1991

Book Review: "Racial Matters": The FBI's Secret File on Black America, 1968-1972. by Kenneth O'Reilly.

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that he was a bad judge? Or don't the people of California know which values they share?

In sum, Grodin's odyssey is a fascinating one, but he does not convince this reader that the voters were wrong.

"RACIAL MATTERS": THE FBI'S SECRET FILE ON BLACK AMERICA, 1968-1972. By Kenneth O'Reilly.[1] New York: Free Press, 1989. Pp. vii, 456. Cloth, $24.95.

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The 1988 movie "Mississippi Burning" depicted the FBI as a protector of blacks. Led by Gene Hackman, its agents streamed into Mississippi to do battle with bigots and the Klan. Although "Mississippi Burning" simply reiterated in a somewhat more fictionalized form the heroic portrayal of the FBI's role in the fight for racial justice already presented by Don Whitehead in his 1970 book *Attack on Terror*[3] and by the 1975 made-for-television movie of the same title, it became the target of vocal critics, such as Coretta Scott King, who complained that, among other things, the film grossly overstated both the FBI's commitment to the cause of civil rights and its contributions to the success of the civil rights movement.[4] Professor Kenneth O'Reilly's compelling account, *Racial Matters*, proves beyond question that the critics were correct. O'Reilly demonstrates that, far from protecting the civil rights movement, for about a decade in the 1960s and early 1970s the FBI waged war on black America. He leaves in doubt only the motivation behind the Bureau's attack.

Racial Matters is the sort of first-rate monograph O'Reilly's earlier writing on the subject would lead one to expect.[5] It is, to be

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3. D. WHITEHEAD, ATTACK ON TERROR (1970).

4. *See*, Champlin, *'Burning' Issue: How Much to Alter Fact to Fuel Drama*, L.A. Times, Jan. 24, 1989, VI, at 1, cols. 4-5.

5. In recent years O'Reilly has focused his critical gaze on the FBI's relations with black America, producing several important articles and papers on that topic. *See, e.g.*, O'Reilly, *The Roosevelt Administration and Black America: Federal Surveillance Policy and Civil Rights During the New Deal and World War II Years*, 48 PHYLON 12 (1987); *The FBI and the Civil Rights Movement During the Kennedy Years—From the Freedom Rides to Albany*, 54 J.S. HIST. 201 (1988) (hereinafter cited as O'Reilly, *Kennedy Years*); *The FBI and the Politics of Riots*, 1964-1968, 75 J. AM. HIST. 91 (1988)((hereinafter cited as O'Reilly, *Riots*); The FBI and the NAACP, paper presented at the Annual Meeting of the Organization of American Historians (Mar. 24, 1990). *See* Belknap, *Above the Law and Beyond its*

sure, not a perfect book. O'Reilly mischaracterizes 18 U.S.C. § 242 as a conspiracy statute (p. 201) and erroneously reports that all three of the Ku Klux Klansmen responsible for the 1965 murder of white civil rights worker Viola Liuzzo were tried and acquitted in an Alabama state court (p. 221).[6] In addition, his Chapter 6 ("Klan Wars") is not as well organized as it might be.

On the whole, though, this is a very well written book. The prose is lively and hard-hitting, and O'Reilly makes his argument clearly and effectively. He also supports it with a wealth of evidence. Like his earlier books and articles, *Racial Matters* relies heavily on FBI documents, most of them obtained through use of the Freedom of Information Act. O'Reilly also employs records of the Department of Justice, the Central Intelligence Agency, Military Intelligence, and the Internal Revenue Service. In addition, he has consulted approximately seventy manuscript collections in presidential libraries and other archival repositories around the country and conducted more than seventy interviews.[7] His command of the secondary literature on both civil rights and the FBI is as impressive as his primary research.

