

File #:

Released under the John F. Kennedy  
Assassination Records Collection Act of  
1992 (44 USC 2107 Note). Case#: NW  
65994 Date: 11-01-2021

62-AL-2368

Serial Scope:

1 thru 23

DO NOT  
DESTROY  
FCIPA# N/A

NR046 WA CODE

8:48PM NITEL 3-24-75 DEB

TO ALL SACS

FROM DIRECTOR

SENATE SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES

SENATOR FRANK CHURCH, CHAIRMAN OF THE SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES HAS MADE AN INITIAL REQUEST FOR INFORMATION FROM THE FBI. AMONG THE ITEMS REQUESTED IS A BREAKDOWN OF FIELD AGENT PERSONNEL ASSIGNED TO INTERNAL SECURITY AND COUNTERINTELLIGENCE MATTERS.

ACCORDINGLY, WITHIN FOUR EIGHT HOURS EACH SAC SHOULD SUTEL TO FBIHQ, ATTENTION: BUDGET AND ACCOUNTING SECTION, SETTING FORTH SEPARATELY THE NUMBER OF SACS, ASACS, SUPERVISORS AND AGENTS ASSIGNED TO INTERNAL SECURITY AND COUNTERINTELLIGENCE MATTERS. PERCENTAGES OF AN AGENTS TIME, WHEN NOT ASSIGNED FULL-TIME TO THESE ACTIVITIES, SHOULD BE USED IF APPROPRIATE, PARTICULARLY IN THE SUPERVISORY CATEGORIES. THIS INFORMATION SHOULD BE BROKEN DOWN SEPARATELY BETWEEN INTERNAL SECURITY AND COUNTERINTELLIGENCE. YOUR RESPONSE SHOULD BE LIMITED TO AGENT PERSONNEL ONLY.

END

*1cc  
dest.  
rec*

*done  
rec  
Open  
66 bad  
re info matter  
JL*

62-2368-1

~~66-2885~~

SEARCHED	INDEXED
SERIALIZED	FILED
MAR 24 1975	
FBI - ALBANY	

*Stoops*

F B I

Date: 3/26/75

004

Transmit the following in CODED  
(Type in plaintext or code)

Via TELETYPE NITEL  
(Priority)

TO: DIRECTOR, FBI *4% PAW*  
FROM: SAC, ALBANY  
ATTN: BUDGET AND ACCOUNTING SECTION.

SENATE SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES  
RE BUREAU TELETYPE TO ALL SACS DATED MARCH 24, 1975.

IN ACCORDANCE WITH INSTRUCTIONS SET FORTH IN REFERENCED  
BUREAU TELETYPE, THE FOLLOWING IS ALBANY DIVISION'S RESPONSE:

1 FIELD SUPERVISOR ASSIGNED TO INTERNAL SECURITY MATTERS  
AND SPENDS 40 PERCENT OF SUPERVISORY TIME. 23 AGENTS ASSIGNED  
ON PART-TIME BASIS TO INTERNAL SECURITY MATTERS AND THE PERCENTAGE  
OF TIME SPENT IS AS FOLLOWS:

8 AGENTS AT 5 PERCENT; 2 AGENTS AT 10 PERCENT; 2 AGENTS AT  
15 PERCENT; 2 AGENTS AT 20 PERCENT; 1 AGENT AT 30 PERCENT; 1  
AGENT AT 35 PERCENT; 2 AGENTS AT 45 PERCENT; 1 AGENT AT 50 PERCENT;  
1 AGENT AT 60 PERCENT; 2 AGENTS AT 75 PERCENT; 1 AGENT AT  
85 PERCENT.

1 FIELD SUPERVISOR ASSIGNED TO COUNTERINTELLIGENCE  
MATTERS AND SPENDS 40 PERCENT OF SUPERVISORY TIME. 23 AGENTS  
ASSIGNED ON A PART-TIME BASIS TO COUNTERINTELLIGENCE MATTERS AND  
THE PERCENTAGE OF TIME SPENT BY THESE AGENTS ON ~~62-2368-1A~~

17-ALBANY  
GLS/mma  
(1)

*1cc dest. [unclear]*  
*[Signature]*

SEARCHED  
SERIALIZED  
INDEXED  
FILED  
MAY 1 1975  
FBI - ALBANY

Approved: *[Signature]*  
Special Agent in Charge

Sent *[Signature]* Per *[Signature]*

62-2368-1A

F B I

Date:

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)

Via \_\_\_\_\_  
(Priority)

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COUNTERINTELLIGENCE MATTERS IS AS FOLLOWS:

6 AGENTS AT 5 PERCENT; 5 AGENTS AT 10 PERCENT;  
4 AGENTS AT 15 PERCENT; 2 AGENTS AT 30 PERCENT; 2 AGENTS  
AT 35 PERCENT; 1 AGENT AT 45 PERCENT; 2 AGENTS AT 60 PERCENT;  
1 AGENT AT 85 PERCENT.

