number.

March 15, 2005: Entry made by [REDACTED]

On April 9, 2005 [REDACTED] attended the anti-death penalty rally outside of Baltimore's Supermax correctional facility in a covert capacity. The investigators were in the area ahead of the scheduled 1400 hour start time for the event and observed no unusual activities by anyone associated with the rally. The rally was originally scheduled to start from a public park several blocks from Supermax with participants marching to the prison from that location. For undetermined reasons the only people at the park at 1330 hours were several people from Baltimore's Campaign to End the Death Penalty Maryland (CEDPMD) group. They came to the rally a short time after it started in their vehicles.

At approximately 1400 hours a yellow school bus from Takoma Park arrived in a parking area near Supermax and the protestors were given large cardboard signs to hold which promoted anti-death penalty views. There were approximately 75 to 80 protestors at the rally and none participated in any type of civil disobedience or illegal acts - protestors were even careful to move out of the way for Division of Correction employees who were going into the parking lot for work. A bullhorn was utilized and several television and print journalists were in attendance. After walking in small circle

near Supermax for an hour, the group then walked around the block before reconvening in the parking lot.

At this time a number of protestors spoke to the group. The speakers included Mike Stark from the Takoma Park chapter of CEDPMP, two of Vernon Evans's sisters, Terry Fitzgerald from the Baltimore chapter of CEDPMD, Mike Corsey who said he was the leader of the D.C. Anti-War Network (D.A.W.N.), an activist from New York and also a man originally only identified as "Max" who spoke about civil disobedience at future events.

After the rally concluded without incident, [redacted] made contact with "Max" and spoke to him about becoming involved with his group and wanting to learn more about passive resistance and civil disobedience. He said that his group, Pledge of Resistance, tries to meet weekly at the American Friends Service Committee Baltimore Office on York Road. [redacted] went with him to his parked vehicle nearby and received a flyer for events at the office which contained "Max's" Internet e-mail address: mobuszewski@afsc.org. [redacted] said that [redacted] would be in contact with "Max" about future events. [redacted] conducted surveillance during the exchange.

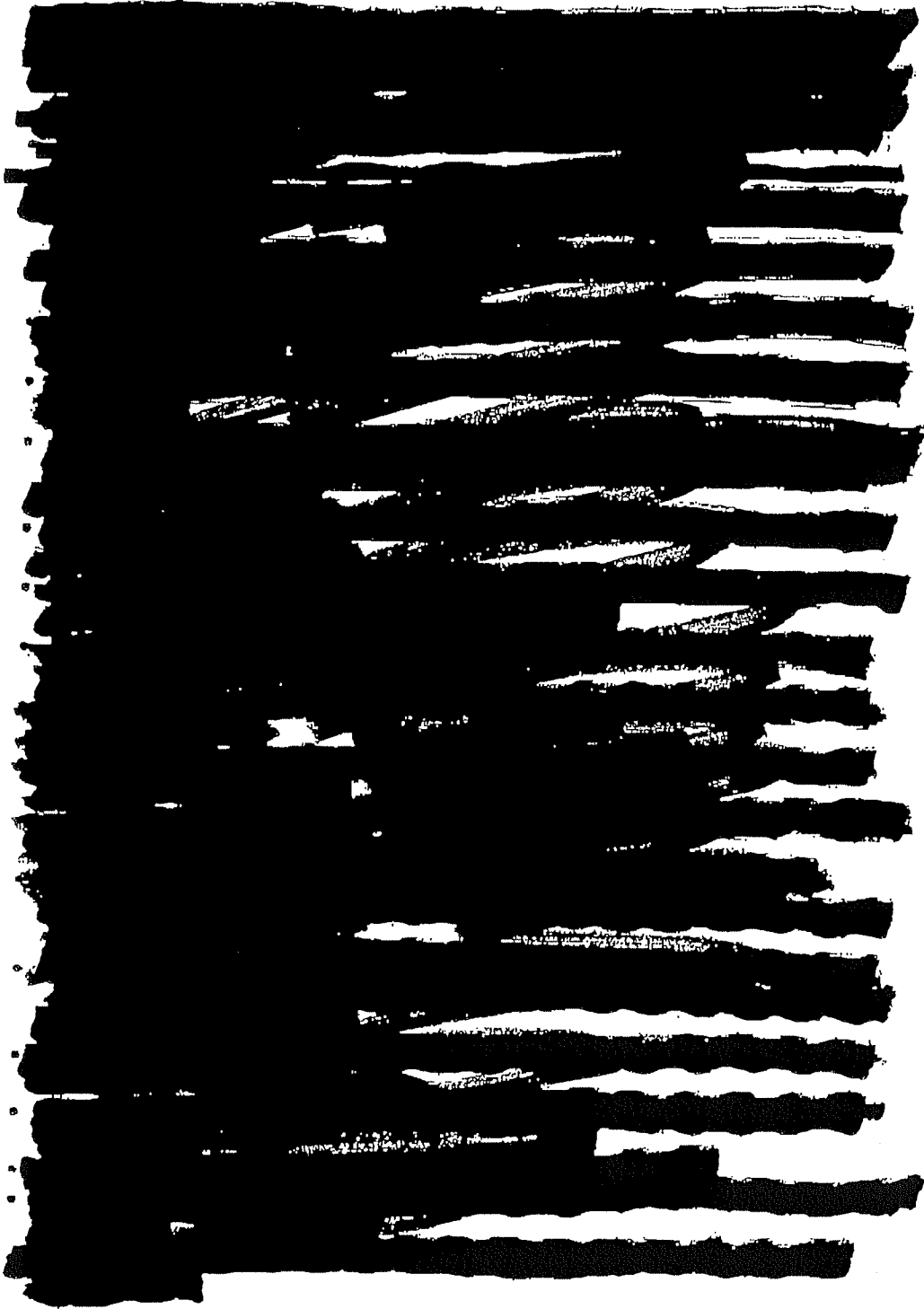
Subsequent investigations indicated the following information concerning "Max":
Vehicle: Maryland 178M343, registered to Max John Obuszewski. The tags were on a 1993 blue Plymouth minivan, VIN 2P4GH2S39PR309273, which had numerous bumper stickers on the back and anti-death penalty signs on the side windows. The vehicle's registration expires in 06/07.

Person: Max John Obuszewski W/M [redacted]

HGT: [redacted] WGT: [redacted] HAIR: [redacted] EYES: [redacted]
SID: [redacted] FBI: [redacted] VA ID: [redacted]
SS#: [redacted]
MD DL#: [redacted]

Criminal/Driver History: Obuszewski has a valid class C driver's license with no record and an expiration of 09/07/08. [redacted]

[Large redacted block of text]



[REDACTED]

[REDACTED] has requested an MVA photograph of Obuszewski and it will be attached to case explorer when it is returned. No further information could be found on any of the other activists listed above as further identifying information about them cannot be determined at this time.

Investigations will continue with [REDACTED] contacting Obuszewski and monitoring any developments in Vernon Evans's and Wesley Baker's cases. The Maryland Court of Appeals is scheduled to hear their appeals on June 7, 2005 at the court in Annapolis. Protestors have said they will be at that event but no firm plans have been uncovered at this time. Appropriate personnel will be notified prior to that date.

May 25, 2005: Entry made by [REDACTED]

On May 24, 2005 [REDACTED] attended the organizational meeting for the Save Vernon Evans anti-death penalty group. [REDACTED] attended in a covert capacity as [REDACTED]

The meeting was attended by twelve people including Max Obuszewski as listed above, Chuck (last name unknown) from United Catholic Charities, Terry Fitzgerald who is an activist heading the Save Vernon Committee, several members of Evans' family along with several unidentified people.

The meeting focused on the planned June 6th protest and press conference outside of Maryland's Death Row at 1700 hours. The group said they planned to alert the media about the event and expected coverage as it is on the eve of the case going before the Maryland Court of Appeals. They want to have six speakers but none have been confirmed at this time but will likely be clergy opposed to the death penalty in all cases. Fitzgerald stressed that he wanted this demonstration along with the one the next day in Annapolis to be orderly and not an occasion for civil disobedience. He said that they were not all "loose cannons" like people think. The group said the rally should last about an hour and would consist of people marching with signs and chanting slogans.