O'Reilly establishes that the FBI did not do much to protect participants in the civil rights movement. The charges he levels are hardly new. Civil rights activists censured the Bureau repeatedly during the early 1960s. A Justice Department lawyer who attended the hearings which the Commission of Inquiry into the Administration of Justice in the Freedom Struggle held in Washington on May 25-26, 1962 reported:

> The Federal Bureau of Investigation was roundly criticized by many of the witnesses. . . . The general tenor of these criticisms was that the Special Agents were not interested at all in civil rights cases, were perfunctory in their investigations, did not pursue all available leads, and in several cases were outspokenly critical of those engaged in direct action in the Freedom Struggle.[8]

Reach: O'Reilly and Theoharis on FBI Intelligence Operations, 1985 AM. B. FOUND. RES. J. 201, 204 n.19.

6. Actually, only one of the three accused klansmen, Collie Leroy Wilkins, was tried and found not guilty in the first of two Alabama state trials. M. BELKNAP, FEDERAL LAW AND SOUTHERN ORDER 188-89 (1987). O'Reilly correctly reports that Wilkins was the only defendant in a second state trial (p. 189), and that all three klansmen were subsequently convicted on federal civil rights conspiracy charges (p. 193-94).

7. A majority of these interviews seem to have been conducted by telephone. While that method is not ideal, unless he is extremely wealthy, an historian based in Anchorage, Alaska has little choice but to rely heavily upon it.

8. Memorandum from Theodore R. Newman, Jr. to Burke Marshall (May 28, 1962), Box 31, Burke Marshall Papers, John F. Kennedy Presidential Library, Boston, Massachusetts. The Commission of Inquiry into the Administration of Justice in the Freedom Struggle, set up by the Congress of Racial Equality (CORE), was chaired by former First Lady Eleanor Roosevelt and Socialist party leader Norman Thomas. *See* M. BELKNAP, *supra* note 6, at 117.

Historians have echoed contemporary critics of J. Edgar Hoover's FBI, picturing it as an organization uninterested in civil rights and unwilling to exert itself to provide protection for those working to promote the cause of racial justice.[9]

While not the first scholar to fault the Bureau for failing to protect civil rights activists against white violence, O'Reilly offers far more evidence to substantiate the criticism than have his predecessors. He shows that Director Hoover regarded civil rights workers as troublemakers. FBI agents stood by while angry racists beat them, declining to make arrests or even to restrain the attackers. Indeed, the Bureau sometimes passed information about upcoming demonstrations to southern police departments that it knew had been infiltrated by the Klan, thus, however unintentionally, assisting Klansmen in attacking protesters. More worried about the state of its relations with southern lawmen than about the safety of black activists, the FBI showed little enthusiasm for enforcing the federal civil rights statutes that might have been used to punish this racist violence. Hoover insisted his agency could do little about the situation, because maintaining law and order was the job of state and local police, and if the Bureau usurped their responsibility it would be violating the Constitution.

In arguing that federalism precluded the FBI from protecting the targets of racist violence, O'Reilly notes, Hoover was echoing sentiments articulated by such Justice Department leaders as Robert F. Kennedy, who served as attorney general in his brother John's administration, and Burke Marshall, the assistant attorney general who ran the Kennedys' Civil Rights Division. That observation is not novel.[10] O'Reilly provides an important new insight, however, when he points out that the legal and constitutional scruples which kept Hoover and his superiors from providing the civil rights movement with federal protection did not keep them from subjecting it to federal surveillance. Viewing black activists as potential subversives and civil rights demonstrations as threats to law and order, the FBI determined to keep an eye on both. Hoover did not see any constitutional problem in monitoring the movement. Nor did officials in the Departments of Justice. The Kennedy administration viewed surveillance as more convenient and

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9. *See, e.g.*, M. BELKNAP, *supra* note 6, at 112-14; R. POWERS, SECRECY AND POWER 368 (1987); A. SCHLESINGER, JR., ROBERT KENNEDY AND HIS TIMES 291-93, 352-65 (1978); A. MATUSOW, THE UNRAVELING OF AMERICA 80 (1984). Somewhat less critical is C. BRAUER, JOHN F. KENNEDY AND THE SECOND RECONSTRUCTION 161-65, 289 (1977).