END.

Approved: \_\_\_\_\_ Sent \_\_\_\_\_ M Per \_\_\_\_\_  
Special Agent in Charge

NR074 WA CODE

1936((((((((((((((((((((PM NITEL 5-2-75 MSE

TO ALL SACS

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SENSTUDY 75

CAPTIONED MATTER PERTAINS TO BUREAU'S HANDLING OF REQUESTS FROM SENATE AND HOUSE SELECT COMMITTEES TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES. IN CONNECTION WITH WORK OF THESE COMMITTEES, STAFF MEMBERS MAY SEEK TO INTERVIEW CURRENT AND FORMER FBI EMPLOYEES.

RECENTLY, THE SENATE SELECT COMMITTEE (SSC) STAFF HAS INTERVIEWED SEVERAL FORMER EMPLOYEES AND IT IS ANTICIPATED THAT MANY MORE SUCH PERSONNEL WILL BE CONTACTED.

THE FBI HAS PLEDGED FULL COOPERATION WITH THE COMMITTEE AND WE WISH TO ASSIST AND FACILITATE ANY INVESTIGATIONS UNDERTAKEN BY THE COMMITTEE WITH RESPECT TO THE FBI. HOWEVER, WE DO HAVE AN OBLIGATION TO INSURE THAT SENSITIVE SOURCES AND METHODS AND ONGOING SENSITIVE INVESTIGATIONS ARE FULLY

*cc destroyed  
5/1/75  
CR*

*Done  
62-DEAD  
RIC*

62-2368-1B

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MAY - 1 1975	
FBI - ALBANY	

*STOOPS*

**ADVISE ALL EMPLOYEES**

*Put in weekly memo for 5/8/75  
5/31/75*

PAGE TWO

PROTECTED. SHOULD ANY FORMER EMPLOYEE CONTACT YOUR OFFICE AND HAVE ANY QUESTION REGARDING HIS OBLIGATION NOT TO DIVULGE INFORMATION OBTAINED BY VIRTUE OF HIS PAST FBI EMPLOYMENT, HE SHOULD BE INSTRUCTED TO CONTACT LEGAL COUNSEL, FBIHQ, BY COLLECT CALL. YOUR CONVERSATIONS WITH FORMER EMPLOYEES MUST BE IN KEEPING WITH OUR PLEDGE. IT IS BELIEVED SUCH A PROCEDURE WOULD INSURE PROPER PROTECTION AND ALSO FACILITATE THE WORK OF THE SSC.

THE ABOVE PROCEDURE ALSO APPLIES TO CURRENT EMPLOYEES OF YOUR OFFICE. HOWEVER, CONTACT WITH THE LEGAL COUNSEL SHOULD BE HANDLED THROUGH THE SAC. //

END

HOLD

4/9/75

SENATE SELECT COMMITTEE  
SENSTUDY 75

Members:

Democrats

Frank Church - Idaho, Chairman

Gary Hart - Colorado

Philip A. Hart - Michigan

Walter D. Huddleston - Kentucky

Walter F. Mondale - Minnesota

Robert Morgan - North Carolina (Freshman)

Republicans

Howard R. Baker, Jr. - Tennessee, Vice Chairman

Barry M. Goldwater - Arizona

Charles M. C. Mathias, Jr. - Maryland

Richard S. Schweiker - Pennsylvania

John G. Tower - Texas

*all SEA's*  
*Bing*  
*Burl*  
*Utica*  
*Synacuse*  
*Plattsburgh*  
*Alen*  
*Montplier*  
*Watertown*  
*Rutland*  
*Ithaca*  
*ASAC*  
*Desk #4*  
*Desk #5*  
*Dead*

62-2368-2

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APR 11 1975	
FBI - NEW YORK	

*[Handwritten signature]*

HOUSE COMMITTEE TO INVESTIGATE INTELLIGENCE  
AGENCIES

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Members:

Democrats

Lucian N. Nedzi - Michigan, Chairman

Ronald V. Dellums - California

Don Edwards - California

Robert N. Giamo - Connecticut

James V. Stanton - Ohio

Michael J. Harrington - Massachusetts

Morgan F. Murphy - Illinois

Republicans

Robert McClory - Illinois

David C. Treen - Louisiana

Robert W. Kasten, Jr. - Wisconsin



NR 335 LA CODE

4:10PM NITEL 5-22-75 PAV

TO ALL SACS

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SENSTUDY - 75.