The group also discussed the "silent witness vigil" and the Maryland Court of Appeals on June 7th from 0930 to 1200 hours. The group is planning to meet up outside of the Court of Appeals and "pack the courtroom". They said they would likely wear armbands to show their support for Evans. The 60 minute oral arguments in Evans' case are scheduled to start at 1000 hours so the group said anyone who wants to try to get into the small courtroom should get there at approximately 0915 hours. The people who can't get in are going to try and stand silently near the courthouse holding signs protesting the death penalty. Following Evans' case there is also arguments scheduled in Baker's case. The group was very firm about any protests being silent and non-disruptive because they were worried about damaging Evans' case. A woman at the meeting said a group from the NAACP in Montgomery and Prince George's County were planning to come to the courthouse to show their support.

Also discussed at the meeting was a letter sent from Obuszewski to the Baltimore County State's Attorney. He said he had requested a meeting with her to talk about why Baltimore County is number 2 in the United States per capita in seeking the death penalty

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and very high nationwide for the number of death penalty cases reversed on appeal. He said he expected this request to be denied and the group could discuss at its next meeting, tentatively scheduled for June 14th, how to proceed if the meeting is denied. Obuszewski said that he would like to stage a "loud" protest at her office in the near future.

No further information was discussed at the meeting.

The MSP Annapolis Barrack, Department of General Services Police, Baltimore City Police Department Intelligence Unit and the Annapolis City Police were informed about the above events.

Investigative Time for [REDACTED] 03/11/05 through 04/15/05 - 44 hours
Investigative Time for [REDACTED] 04/15/05 through 05/25/05 -- 6 hours

June 10, 2005: Entry Made by [REDACTED]

On June 6, 2005, [REDACTED] attended in a covert capacity a rally at the Supermax prison in Baltimore City which was held to protest upcoming inmate executions. There were approximately 25 people at the protest which was held on both sides of the street just outside of the main doors of the Central Booking and Intake Facility. The protestors gathered for approximately 1 ½ hours and held signs and gave out flyers which stated their opposition to the death penalty. There were no problems observed at the event. Participants included Terry Fitzgerald, Max Obuszewski and other known but currently unidentified recurrent death penalty protestors.

On June 7, 2005, [REDACTED] attended the Court of Appeals hearing for death row inmate Wesley Baker. The hearing scheduled for Vernon Evans had been postponed until September, but members of the group planning a protest associated with Vernon Evans decided to go ahead with the vigil and attending the hearing. Allied police agencies were informed of all recent developments.

There were approximately 10 to 15 anti-death penalty activists who were inside of the courtroom and none caused any problems. There were several additional protestors outside of the courthouse who held signs against the death penalty and they were joined by those in the courtroom when the hearing was over. No problems were observed.

In attendance at the court were Terry Fitzgerald, Max Obuszewski, Mike Stark who is an anarchist who head the Takoma Park Campaign to End the Death Penalty, several other unidentified members of the same group with Stark and at least one unidentified female connected with the NAACP.

Investigative Time for [REDACTED] 05/25/05 through 06/10/05 - 11 hours

June 23, 2005: Entry Made By [REDACTED]

On June 21, 2005, [REDACTED] attended in a covert capacity an organizational meeting for the anti-death penalty group Committee to Save Vernon Evans at the American Friends Service Hall on York Road in Baltimore. There were approximately 8 people at the meeting including Max Obuszewski and Terry Fitzgerald.

The main focus of the meeting was members talking about holding a forum between September 22 and September 1, 2005. The forum was to be at the Friend's Hall and would

be to educate activists and community members about the death penalty, Vernon Evans' case and the cases of other men on Maryland's death row.

At the end of the meeting, Obuszewski told the group that he had received a negative response in his request to Baltimore County State's Attorney Sandra O'Connor for a meeting to discuss the death penalty. He said that he was following the basics of passive resistance and had contacted his oppressor and since she declined a meeting, he could move forward with planning a sit-in and demonstration at her office. Obuszewski said that he would put this on the "back burner" since there was so much work to be done for the forum. He said he would like to hold any action at her office closer in time to a scheduled execution. He supplied members with copies of O'Connor's response to his meeting request. [REDACTED] contacted Baltimore County Police Intelligence Division [REDACTED] on June 22, 2005 to inform [REDACTED] of the above intelligence.

Obuszewski mentioned only two other planned protests/actions in the next two months. He made no mention of any protests at the National Security Agency over the Fourth of July weekend. Documents seen in the office also gave no indication of any protests planned for NSA by Pledge of Resistance. This information was passed on to NSA officials on June 22, 2005 and the situation will continue to be monitored.

The two protests Obuszewski mentioned was the annual "Starving For Justice" rally at the Supreme Court in Washington, D.C. which is held June 27th through July 2nd. He said these dates were significant because it is when the Supreme Court called a halt to executions and when they allowed them to continue. He said he would be attending and fasting for some of the time.

Obuszewski also gave out flyers for a planned protest for August 6th and 9th to commemorate the bombings at Hiroshima and Nagasaki during World War II. There is an organizational meeting for this protest on June 27th at 1800 hours at the Friend's Hall on York Road. No further information could be obtained about these events but the situation will be monitored.

A female attending the meeting announced that Amnesty International was holding a workshop and training for anti-Death Penalty coordinators and activists at the University of Maryland, College Park July 22nd - 24th.

A man attending the meeting wanted the Committee to think about merging with another vocal Baltimore activist group which protests police brutality and problems in Baltimore's Central Booking and Intake Facility. Fitzgerald and Obuszewski said they didn't think this should happen at this time.

No other information was discussed at the meeting.

Investigative Time for [REDACTED]: 06/10/05 through 06/23/05 - 8 hours

July 6, 2005: Entry Made By [REDACTED]

On July 5, 2005 [REDACTED] attended in a covert capacity an organizational meeting for anti-death penalty group Committee to Save Vernon Evans at the American Friends Service Hall on York Road. There were four people at the meeting including Max Obuszewski, Terry Fitzgerald and Bernie (no further information). [REDACTED] used the covert identity [REDACTED]

The majority of the meeting was spent discussing the forum to education people about the death penalty which has been tentatively scheduled for August 31st, 2005 at 1900

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hours at the Friends Hall. The layout of the flyer and speakers were discussed. At the end of the meeting Obuszewski briefed attendees about the rally in Washington over the 4th of July weekend and the resignation of the Baltimore County State's Attorney.

During the course of the meeting I asked if anyone knew anything about the Bio Tech conference in Frederick at Ft. Detrick on July 14th, 2005 and no one at the meeting said they were aware of any planned actions on that day.

I also made contact with Obuszewski via e-mail after the meeting to ask about attending a meeting of the protest group he heads, Pledge of Resistance, on July 11th, 2005. Further information about this meeting and subsequent actions will be carried on a separate entry in case explorer.

Investigative Time for [REDACTED] 06/23/05 through 07/06/05 -- 8 hours

August 3, 2005: Entry Made By [REDACTED]

On August 2, 2005 [REDACTED] attended in a covert capacity an organizational meeting for the anti-death penalty group Committee to Save Vernon Evans at the American Friends Service Hall on York Road in Baltimore. There were approximately 8 people at the meeting including Max Obuszewski and Terry Fitzgerald. [REDACTED] attended the meeting [REDACTED] formerly known [REDACTED] prior to a change in marital status.

The focus of the meeting was planning flyers and promotion for the August 31, 2005 forum being held at the friend's hall discussing the death penalty. The event will feature three lawyers speaking about the death penalty in general (how it is applied, the appeals process, etc.) with specific information about Evan's and Baker's cases. A meeting to finalize the details was scheduled for August 23, 2005. There should be no disruptions at this event since it is being held for like-minded people.