10. This reviewer made the same point several years ago. *See* Belknap, *The Vindication of Burke Marshall: The Southern Legal System and the Anti-Civil Rights Violence of the 1960s*, 33 EMORY L.J. 93, 94-98 (1984).

less controversial than aggressive enforcement of civil rights laws or the protection of civil rights workers. "Neither Robert Kennedy nor the attorneys in the Civil Rights Division were struck by the contradiction between the FBI's strict-constructionist posture on civil rights enforcement and its anything-goes activities in surveillance," O'Reilly asserts.

He offers not only a more penetrating analysis of Hoover's constitutional position than that presented by other writers, but also a harsher condemnation of the Bureau's record in the race relations area. According to O'Reilly, the FBI was guilty not merely of failing to protect civil rights activists from attacks by others but of itself assailing their movement. The Bureau went on the offensive in 1963. Before that, although Hoover was unsympathetic to the cause of integration and had assigned agents to investigate civil rights organizations from 1919 on in search of Communist or other subversive influences, he had avoided openly aligning his agency with the opponents of black equality. Through the 1940s and 1950s the Director sought to protect himself and the Bureau by not allowing his organization to become publicly identified with either side of what he recognized as a fundamental and divisive debate. When asked to enforce civil rights laws, such as the voting legislation Congress enacted in 1957 and 1960, Hoover's FBI dragged its feet and did as little as possible. The Director's obstructionism did not rise to the level of active opposition, however. As O'Reilly reports, "His real hope was that the civil rights movement would disappear on its own, that he personally would not have to expose himself to the risk of openly opposing it."

The August 1963 March on Washington, led by Dr. Martin Luther King, Jr., destroyed that hope. This huge demonstration, in which more than 200,000 Americans participated, demonstrated that the drive for racial equality was advancing with broad-based support. According to O'Reilly, "The March on Washington convinced Hoover that the civil rights movement would not wither away on its own, that he would have to smash it before it irreparably damaged his America." "Before the summer of 1963 ended," O'Reilly says, "the FBI began to transform what had been a holding action against black demands for justice and equality into a frontal assault on Dr. King and the movement he helped to lead."

The Bureau sought to head off what its leaders viewed as an impending social revolution by discrediting the civil rights crusade, seeking to portray it as tainted with communism. The principal target of this effort was Dr. King, one of whose advisors had formerly been active in the Communist party. The Bureau later tried to dis-

credit King in other ways, and disseminated derogatory information on other civil rights activists as well. Amidst the rioting that erupted in many of the country's urban ghettos during the period 1964-1968, the FBI escalated its war on black America, adding to an already pervasive surveillance operation a Ghetto Informant Program. It also initiated an aggressive counterintelligence program (COINTELPRO), designed to disrupt so-called "Black Hate Groups" by provoking conflict within and between such organizations. Late in the administration of President Lyndon Johnson, the Bureau launched an all-out attack on the tough-talking Black Panther Party that left several Panthers dead. As O'Reilly notes, "[o]f the thousands of domestic intelligence and counterintelligence investigations launched against black activists, only the Martin Luther King case rivaled the Panther case in its ferocity. . . . " He adds, in a kind of ironic summary of the Bureau's relationship with African-Americans during the period 1960-1972, "[t]he 1960s had begun with FBI agents standing by while southern lawmen beat black activists, and ended with FBI agents inciting police violence against black activists in the urban North."

Other scholars have discussed various facets of this attack on black activism. In his biography of Hoover, Richard Powers deals briefly with the Bureau's assault on the Panthers,[11] and David Garrow has written an entire book on its campaign to destroy Martin Luther King.[12] No scholar, however, has authored such a comprehensive account of the FBI's attack on civil rights activists and black militants nor developed such a coherent picture of what O'Reilly argues persuasively was in fact a war against the entire Afro-American community.