REBUTEL MAY 2, 1975.

IN CONNECTION WITH WORK OF THE SENATE AND HOUSE SELECT COMMITTEES, ITS REPRESENTATIVES MAY CONTACT YOUR OFFICE FOR INFORMATION.

IN ONE RECENT INSTANCE, A REPRESENTATIVE OF THE SENATE SELECT COMMITTEE TELEPHONICALLY INQUIRED AS TO IDENTITY OF SAC IN A PARTICULAR OFFICE DURING 1973.

IN HANDLING SUCH INQUIRIES INSURE ESTABLISHING BONA FIDES OF REPRESENTATIVE BY SHOW OF CREDENTIALS ON PERSONAL CONTACT OR, IF TELEPHONIC CONTACT, BY TELEPHONING BACK TO COMMITTEE. UNLESS INFORMATION IS OF A PUBLIC NATURE! AS IN THE INSTANCE CITED ABOVE, OBTAIN FBIHQ CLEARANCE PRIOR TO SUPPLYING ANY INFORMATION. FBIHQ MUST BE EXPEDITIOUSLY ADVISED OF ALL INFORMATION FURNISHED.

END

62-2368-2A

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MAY 20 1975	
FBI - ALBANY	

*Incorporated into Shero memo 5/20/75 mkt*

*1 cc det kee*



UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

May 28, 1975

MEMORANDUM TO ALL EMPLOYEES

RE: INTERVIEWS OF FBI EMPLOYEES

All employees are advised that Congress is conducting an inquiry into activities of the Federal Bureau of Investigation. Congressional staff members are conducting interviews of former and current FBI employees. This Bureau has pledged its cooperation with the Congress.

You are reminded of the FBI Employment Agreement (copy attached) with which you agreed to comply during your employment in the FBI and following termination of such employment.

Also, you are reminded of Title 28, Code of Federal Regulations, Section 16.22 (copy attached), which reads as follows:

"No employee or former employee of the Department of Justice shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without prior approval of the appropriate Department official or the Attorney General in accordance with Section 16.24."

Also, you are reminded of Department of Justice Order Number 116-56, dated May 15, 1956, (copy attached) which, among other things, requires an employee upon the completion of his testimony to prepare a memorandum outlining his testimony.

Our cooperative efforts, of course, must be consistent with the above cited authority. Therefore, if you are contacted for purpose of interview or testimony you are to request approval as required by the Employment Agreement and await authorization before furnishing information, testimony, or record material.

Enclosures (3)

*Clarence M. Kelley* 62-2368-3

Clarence M. Kelley  
Director

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SERIALIZED <i>DD</i>	FILED <i>DD</i>
JUN 16 1975	
FBI - ALBANY	



## EMPLOYMENT AGREEMENT

As consideration for employment in the Federal Bureau of Investigation (FBI), United States Department of Justice, and as a condition for continued employment, I hereby declare that I intend to be governed by and I will comply with the following provisions:

(1) That I am hereby advised and I understand that Federal law such as Title 18, United States Code, Sections 793, 794, and 798; Order of the President of the United States (Executive Order 11652); and regulations issued by the Attorney General of the United States (28 Code of Federal Regulations, Sections 16.21 through 16.26) prohibit loss, misuse, or unauthorized disclosure or production of national security information, other classified information and other nonclassified information in the files of the FBI;

(2) I understand that unauthorized disclosure of information in the files of the FBI or information I may acquire as an employee of the FBI could result in impairment of national security, place human life in jeopardy, or result in the denial of due process to a person or persons who are subjects of an FBI investigation, or prevent the FBI from effectively discharging its responsibilities. I understand the need for this secrecy agreement; therefore, as consideration for employment I agree that I will never divulge, publish, or reveal either by word or conduct, or by other means disclose to any unauthorized recipient without official written authorization by the Director of the FBI or his delegate, any information from the investigatory files of the FBI or any information relating to material contained in the files, or disclose any information or produce any material acquired as a part of the performance of my official duties or because of my official status. The burden is on me to determine, prior to disclosure, whether information may be disclosed and in this regard I agree to request approval of the Director of the FBI in each such instance by presenting the full text of my proposed disclosure in writing to the Director of the FBI at least thirty (30) days prior to disclosure. I understand that this agreement is not intended to apply to information which has been placed in the public domain or to prevent me from writing or speaking about the FBI but it is intended to prevent disclosure of information where disclosure would be contrary to law, regulation or public policy. I agree the Director of the FBI is in a better position than I to make that determination;