Fitzgerald spoke about Vernon Evans' hearing at the Court of Appeals which is scheduled to be heard on September 2, 2005 in Annapolis. The committee is going to be asking for people to pack the courtroom as they did for Wesley Baker's hearing in June and also hold a silent vigil protesting the death penalty in front of the courthouse.

Also mentioned during the meeting were events planned for the anniversary of the atomic bombs in Japan on August 6th and August 9th at the friend's hall and near Johns Hopkins University. A community meeting which may be contentious concerning reforms in Maryland's prison was also announced for August 10, 2005 at 426 E. 31st Street at 1900 hours. This event will feature the family members of an inmate murdered at Central Booking along with correctional officers. A protest was also mentioned that is being held on August 4, 2005 from 1130 to 1230 at the Mitchell Courthouse in Baltimore to protest voter's rights. [REDACTED] contacted Baltimore City Police Intelligence Division via fax concerning the events being held in Baltimore City. [REDACTED] said [REDACTED] would contact any other agencies or barracks affected by any of the above events.

Investigative Time for [REDACTED] 07/06/05 through 08/03/05 - 9 hours

August 24, 2005: Entry Made By [REDACTED]

On August 23, 2005 [REDACTED] attended in a covert capacity an organizational meeting for the anti-death penalty group Committee to Save Vernon Evans at the American Friends Service Hall on York Road in Baltimore. There were 6 people at the meeting including Max Obuszewski and Terry Fitzgerald. [REDACTED] attended the meeting as Lucy Shoup.

The majority of the meeting was spent discussing logistics for the Death Penalty Forum being held at the meeting hall on Wednesday, August 31, 2005. Table and chair placement, order of speakers, the type of food and what petition sign-up sheets would be available were decided.

Toward the end of the meeting the group discussed plans for attending the September 2, 2005 hearing in Annapolis for Vernon Evans. No concrete number of people attending could be determined but some Baltimore members of the group are meeting at the Friends Hall at 0800 hours to travel to Annapolis. The group said the doors open to the hearing room at 0900 hours and that oral arguments start at 1000 hours and will last one hour. Information about the hearing will be displayed and given out to anyone attending the Aug. 31st forum. As with the past hearing for Wesley Baker, the members of the committee talked about being aware of not causing a disturbance because they didn't want to hinder Evans' case. They said Evans' family wanted as many people as possible to be both inside and outside of the courtroom. Fitzgerald said he knew the sign restrictions from the last protest and would instruct people outside of the courthouse where to stand. The people going into the courtroom said they were going to be "silent witnesses" to the hearing and hoped their presence would show support for Evans. No one in the committee said if they were aware of any outside groups planning to attend the event but they did not indicate that they were planning to contact any additional people apart from the people attending the forum.

The meeting concluded with members talking about trying to get the man running for Baltimore County State's Attorney to commit to his plans regarding the death penalty in the county. They also discussed a forum being held by Kwesi Mfume on September 20, 2005 and talked about organizing committee members going to the talk and questioning the candidate on his death penalty views.

No other information was discussed which had any intelligence value. The above information was forwarded to MSP commanders to facilitate planning for the Annapolis hearing and to analysts preparing a threat assessment for the event.

Investigative Time for [REDACTED] 08/03/05 through 08/24/05 - 9 hours

September 1, 2005: Entry Made By [REDACTED]

On August 31, 2005 [REDACTED] attended in a covert capacity anti-death penalty forum sponsored by the group Committee to Save Vernon Evans at the American Friends Service Hall on York Road in Baltimore. There were approximately 25 people at the forum including Max Obuszewski and Terry Fitzgerald. [REDACTED] attended the meeting.

The forum was held to discuss issues surrounding the how the death penalty is administered in Maryland, how a death penalty case winds its way through the federal

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and state courts and the specifically the cases of Vernon Evans and Wesley Baker. The speakers were an attorney for Baker, an attorney for Evans who participated via conference call and another attorney/activist who has worked on numerous death penalty cases. The attorneys talked extensively about how to organize an effective campaign against the death penalty. The audience members asked very general questions about the progress of Baker's and Evans' cases and other death penalty issues. Each attorney stressed that before any protesters took any action they should talk to the attorneys and make sure the actions would not adversely affect the case.

Toward the end of the forum, Fitzgerald announced the hearing for Evans scheduled for September 2, 2005 in Annapolis. He said anyone wishing to attend could carpool from the meeting hall or meet at the courthouse in Annapolis at 0900 hours. Fitzgerald and Obuszewski said that the protest outside was going to be a "silent vigil" in opposition to the death penalty and the people "packing" the courtroom were there only to show support. There has been no information that any anti-death penalty groups will come from Prince George's or other counties to the hearing as some did for Bakers' June hearing.

Evans is not scheduled to be at the hearing and several members of his family are out of town and will not attend. No information has been obtained that any member of the victims' families will be in attendance.

Investigative Time for [REDACTED] 08/24/05 through 09/01/05 - 9 hours

September 5, 2005: Entry Made By [REDACTED]

On September 2, 2005 [REDACTED] attended in a covert capacity the Court of Appeals hearing for Vernon Evans who is facing the death penalty after being convicted of a contract double murder in the 1980s. [REDACTED] was inside the courtroom with approximately 10 members of the committee to Save Vernon Evans and [REDACTED] maintained surveillance outside of the courtroom. One man, Terry Fitzgerald, remained outside of the court holding an anti-death penalty sign for the duration of the two-hour hearing. [REDACTED] attended the hearing [REDACTED]

There were two issues before the court. One of Evans' attorneys argued that the death penalty was racist and the other attorney made a technical legal argument. The justices do not issue a ruling from the bench and will likely issue their written ruling within the next several months. Evans' execution has been stayed while his case is being adjudicated.

The people in the courtroom did not cause any type of disturbance during the arguments and no problems were observed. Four members of Evans' family were also in the courtroom and also did not cause any disturbances. There were no problems observed outside of the courtroom and the group left after the hearing concluded.

Investigative Time for [REDACTED] 09/01/05 through 09/05/05 - 10 hours

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September 21, 2005: Entry Made By [REDACTED]

On September 20, 2005 [REDACTED] attended in a covert capacity a meeting for the Save Vernon Evans Committee at the Friends Meeting Hall in Baltimore. [REDACTED] attended the hearing [REDACTED]

There were four people at the meeting which was held to discuss the holding of the Voices from Death Row speaking tour in Baltimore. A group of exonerated prisoners and activists are touring the country in September, October and November to tell their stories and the Committee is interested in setting up a stop in Baltimore the first week of November at an undetermined location.

The Committee decided to meet again on October 4th, 2005 at 1900 hours to discuss the tour and set a firm date. The following dates were also given out on a flyer for activist events:

October 5, 2005: Amnesty International Baltimore Chapter is meeting to discuss the upcoming 2006 legislative session and what actions activists groups can take regarding the death penalty and other issues; 1830 hours, Panera Bread Baker, 1852 Reisterstown Road, Owings Mills.

November 7, 2005: American Civil Liberties Union discuss the Patriot Act and how it is applied to the general population in relation to civil rights and liberties; 1830 hours, Roland Park Place, 830 West 40th Street, Baltimore.

December 8, 2005: Human Rights Letter Writing Campaign in recognition of International Human Rights Day; 1800 hours, City Café, 1001 Cathedral Street, Baltimore.

Nothing further was discussed at the meeting.

Investigative Time for [REDACTED] 09/05/05 through 09/21/05 - 10 hours

October 10, 2005: Entry made by [REDACTED]

On October 3, 2005 at approximately 1900 hours [REDACTED] attended a meeting of the Committee to Save Vernon Evans in a covert capacity [REDACTED]

There were six people at the meeting which addressed the issue of bringing an anti-death penalty speaking tour to Baltimore in November. The "Voices From Death Row" tour is a group of exonerated death row inmates and supporters touring the country speaking about their experiences and their opposition to the death penalty. Committee members tentatively planned to invite the tour to Baltimore on November 2nd or 8th, 2005 with a possible venue of the First Unitarian Church on Charles Street in Baltimore City.