While castigating the Bureau for attacking black America, O'Reilly denigrates its vaunted skirmish with the Ku Klux Klan. "From beginning to end," he writes, "the Klan wars remained a sideshow to the real war against the black struggle for racial justice." Hoover disliked the Klan because it gave white supremacy a bad name, but he would not have undertaken the campaign glorified by Don Whitehead and "Mississippi Burning" if he had not been forced to do so. "Of all the FBI's counterintelligence programs . . . only the Klan effort resulted from outside pressure," O'Reilly explains. According to him, that "pressure came from the press and the White House, from Robert Kennedy and then from [his successor as attorney general] Nicholas Katzenbach, and from the civil rights movement itself."

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11. R. POWERS, *supra* note 9, at 458-60.
12. D. GARROW, THE FBI AND MARTIN LUTHER KING, JR. (1981).

O'Reilly stresses that the FBI preferred intelligence investigations and counterintelligence actions to gathering evidence for use in criminal prosecutions of Klansmen. By relying on spying and dirty tricks and staying out of court, he says, the FBI could avoid disrupting its good relations with southern police departments and could also "act without lawyers." Political scientist William W. Keller provides support for this argument. Keller agrees with O'Reilly that Hoover preferred the disruption and dirty tricks associated with the White Hate Groups COINTELPRO, launched by the Bureau in September, 1964, to criminal prosecution of the Klan, and that he did not reveal much of what this program involved to Attorney General Katzenbach.[13]

Nevertheless, O'Reilly's argument is not entirely persuasive. The sheer magnitude of the FBI's anti-Klan campaign suggests this was more than just a sideshow. By late 1965 the Bureau had more than 2,000 informants operating inside the KKK. Twenty percent of all Klan members, and even the grand dragon of one southern state, were working for the FBI. When civil rights workers Michael Schwerner, James Chaney, and Andrew Goodman disappeared near Philadelphia, Mississippi in June of 1964, the FBI dispatched 150 agents to search for them.[14] That same summer it sent fifty-three men to Athens, Georgia to investigate the murder by Klansmen of black Army Reserve Officer Lemuel Penn.[15] O'Reilly is right that the Bureau had to be pressured into making this massive commitment, but so did the White House and the Justice Department.[16] As he himself points out, there was a very practical reason for federal authorities to rely on a COINTELPRO rather than criminal prosecution to smash the KKK: southern juries seldom convicted white men for crimes of violence against blacks. Furthermore, when Justice Department lawyers managed to break this pattern and obtain guilty verdicts against the klansmen responsible for the deaths of Penn, Schwerner, Goodman, Chaney and Liuzzo, it did so with evidence gathered by the FBI, much of it acquired only because of the Bureau's extensive infiltration of the Klan.[17] In its combat with the KKK, the FBI was not the white knight depicted by its apologists. But as Richard Gid Powers observes, "Hoover directed massive investigations of racial violence in the South and he forestalled more violence by disrupting and even-

13. W. KELLER, THE LIBERALS AND J. EDGAR HOOVER 90-92 (1989).
14. M. BELKNAP, *supra* note 6, at 156.
15. *Id.* at 152.
16. *Id.* at 143-58.
17. *Id.* at 128-204.

tually destroying the South's network of murderous Klans."[18] In his eagerness to focus attention on the Bureau's sometimes vicious assault on black activists, O'Reilly gives the FBI a bit less credit for its "Klan Wars" than the Bureau probably deserves.