(3) I agree that all information acquired by me in connection with my official duties with the FBI and all official material to which I have access remains the property of the United States of America, and I will surrender upon demand by the Director of the FBI or his delegate, or upon separation from the FBI, any material relating to such information or property in my possession;

(4) That I understand unauthorized disclosure may be a violation of Federal law and prosecuted as a criminal offense and in addition to this agreement may be enforced by means of an injunction or other civil remedy.

I accept the above provisions as conditions for my employment and continued employment in the FBI. I agree to comply with these provisions both during my employment in the FBI and following termination of such employment.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

Witnessed and accepted in behalf of the Director, FBI, on

\_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_  
(Signature)



Office of the Attorney General  
Washington, D. C. 20530

January 18, 1973

ORDER NO. 501-73

RULES AND REGULATIONS

**Title 28—JUDICIAL  
ADMINISTRATION**

**Chapter I—Department of Justice**

[Order 501-73]

**PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION**

**Subpart B—Production or Disclosure in Response to Subpenas or Demands of Courts or Other Authorities**

This order delegates to certain Department of Justice officials the authority to approve the production or disclosure of material or information contained in Department files, or information or material acquired by a person while employed by the Department. It applies where a subpoena, order or other demand of a court or other authority, such as an administrative agency, is issued for the production or disclosure of such information.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, Subpart B of Part 16 of Chapter I of Title 28, Code of Federal Regulations, is revised, and its provisions renumbered, to read as follows:

**Subpart B—Production or Disclosure in Response to Subpenas or Demands of Courts or Other Authorities**

- Sec.
- 16.21 Purpose and scope.
  - 16.22 Production or disclosure prohibited unless approved by appropriate Department official.
  - 16.23 Procedure in the event of a demand for production or disclosure.
  - 16.24 Final action by the appropriate Department official or the Attorney General.
  - 16.25 Procedure where a Department decision concerning a demand is not made prior to the time a response to the demand is required.
  - 16.26 Procedure in the event of an adverse ruling.

**AUTHORITY:** 28 U.S.C. 509, 510 and 5 U.S.C. 301.

**Subpart B—Production or Disclosure in Response to Subpenas or Demands of Courts or Other Authorities**

**§ 16.21 Purpose and scope.**

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") of a court or

other authority is issued for the production or disclosure of (1) any material contained in the files of the Department, (2) any information relating to material contained in the files of the Department, or (3) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status.

(b) For purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of, the Attorney General of the United States, including U.S. attorneys, U.S. marshals, and members of the staffs of those officials.

**§ 16.22 Production or disclosure prohibited unless approved by appropriate Department official.**

No employee or former employee of the Department of Justice shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without prior approval of the appropriate Department official or the Attorney General in accordance with § 16.24.

**§ 16.23 Procedure in the event of a demand for production or disclosure.**

(a) Whenever a demand is made upon an employee or former employee of the Department for the production of material or the disclosure of information described in § 16.21(a), he shall immediately notify the U.S. attorney for the district where the issuing authority is located. The U.S. attorney shall immediately request instructions from the appropriate Department official, as designated in paragraph (b) of this section.

(b) The Department officials authorized to approve production or disclosure under this subpart are:

(1) In the event that the case or other matter which gave rise to the demanded material or information is or, if closed, was within the cognizance of a division of the Department, the Assistant Attorney General in charge of that division. This authority may be redelegated to Deputy Assistant Attorneys General.

(2) In instances of demands that are not covered by paragraph (b) (1) of this section:

(i) The Director of the Federal Bureau of Investigation, if the demand is one made on an employee or former employee of that Bureau for information or if the demand calls for the production of material from the files of that Bureau, and

(ii) The Director of the Bureau of Prisons, if the demand is one made on an employee or former employee of that Bureau for information or if the demand calls for the production of material from the files of that Bureau.