The group hopes to widely publicize this event at colleges and local churches and is hoping that at least one hundred people attend and organizers said that they hoped there could be more people who attend. Campaign to End the Death Penalty members and the Socialist Party plan to help with publicizing the event.

The event could draw a large crowd due to the fact that a death warrant could be issued for death row inmate Wesley Baker during that week. His appeal was denied by the Maryland Court of Appeals the day prior to the meeting on October 3rd and will

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become official after 30 days. A death warrant could be issued at that time with an execution date likely to be in late 2005 or early 2006.

[REDACTED] also received information at this event about a tentative anti-war protest at Towson Town Centre in Towson the day after Thanksgiving, November 25th. Anti-war protesters are planning to go to the mall and hand out fliers to shoppers. No further details about time, exact location or number of people expected to attend could be obtained at this time.

Information about the above events was relayed via e-mail by [REDACTED] to detectives from the intelligence division of Baltimore City Police Department and the Baltimore County Police Department.

Due to the above facts I request that this case remain open and updated as events warrant.

Total Investigative Time for [REDACTED] from 09/21/005 to 10/10/05 - 10 hours

October 20, 2005: Entry made by [REDACTED]

On October 18, 2005 at approximately 1900 hours, [REDACTED] attended a meeting of the Committee to Save Vernon Evans in a covert capacity.

There were seven people at the meeting and the group again discussed logistics of bringing the two speakers to the November 2, 2005 event in Baltimore. The two speakers are Darby Tillis, who was exonerated and is an activist against capital punishment, and Billy Moore who was guilty and on death row in Georgia but was released. The event remains at the First Unitarian Church at 514 N. Charles Street at 1900 hours. No further information was received about numbers of people who could be attending. The church has a small room where the program is going to be held but it can be moved into the church if it gets crowded.

Also discussed at the meeting was a rumor going around among activists that there was some type of toxin/hazard picked up by air monitors in Washington, D.C. during the September 24th, 2005 anti-war protests there. Activists are saying some people are getting sick and they believed that the government could be behind the release of something in the air. [REDACTED] passed this information along to analysts within the MSP and also to a military intelligence officer. This officer said government officers are saying that they believe protestors may have released something into the air. No further information could be obtained about what was found in the air or if anyone really got sick.

Due to the above facts, I request that this case remain open and updated as events warrant.

Total Investigative Time for [REDACTED] from 10/10/05 to 10/20/05 - 10 hours

November 17, 2005: Entry made by [REDACTED]

On November 15, 2005 [REDACTED] of the Maryland State Police's Homeland Security and Intelligence Division attended an organizational meeting of the Baltimore Coalition to End the Death Penalty at the American Friends Committee Service Hall in Baltimore, Maryland. [REDACTED] attended the meeting in a covert capacity. [REDACTED]

There were approximately 30 people at the "emergency" meeting which was called because of several pending executions. Gov. Ehrlich signed a death warrant for Wesley Baker for the week of December 5th and a death warrant is likely to be signed for Vernon Evans soon with a possible execution date in early 2006. Crips founder Stan "Tookie" Williams is also scheduled to be executed in California on December 13th. Attendees at the meeting included family and friends of Baker and Evans, people from Amnesty International, the National Socialists, students from Goucher College and members of the public. Emotions were high at the meeting with increasing inflammatory rhetoric about "making noise" to try and stop the executions.

Intelligence indicates that attendance at the below listed events is likely to be large with some events drawing several hundred people. Information about the events is being widely posted on the Internet, at many college campuses, in area churches and through leafleting sessions around the state. Although most death penalty protests in the past have not been violent, the potential for disruptions and problems continue to exist due to the strong emotions the issue illicit from people on both side of the debate. Members of the family of Baker's and Evan's victims have not been outspoken in the past about either their support or anti-death penalty feelings.

The events tentatively scheduled for the next 20 days are:

* **Saturday, November 26th** - A large-scale demonstration is being planned to "disrupt" Governor Ehrlich's schedule. There are tentative plans to try and find out what public functions the Governor will be attending on that day and large groups of people are going to mobilize to voice their opposition to the death penalty and Baker's execution. If his schedule can't be determined, then the group plans to protest outside of the Governor's Mansion with a time and place for both to be determined. The group had originally planned to protest outside of the Arbutus home of Ehrlich's parents, but this idea was dismissed by a majority of the group. [REDACTED] and another [REDACTED] trooper are planning to attend in a covert capacity.

* **Wednesday, November 30th** - A Town Hall meeting which may feature a call in from Baker with the time and place yet to be determined, to voice opposition to the death penalty and Baker's upcoming execution. This is also a national day of action in support of Stan "Tookie" Williams. Jamie Foxx - who starred in the movie Redemption which is about Williams - is showing the film in California and other locations area also likely to be showing the film. [REDACTED] and another [REDACTED] trooper are planning to attend the Town Hall event in Baltimore in a covert capacity.

* **Thursday, December 1st** - A prayer meeting may be held, time and place to be determined.

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* Saturday, December 3rd - Large demonstration outside of Supermax in Baltimore City, time to be determined. This should draw hundreds of protestors. [REDACTED] and another [REDACTED] trooper are planning to attend.

* Monday, December 5th - An around the clock vigil at Supermax is tentatively scheduled. Group members said executions have been done on the past in the evening of the first day on the death warrant.

Due to the above facts, I request that this case remain open.

Total Investigative time for [REDACTED] from 10/20/05 to 11/17/05 - 19 hours

November 28, 2005: Entry made by [REDACTED]

On November 26, 2005 at approximately 1300 hours, [REDACTED] of the Maryland State Police's Homeland Security and Intelligence Division attended a death penalty protest in a covert capacity. The rally was held at the Governor's Mansion in Annapolis. Prior to the event, [REDACTED] contacted the Annapolis Barrack, Annapolis City Police and MSP's Executive Protection Unit about the gathering.

There were approximately 30 protestors at the event which had been called in advance of next week's scheduled execution of Wesley Baker. In attendance were representatives of church groups, victim's groups, family members of Baker and death Row inmate Vernon Evans, member of the Campaign to End the Death Penalty, members of the International Socialist Organization and also members of the Baltimore Coalition Against the Death Penalty.

The group started out with chants and holding signs to passing motorists near church circles; when members were told by Department of General Services Police that they could not block the walkway on the Mansion side, the protestors immediately moved to the other side of the street. After approximately 1 hour the group marched around the Governor's Mansion and gave speeches on Lawyer's Mall. There were no disturbances at the protest and no problems were detected by the covert troopers. The protestors left the scene without incident.

The venues for events in Baltimore City on November 30th and December 1st were gathered at the protest and this information was sent to the Baltimore City Police's Intelligence Division.

Due to the above facts, I request that this case remain open.

Total Investigative time for [REDACTED] from 11/17/05 to 11/28/05 - 8 hours

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December 21, 2005: Entry made by [REDACTED]

On Wednesday, November 30, 2005, [REDACTED] of the Maryland State Police's Homeland Security and Intelligence Division attended a meeting/rally in a covert capacity in Baltimore City regarding the upcoming scheduled execution of Wesley Baker. The meeting was held at a church meeting hall on North Charles Street and Baltimore City Intelligence Division was notified about the event and attendance by the troopers.

The meeting was approximately 2 hours long and was attended by approximately 30 people including attorneys for condemned inmate Baker, family members of death row inmate Vernon Evans, state and city legislators and community activists. No plans were discussed at this meeting to cause any civil disruptions during the run-up or during the week that Baker is scheduled to be executed.

On December 3, 2005 [REDACTED] also attended an anti-death penalty protest outside of Supermax Prison in Baltimore City. [REDACTED] attended in a covert capacity and were covered by two covert officers from Baltimore City Police's Intelligence Division. Baltimore Police also had a command van nearby in case of problems.

There were at least 100 people at the protest which lasted approximately 1 1/2 hours. The group held signs and marched in circle in front of Central Booking before walking around the prison and then ending with speeches by activists and politicians who are against the death penalty. Traffic was not disrupted and no protesters caused any problems.