This problem is at most one of emphasis, however, and it does not seriously detract from an otherwise outstanding work. The only really disturbing feature of *Racial Matters* is O'Reilly's failure to provide a persuasive explanation for the FBI's conduct. The closest this book comes to illuminating the cause of the phenomenon it describes so brilliantly is a passage in which O'Reilly asserts that Hoover viewed "the black struggle. . . as a threat to his way of life, his bureaucracy, and his vision of a white Christian, and harmonious America." In several other places as well, O'Reilly attributes the Bureau's campaign against Afro-American activists to the Director's determination to preserve his own way of life. *Racial Matters* never describes that way of life, however, nor explains why Hoover believed that racial equality would destroy it. In his biography of the Director, Powers devotes two chapters to developing a picture of the value system that his subject acquired during a boyhood spent on Seward Square in the Capitol Hill section of Washington, D.C., then uses that value system to explain much of what Hoover did during his long career with the FBI.[19] O'Reilly fails to provide his readers with a comparable description of what it was Hoover thought he was defending. For that reason, his terse explanations for the Director's war on black America remain unconvincing.

They fail to persuade not only because of their brevity but also because much of his own evidence, as well as much that has been written by others, suggests a different explanation for Hoover's conduct. There is general agreement that Hoover was a manipulative bureaucrat, determined to advance his own and his Bureau's interests. Furthermore, he was capable of subordinating his personal predilections to bureaucratic considerations. For example, in 1953-1954, despite his intense hostility toward communists, Hoover terminated his once close relationship with Joe McCarthy, in order to protect his agency's image.[20]

A commitment to promoting the interests of the FBI also explains the Director's approach to racial matters. O'Reilly is no doubt correct in picturing Hoover as a racist who shared the convictions of diehard southern segregationists and had no use for the

18. R. POWERS, *supra* note 9, at 407.
19. *See* R. POWERS, *supra* note 9, at 5-35 and *passim*.
20. A. THEOHARIS & J. COX, THE BOSS 292-99 (1988).

idea of black advancement. But his racial views do not appear to be what determined FBI policies and priorities. As O'Reilly acknowledges, during the 1950s, "despite Hoover's personal hostility toward the integration movement, he would not commit the Bureau to the other side." In the early 1960s, the FBI subjected movement activists to surveillance but refused to provide them with protection. Elsewhere, O'Reilly explains why: "The Kennedys exerted little pressure on the FBI to protect civil rights workers, while they constantly pressured the FBI to do more of the thing that J. Edgar Hoover wanted to do all along—spy on civil rights workers."[21] In 1964 the Bureau went to war with the Ku Klux Klan, attacking terrorists and thereby providing security for the same movement it had so long opposed. As Powers explains, the reason was that "Lyndon Johnson had finally managed to persuade J. Edgar Hoover to order the FBI to enforce civil rights laws in the South in an aggressive and effective fashion."[22] When ghetto rioting made black militants the focus of public and presidential concern, Hoover went after them. His motivation, like that which had controlled his approach to racial matters for decades, was bureaucratic. As O'Reilly has written in an excellent article on the subject, "The president used the FBI director to cope with the political problems unleashed by the riots, and the director used the president to broaden his agency's domestic intelligence mandate."[23]

In other words, Hoover repeatedly gave his superiors what they wanted because that served the FBI's interests. Bureau policy altered in response to changes in presidential and Justice Department policy. But Justice and the White House were in turn responding to public opinion, as their dramatic turnaround on the protection issue following the disappearance of Schwerner, Goodman, and Chaney demonstrates.[24] If the FBI waged war on black America, then it must have done so because most of the time that is what most Americans wanted it to do. This interpretation is more consistent with the evidence than an explanation that focuses on Hoover's determination to protect his own vaguely-defined way of life. What *Racial Matters* suggests is a profoundly disturbing thought: the FBI's racism is our own.

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21. O'Reilly, *Kennedy Years*, *supra* note 5, at 205.
22. R. POWERS, *supra* note 9, at 408.
23. O'Reilly, *Riots*, *supra* note 5, at 92.
24. *See* M. Belknap, *supra* note 6, at 128-58.