There was one counter-demonstrator who drove by and gave protesters the finger and then came out of his vehicle and tried to heckle speakers. Some protesters spoke to him at the side of the crowd and, after exchanging views, the man left. His identity was not determined. There were no other problems at the event.

Information was obtained that protesters plan to be outside of Supermax from 1700 hours to midnight starting Monday, December 5th until Baker is executed. There is no intelligence to indicate that anyone in the group is planning to cause any disruptions or practice any type of civil disobedience.

In a report in The Baltimore Sun on December 2, 2005 outspoken death penalty supporter Fred Romano - whose sister was murdered by the last man executed in Maryland - said he plans to come out to Supermax on Monday to voice his support for the execution. Romano said that unlike his vocal and confrontational protest at Steven Okon's execution in 2004, he would like to be more low-key. Members of the family and friends of the victim of Wesley Baker have granted interviews in recent days but several are not speaking to the media and it is unclear if any will join a protest in support of Baker's execution.

Available intelligence does not indicate that there will be problems at the protests during the week of Baker's scheduled execution. No members of protest groups have indicated that they want to cause problems or disruptions, although when the execution is carried out, emotions will high among the death penalty abolitionists. The family of the next man likely to be executed, Vernon Evans, have been at every protest and meeting of anti-death penalty groups and are very vocal about their opposition to all executions.

Baltimore City Intelligence officers have been notified that there will be several covert troopers in the protest groups starting Monday, December 5th to monitor for any problem spots or potential problems.

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On December 5, 2005 at approximately 1700 hours protestors began to gather outside of Supermax. Monitoring the demonstration were [REDACTED] Baltimore City Intelligence officer, tactical units from Baltimore City and the Maryland State Police and correctional officers. The crowd size fluctuated but approximately 30 protestors stayed in front of the Central Booking and Intake Facility until approximately 2045 hours when the group moved to near the main gate to the death chamber area. The group held signs and lit candles and sang songs outside of the gate until Baker's execution was announced just after 2130 hours. There were approximately three counter demonstrators but the two groups did not engage and everyone began leaving the area after 2230 hours. No problems were observed.

On December 20, 2005 [REDACTED] attended an organizational meeting for the Baltimore Coalition to End the Death Penalty in a covert capacity at the Friends Meeting Hall on York Road in Baltimore. There were approximately 14 people at the meeting and plans were discussed for future "Live from Death Row" speaking events at area churches. Earlier information sent out by the group about possible hunger strikes outside of the Governor's Mansion was not addressed. No other type of civil disturbances or illegal actions was discussed.

Due to the fact that activities are ongoing and another execution date is likely to be set in the next few weeks, I request that this case remain open.

Total Investigative time for [REDACTED] from 11/28/05 to 12/21/05 - 22 hours

January 13, 2006: Entry made by [REDACTED]

On Tuesday, January 10, 2006, [REDACTED] of the Maryland State Police's Homeland Security and Intelligence Division attended an anti-death penalty forum at Red Emma's coffee house on St. Paul Street in Baltimore City. [REDACTED] attended the meeting in a covert capacity.

The forum was attended by approximately 20 people and the speakers were Dr. Terry Fitzgerald, head of the Baltimore Coalition to End the Death Penalty, and Gwyn Bates, sister of death row inmate Vernon Evans. The forum was held to speak out against the death penalty and came the day after a death warrant was signed by a Baltimore County judge for Vernon Evans for the week of February 6, 2006.

Bates said during her emotional comments that she and her sisters wanted to do something "extraordinary" prior to her brother's execution to make the Governor and others in Maryland aware of their opposition to executions. She said they didn't want this to be a negative event, but rather something positive like telling the Governor that she loved him each time she went to an event he attended.

Tentative plans were set for more community meetings and protests to be held during the next month before the execution.

[REDACTED] also gave [REDACTED] an overview of the protest areas in the city for the pending execution.

On Thursday, January 12, 2006 [REDACTED] took photographs of the areas around Death Row and Central Booking for [REDACTED] to present at the briefing.

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for Field Operations Bureau troopers prior to the execution. The photographs are attached to this file. [REDACTED] also requested photographs of key members of Evans' family who may cause disruptions at upcoming demonstrations.

Total Investigative time for [REDACTED] from 12/21/05 to 01/13/06 - 22 hours

February 20, 2006: Entry made by [REDACTED]

On Saturday January 28, 2006, [REDACTED] of the Maryland State Police's Homeland Security and Intelligence Division attended an anti-death penalty rally in Annapolis at Lawyer's Mall. [REDACTED] attended the meeting in a covert capacity.

There were approximately 70 people at the rally which last approximately 1 1/2 hours. The group met at church circle, walked around the Governor's Mansion and then finished the rally at Lawyer's Mall with speeches. During the speeches members of Vernon Evan's family went into the State House to deliver a letter and petition to Governor Ehrlich. They were told hold to submit such items and came back outside. No intelligence about any disturbances at upcoming protests in the run-up to the execution was discussed.

Also attending the rally briefly were four members of the black separatist group the New Israelites who are easily recognizable by their mid-evil style clothing. The four men photographed the demonstrators, spoke with them briefly and then watched the rally for a short time from approximately 50 yards away. It is unknown their affiliation with the protest, if any, or their stance on the death penalty.

There were no problems observed and the rally ended without any disruptions.

On 01/31/2006, [REDACTED] attended the "Live From Death Row meeting at Grace Memorial Baptist Church, Eden and Chase Streets, Baltimore, MD. [REDACTED] attached a copy of [REDACTED] report to numbers in the case explorer file.

On February 4, 2006, [REDACTED] attended an anti-death penalty rally outside of Supermax Prison in Baltimore City in a covert capacity. There were approximately 75 to 100 people in attendance and the group protested under the highway overpass due to rainy weather then marched around the area housing death row inmates. Several people spoke at the event which last approximately 2 hours.

There were no disruptions at the event and no plans for any kind of civil disobedience the night of the execution were discussed.

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On February 6, 2006 at 0001 hours the death warrant for Vernon Evans went into effect and a protest was planned at Supermax Prison in Baltimore that night. That morning, the Maryland Court of Appeals stayed the execution for various reasons brought up on appeal and a hearing was scheduled before the court in May

Total Investigative Time for [REDACTED] from 1/13/06 to 2/20/06 - 23 hours

May 15, 2006: Entry made by: [REDACTED]

On April 18, 2006 [REDACTED] of the Maryland State Police's Homeland Security and Intelligence Division attended an organizational meeting of the Baltimore Coalition Against the Death Penalty. The meeting was attended by approximately a dozen activists and the topic was the upcoming march from Baltimore's death row to the Annapolis Court of Appeals. Logistics of the march were discussed and no intelligence was gathered about any possible disruptions during the march or court hearing.

On April 24, 2006 [REDACTED] sent a memo to the commanders of agencies involved in the May 6th-8th march to outline the Coalitions plans. The memo was sent to MSP Annapolis, Executive Protection, Annapolis City Police, Anne Arundel County Police, Baltimore City Police and Department of General Services Police.

[REDACTED] advised that the march is kicking off at 0900 hours on May 6th at Supermax in Baltimore City and the group is marching to St. Alban's Episcopal Church in Glen Burnie where they will stay the night. The next day the group is marching to the Asbury United Methodist Church in Arnold starting at 1000 hours. On Monday the 8th, the group is leaving Arnold at 0800 to march the 4.5 miles to the Court of Appeals in Annapolis. There is one group member responsible for getting the appropriate permits for the walk and to contact police along the route.

The group is planning a demonstration outside of the courthouse while the hearing is going on and some members are going into the courtroom to bear "silent witness". At a similar hearing last year for Evans there was one person outside and 10 inside. Like last year, they are very aware that anything they do outside or inside the courthouse could impact Evans' case so they are not planning to be disruptive. The group has not caused problems at past demonstrations. However, this event could cause disruptions to traffic along the march route.

The march organizers have no idea how many people are going to be involved in the entire march but [REDACTED] estimated that that there would be no more than 15 due to the length of the journey. There were 17 people at last week's march organizing committee so they may be able to draw more supporters.

The group knows that drawing a crowd to the hearing will be hard since it is a weekday and they are appealing to senior citizens who have more time. [REDACTED] anticipated a similar size crowd as last year's hearing, although there could be more due to the march and the increased focus on the death penalty.

The court hearing is scheduled to begin at 0800 hours on the 8th because there are four arguments the court is hearing in Evans' case and each is scheduled for an hour. Since the protest is not slated to begin until at least 1030 hours, [REDACTED] suggested that

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the [REDACTED] be at the courthouse at 1000 hours. There are no plans by protesters to be at the courthouse earlier although some of Evans' family members may be at the courthouse to hear all of the arguments.

On April 28, 2006, [REDACTED] attended a meeting of law enforcement agencies to discuss the march and the law enforcement response. Members of all affected agencies attended and no further intelligence was gathered from the meeting. [REDACTED] briefed the agencies about the information obtained to date.

On May 2, 2006, [REDACTED] attended a meeting at Grace Memorial Baptist Church of activists to further plan for the march. [REDACTED] said approximately 10 people were at the meeting he Vernon Evans called and [REDACTED] got to speak to him. The meeting mainly covered the logistics for the march this weekend and [REDACTED] was able to get a copy of the schedule, which had not changed since the previous bulletin had been sent out by [REDACTED]

[REDACTED] said that the coalition members at this meeting were stressing the importance of a peaceful demonstration. They did mention a small group of protestors will rally at the court house in Annapolis on Monday the 8th. [REDACTED] said the group didn't know an accurate number of people who will march and did not seem organized.

The above information was sent to the agencies affected by the march via e-mail on May 3, 2006.

On May 8, 2006, [REDACTED] responded to the Court of Appeals in a covert capacity to monitor the hearing and protest. Throughout the weekend [REDACTED] got updated march numbers from Anne Arundel County Police Intelligence Section and relayed that information to [REDACTED] of the Annapolis Barrack. There were approximately 20 marchers the first day, 13 on Sunday and five people finished the march on Monday.

Approximately 6 protestors stood outside of the courthouse for a short time and then came into the courtroom. The hearing lasted approximately 2 ½ hours and there were approximately 20 anti-death penalty activists inside for the hearing.

There were no disruptions inside or outside of the hearing room and the crowd left after the hearing was concluded.

No further intelligence has been obtained yet about upcoming events but the situation will be monitored. A decision from the court is not expected until Fall and if denied, a new execution date could be set at least a month after the decision is first published.

Total Investigative Time for [REDACTED] from 02/20/06 to 05/15/06 - 19 hours

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On October 4, 2005 [REDACTED] of the Maryland State Police Homeland Security and Intelligence Division attended a meeting of the Pledge of Resistance, Baltimore, in a covert capacity [REDACTED]

There were approximately 15 people at the weekly meeting and most of the time was spent talking about the anti-war protests in Washington, D.C. the week before and the mass arrest in front of the White House. Brief information about an upcoming protest at the National Security Agency was discussed and passed on via [REDACTED] to NSA officials. The protest will commence at NSA at approximately 1200 hours for a peace week gathering and numbers of protestors who will be attending from the Pledge could not be determined.

If further information develops about Pledge or NSA activities it will be given to the appropriate people.

Total Investigative Time for [REDACTED] - 9 hours

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Case Report



Thursday, September 07, 2006

Washington / Baltimore



High Intensity Drug Trafficking Area

Case



Explorer



Sep-07-06 14:12 From:MSP/HSID

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Case Information

Case Number : [REDACTED] Reference ID : [REDACTED]

Created By: [REDACTED] 7/13/2005 1:37:07 PM

Modified By: [REDACTED] 10/4/2006 4:05:49 PM

| | | | |
|--------------------|-----------------------|--------------------|---|
| Date Opened : | 7/13/2005 12:00:30 PM | Primary Crime: | AA MSP: Terrorism - Anti Govern |
| Disposition : | Closed | Secondary Crime(s) | AA MSP: Terrorism - Anti-War Protestors |
| Disposition Date : | 7/14/2005 9:50:30 AM | | |
| Source : | | | |
| Location : | | | |

| | | | |
|----------------|------------|-------------------|--|
| Case Manager : | [REDACTED] | ID/Badge Number : | |
| Phone Number : | [REDACTED] | Extension : | |
| Crime Date : | | | |

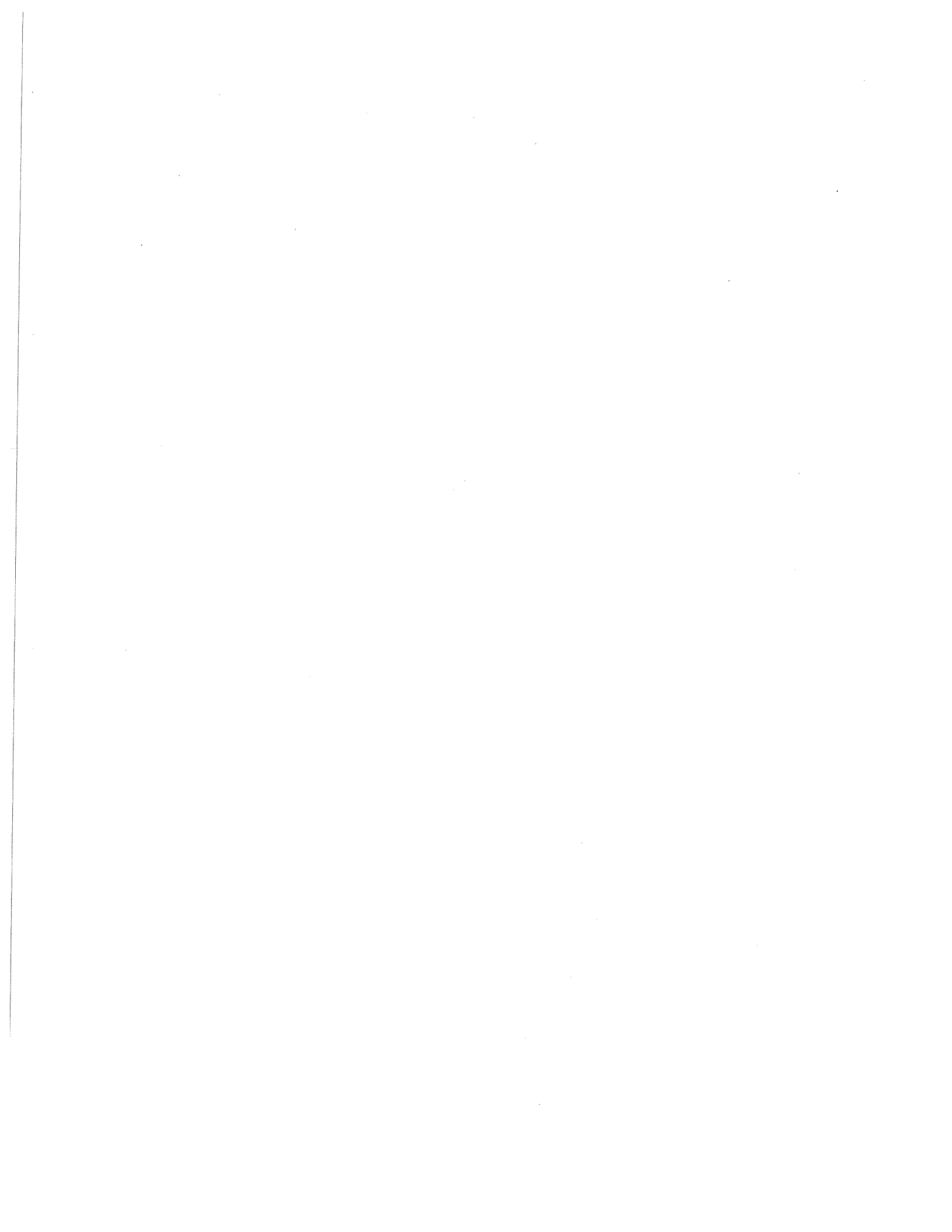
Assigned Agency Maryland State Police ORI :

Involved Agency(s) :
No Involved

Case Statistics

| | |
|---------------|---|
| People | 1 |
| Addresses | 1 |
| Numbers | 1 |
| Vehicles | 0 |
| Drugs | 0 |
| Organizations | 1 |
| Firearms | 0 |

*These entities may or may not be printed



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T-226 P.025/043 F-137

Person Information

Person : Obuszewski, Max [REDACTED]

Created By: [REDACTED] 7/13/2006 4:33:11 PM

Modified By: [REDACTED] 7/13/2006 4:38:19 PM

| | | | |
|---------------|------------|---------------|------------|
| Involvement : | PRIMARY | Hair Color : | Brown |
| First Name : | Max | Eye Color : | Brown |
| Middle Name : | John | Height : | 5ft 11in |
| Last Name : | Obuszewski | Weight : | 160 lbs |
| Suffix : | | Race : | White |
| Sex : | Male | Nationality : | |
| Moniker(s) : | | Birthdate : | [REDACTED] |
| | | Age : | 60 |

Social Security # [REDACTED]

State ID : [REDACTED]

FBI #: [REDACTED]

Local ID : [REDACTED]

Notes :

Head of Pledge of Resistance. See case explorer case [REDACTED] for full criminal history and further details.

Charges :

No Charges

Associations :

[ORG] Pledge of Resistance Member [PERSON] Obuszewski, Max [REDACTED]
[PERSON] Obuszewski, Max [REDACTED] Lives At/With [ADDRESS] [REDACTED]

Scars, Marks & Tattoos :

No SMTs (Scars, Marks, Tattoos)

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Address Information

Address : [REDACTED]

Created By: [REDACTED] /13/2005 4:38:29 PM

Modified By: [REDACTED] /7/13/2005 4:39:06 PM

Building Number : [REDACTED]

City : [REDACTED]

Street : [REDACTED]

State : [REDACTED]

Street Type : [REDACTED]

Zip : [REDACTED]

Direction : [REDACTED]

County : [REDACTED]

Apartment : [REDACTED]

Country : United States of America

P.O. Box : [REDACTED]

Notes :

No Notes

Associations :

[PERSON] Obuszowski, Max [REDACTED] Lives At/With [ADDRESS] [REDACTED]

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Number Information

Number : Meeting Information

Created By: [REDACTED] 10/4/2005 4:05:31 PM

Modified By: [REDACTED] 10/4/2005 4:05:49 PM

| | | | |
|-----------------|-------------|----------|---------------------|
| Number Type : | Document ID | Number : | Meeting Information |
| Pin/Extension : | | | |

Notes :

No Notes

Associations :

No Associations



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Vehicle Information

No information

Sep-07-06 14:13 From=MSP/HSID

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Drug Information

No information

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Organization Information

Organization : Pledge of Resistance

Created By: [REDACTED] 7/13/2005 4:39:12 PM

Modified By: [REDACTED] 7/13/2005 4:39:24 PM

Organization : Pledge of Resistance | **Type :** Security Threat Group

Notes :

No Notes

Associations :

[ORG] Pledge of Resistance Member [PERSON] Obuszewski, Max [REDACTED]

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4102000752

T-226 P.031/043 F-137

Firearm Information

No information

Sup-07-06 14:13 From:MSP/HSID

4102900752

T-226 P 032/043 F-137

Narrative

Narrative :

Created By: [REDACTED] 7/13/2005 1:37:07 PM

Modified By: [REDACTED] 7/13/2005 4:44:29 PM

On July 11, 2006 at approximately 1930 hours [REDACTED] of the Maryland State Police's Homeland Security and Intelligence Division attended a meeting of the protest group Pledge of Resistance. [REDACTED] attended the meeting in a covert capacity. [REDACTED]

The meeting was held at the American Friend's Service Committee on Park Road in Baltimore and seven people attended the meeting. The group is led by Max Obuszewski. In attendance was an activist named Bernie, no further information, who is also active in anti-death penalty and anti-war causes, and five middle-aged women who only gave their first names.

The first topic discussed by the group was a recent meeting of several Pledge members with United States Congressman Ben Cardin at his Baltimore office. The group had four "demands" of Cardin which included him signing a resolution asking the President for a timetable for withdrawal of American troops from Iraq. They discussed a scheduled meeting that they have with Cardin on July 27, 2005 at 1400 hours at his Washington, D.C. office. The meeting is formal, has an agenda and was set by Cardin's scheduler so the group is not going to Cardin's office unannounced.

The second item on the agenda was talking about "First Thursday" protests against the war which are held the first Thursday of each month on Charles Street near the Washington Monument. The group holds signs opposing the Iraq war from approximately 1700 to 1830 hours. They said that on a normal Thursday approximately 10 people attend the event.

The third topic discussed was the July 2, 2005 protest that the group held at the National Security

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T-227 P.032/043 F-137

Narrative

Narrative :

Created By: [REDACTED] /13/2005 1:37:07 PM

Modified By: [REDACTED] /13/2005 4:44:29 PM

On July 11, 2005 at approximately 1930 hours [REDACTED] of the Maryland State Police's Homeland Security and Intelligence Division attended a meeting of the protest group Pledge of Resistance. [REDACTED] attended the meeting in a covert capacity [REDACTED]

The meeting was held at the American Friends Service Committee on York Road in Baltimore and seven people attended the meeting. The group is led by Max Obuszewski. In attendance was an activist named Bernie, no further information, who is also active in anti-death penalty and anti-war causes, and five middle-aged women who only gave their first names.

The first topic discussed by the group was a recent meeting of several Pledge members with United States Congressman Ben Cardin at his Baltimore office. The group had four "demands" of Cardin which included him signing a resolution asking the President for a timetable for withdrawal of American troops from Iraq. They discussed a scheduled meeting that they have with Cardin on July 27, 2005 at 1400 hours at his Washington, D.C. office. The meeting is formal, has an agenda and was set by Cardin's scheduler so the group is not going to Cardin's office unannounced.

The second item on the agenda was talking about "First Thursday" protests against the war which are held the first Thursday of each month on Charles Street near the Washington Monument. The group holds signs opposing the Iraq war from approximately 1700 to 1830 hours. They said that on a normal Thursday approximately 10 people attend the event.

The third topic discussed was the July 2, 2005 protest that the group held at the National Security Agency near Ft. Meade. Obuszewski explained that since approximately 1996, the Pledge of Resistance and other like-minded groups have held a protest at NSA each July 4th. He said they have been cited and arrested for trespassing in previous years. Obuszewski said that this year they wanted to try surprise tactics and catch the NSA with "their pants down". Obuszewski said that the Baltimore City Police Department spies on Pledge members from a nearby parking lot and also monitors the Internet to try and find out where they are planning to protest. For these reasons they decided to change the protest date, he said.

Obuszewski said the group of six people that went to NSA contacted each other only by telephone and did not announce their plans to hold the protest early to anyone but those who planned to attend. He sounded very excited when retelling the events because he said that the officers at the gate clearly did not know they were coming and sent out a plain clothes officer to meet with them, then a female also in plain clothes and also had a white government van watching them. Obuszewski said that they brought a table and chairs, Berger cookies to share with the NSA and drinks for the event. He said they went to the area they were told to go to but he and another woman stayed at the guard station and demanded to speak with an official about their concerns. He said they were ultimately given a citation for trespassing but were not physically detained. The protestors not near the gate were questioned by NSA security but most said they refused to provide any personal details to the officers. The meeting members said that they often didn't carry identification to protests for this reason.

Obuszewski and others at the meeting told me that they were concerned about the surveillance they thought they were occasionally under so they sometimes did hold events that were not announced to the public via Internet sites. They said they believe that their e-mails may also be monitored by the Federal Bureau of Investigation. Obuszewski then briefed the members about the organization of the Joint Terrorism Task Forces across the country and how part of their duties was to watch groups such as Pledge of Resistance.

The next item discussed was a planned rally in Washington, D.C. on September 26, 2005 to oppose the war in Iraq. Obuszewski said this was being held two days after a much larger rally being organized by the group ANSWER in which thousands of people from all over the country are expected to converge on the Capital and White House to protest the war. He said that the September 26th rally was being held by the National Call for Non-Violent Resistance and the group United for Peace and Justice. He said that they are expecting a large group on the 26th but not nearly as large as the weekend rally.

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The groups tentatively plan to assemble with a permit on the Ellipse and form two lines with the protestors on one side wearing cardboard signs with names of American troops killed in Iraq and the other side with names of Iraqis killed in the war. He said they were going to try and find photographs of as many people as possible to wear below their names. Obuszewski said that at a yet-to-be-determined time, the group was going to try and form a human circle around the perimeter of the White House. After doing this he said the group would then move to Lafayette Park across from the front entrance to the White House. Obuszewski said that they would not have a permit for this area so everyone would have to split up into groups of 9 - since he said no permits are needed for groups with fewer than 10 people. He said each group would then try and get up to the fence surrounding the white house and place the name card and photographs through the fence and on to the White House lawn.

Obuszewski said that by putting the photos and cards on the lawn that the protestors will likely be arrested, so anyone participating will be told this before they go to the fence. He and others attending the meeting said they wanted to keep this part of the plan secret so that the police would not be aware of what they were going to do. Details of this part of the event will not be on the Internet or any advertisements about the event, he said. Since there are only a few people aware of this information, including [REDACTED] care should be used when disseminating the above intelligence.

On July 13, 2005 [REDACTED] contacted NSA security officer [REDACTED] to brief [REDACTED] about the above information pertaining to the July protest. A copy of this report was also attached on the case explorer entry for the NSA event [REDACTED]. [REDACTED] said he would contact any other agencies who may be affected by any of the above information.

I request that this case be closed until further information is developed.

Total Investigative Time for [REDACTED] - 9 hours

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4102900752

T-227 P.034/043 F-137

Case Report

Thursday, September 07, 2006

Washington / Baltimore



High Intensity Drug Trafficking Area

Case



Explorer



Sep-07-06 14:38 From:MSP/HSID

4102900752

T-227 P.036/043 F-137

Case Information

Case Number : [REDACTED] Reference ID : [REDACTED]

Created By: [REDACTED] 8/15/2005 11:36:29 AM

Modified By: [REDACTED] 9/7/2006 10:59:30 AM

Date Opened : 8/15/2005 11:05:30 AM

Disposition : Pending

Disposition Date : 8/17/2005 2:20:30 PM

Source :

Location :

Primary Crime: AA MSP: Terrorism - Anti-War Protestors

Secondary Crime(s)

AA MSP: Terrorism - Anti Govern

Case Manager : [REDACTED]

ID/Badge Number :

Phone Number : [REDACTED]

Extension :

Crime Date :

Assigned Agency Maryland State Police

ORI :

Involved Agency(s) :

No Involved

Case Statistics

| | |
|---------------|---|
| People | 1 |
| Addresses | 1 |
| Numbers | 0 |
| Vehicles | 1 |
| Drugs | 0 |
| Organizations | 1 |
| Firearms | 0 |

*These entities may or may not be printed

Sep-07-06

14:38

From:MSP/HS10

4102900752

T-227

P 036/043

F-137

Person Information

Person : Obuszewski, Max [REDACTED]

Created By [REDACTED] /16/2005 3:04:29 PM

Modified By [REDACTED] /16/2005 3:34:55 PM

| | | | |
|---------------|------------|---------------|---------------|
| Involvement : | OTHER | Hair Color : | Brown |
| First Name : | Max | Eye Color : | Brown |
| Middle Name : | John | Height : | |
| Last Name : | Obuszewski | Weight : | 160 lbs |
| Suffix : | | Race : | White |
| Sex : | Male | Nationality : | United States |
| Moniker(s) : | | Birthdate : | [REDACTED] |
| | | Age : | 60 |

Social Security # [REDACTED]

State ID : [REDACTED]

FBI # : [REDACTED]

Local ID : [REDACTED]

Notes :

Member of Pledge of Resistance, a group which advocates civil disobedience.

Charges :

No Charges

Associations :

[PERSON] Obuszewski, Max [REDACTED] Lives At/With [ADDRESS] [REDACTED]
[PERSON] Obuszewski, Max [REDACTED] Owner [VEHICLE] Plymouth Van 178M1343

Scars, Marks & Tattoos :

No SMTs (Scars, Marks, Tattoos)

Sep-07-06 14:38 From-MSP/HSID

4102900762

T-227 P 037/043 F-137

Address Information

Address : [REDACTED]

Created By: [REDACTED] /16/2005 3:06:35 PM

Modified By: [REDACTED] /16/2005 3:06:49 PM

Building Number : [REDACTED]

Street : [REDACTED]

Street Type : [REDACTED]

Direction : [REDACTED]

Apartment : [REDACTED]

P.O. Box : [REDACTED]

City : [REDACTED]

State : [REDACTED]

Zip : [REDACTED]

County : [REDACTED]

Country : United States of America

Notes :

No Notes

Associations :

[PERSON] Obuszewski, Max [REDACTED] Lives At/With [ADDRESS] [REDACTED]

Number Information

No information

Vehicle Information

Vehicle : Plymouth Van 178M343

Created By: [REDACTED] 8/16/2005 3:06:49 PM

Modified By: [REDACTED] 8/16/2005 3:06:58 PM

| | | | |
|---------|----------|-----------------|-------------------|
| Make : | Plymouth | State : | Maryland |
| Model : | Van | License Plate : | 178M343 |
| Year : | 1993 | VIN : | 2P4gh2539pr309273 |
| Color : | Blue | | |

Notes :

No Notes

Associations :

[PERSON] Obuszewski, Max [REDACTED] Owner [VEHICLE] Plyrnouth Van 178M343

Drug Information

No information

Organization Information

Organization : Pledge of Resistance

Created By: [REDACTED] 8/16/2005 3:47:08 PM

Modified By: [REDACTED] 8/16/2005 3:47:48 PM

Organization : Pledge of Resistance | **Type :** Security Threat Group

Notes :

No Notes

Associations :

No Associations

Firearm Information

No information

Narrative

Narrative :

Created By: [REDACTED] 8/15/2005 11:36:30 AM

Modified By: [REDACTED] 9/7/2006 10:59:30 AM

On August 8, 2005 [REDACTED] of the Maryland State Police Homeland Security and Intelligence Division attended a protest rally and ceremony at Johns Hopkins University in Baltimore to commemorate the dropping of the atomic Bomb on Nagasaki, Japan during World War II. The rally was also held to protest weapons research at the University's Applied Physics Laboratory. [REDACTED] attended the event in a covert capacity.

The rally started at 1700 hours and approximately 20 people stood at 34th and North Charles Street across the street from the school and the protestors held up anti-war, anti-weapons testing and anti-nuclear war banners to passing motorists. The protestors were careful not to block traffic or obstruct any pedestrians.

At approximately 1800 hours the group moved to a gazebo in a sculpture garden on campus. Event organizer Max Obuszewski had gained permission to use the gazebo prior to the event from campus security. Obuszewski, who is head of the protest group Pledge of Resistance, said they have been holding the same event for years so security was aware of what they were doing.

The ceremony at the gazebo lasted approximately 1½ hours with poetry readings and songs. Local anti-war activist John Steinbach talked to the group about the history of nuclear weapons and the current situation with weapons. The group left the area after the event.

Prior to the rally [REDACTED] contacted Baltimore City Police Intelligence Section [REDACTED] to inform [REDACTED] about the event and advise him of the trooper's covert presence at the event. Uniformed members of the University Police force were at both the rally and the ceremony.

Rally participants were not observed breaking any laws. Obuszewski and an unidentified white male in his mid-30s talked to the group briefly about going to the Pentagon earlier that day to protest the war and they also mentioned the September 24th anti-war rally in Washington, D.C. Nothing else of intelligence value was discussed.

Due to the above facts, I request that this case be closed.

Total Investigative Time for [REDACTED] 13 hours