(3) In instances of demands that are not covered by paragraph (b) (1) or (2) of this section, the Deputy Attorney General.

(c) If oral testimony is sought by the demand, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or his attorney, setting forth a summary of the testimony desired, must be furnished for submission by the U.S. attorney to the appropriate Department official.

**§ 16.24 Final action by the appropriate Department official or the Attorney General.**

(a) If the appropriate Department official, as designated in § 16.23(b), approves a demand for the production of material or disclosure of information, he shall so notify the U.S. attorney and such other persons as circumstances may warrant.

(b) If the appropriate Department official, as designated in § 16.23(b), decides not to approve a demand for the production of material or disclosure of information, he shall immediately refer the demand to the Attorney General for decision. Upon such referral, the Attorney General shall make the final decision and give notice thereof to the U.S. attorney and such other persons as circumstances may warrant.

**§ 16.25 Procedure where a Department decision concerning a demand is not made prior to the time a response to the demand is required.**

If response to the demand is required before the instructions from the appropriate Department official or the Attorney General are received, the U.S. attorney or other Department attorney designated for the purpose shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

**§ 16.26 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.25 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, in accordance with § 16.24, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. "United States ex rel Touhy v. Ragen," 340 U.S. 462.

Dated: January 11, 1973.

RICHARD G. KLEINDIENST,  
*Attorney General.*

[FR Doc.73-1071 Filed 1-17-73;8:45 am]

OFFICE OF THE ATTORNEY GENERAL

WASHINGTON, D. C.

May 15, 1956

ORDER NO. 116-56

It is the policy of the Department of Justice to extend the fullest possible cooperation to congressional committees requesting information from departmental files, interviews with department employees, testimony of department personnel, or testimony of Federal prisoners. The following procedures are prescribed in order to effectuate this policy on a basis which will be mutually satisfactory to the congressional committees and to the Department. [This order supersedes the Deputy Attorney General's Memorandum No. 5, dated March 23, 1953, and his Memorandum No. 97, dated August 5, 1954. It formalizes the Attorney General's press release of November 5, 1953, establishing procedures to permit committees of the Congress and their authorized representatives to interview and to take sworn testimony from Federal prisoners. It supplements Order No. 3229 (Revised) dated January 13, 1953, and Order No. 3464, Supplement No. 4 (Revised) dated January 13, 1953 (with Memorandum of "Authorization Under Order No. 3464 Supplement No. 4 (Revised)" dated January 13, 1953), insofar as said orders have reference to procedures to be followed in the Department's relations with congressional committees. In support of this order, reference should be had to the President's letter dated May 17, 1954, addressed to the Secretary of Defense, and to the Attorney General's Memorandum which accompanied it.]

A. REQUESTS FOR INFORMATION FROM DEPARTMENT FILES

1. Congressional committee requests for the examination of files or other confidential information should be reduced to writing, signed by the chairman of the committee, and addressed to the Deputy Attorney General, who is responsible for the coordination of our liaison with Congress and congressional committees. The request shall state the specific information sought as well as the specific objective for which it is sought. The Deputy Attorney General will forward the request to the appropriate division where a reply will be prepared and returned for the Deputy Attorney General's signature and dispatch to the chairman of the committee.

2. If the request concerns a closed case, i. e., one in which there is no litigation or administrative action pending or contemplated, the file may be made available for review in the Department, in the presence of the official or employee having custody thereof. The following procedure shall be followed in such cases:

a. The reply letter will advise the committee that the file is available for examination and set forth the name, telephone extension number, and room number of the person who will have custody of the file to be reviewed;

b. Before making the file available to the committee representative all reports and memoranda from the FBI as well as investigative reports from any other agency, will be removed from the file and not be made available for examination; provided however that if the committee representative states that it is essential that information from the FBI reports and memoranda be made available, he will be advised that the request will be considered by the Department. Thereafter a summary of the contents of the FBI reports and memoranda involved will be prepared which will not disclose investigative techniques, the identity of confidential informants, or other matters which might jeopardize the investigative operations of the FBI. This summary will be forwarded by the division to the FBI with a request for advice as to whether the FBI has any objection to examination of such summary by the committee representative. The file will not be physically relinquished from the custody of the Department. If the committee representative desires to examine investigative reports from other government agencies, contained in the files of the Department, he will be advised to direct his request to the agency whose reports are concerned.

3. If the request concerns an open case, i. e., one which litigation or administrative action is pending or contemplated, the file may not be made available for examination by the committee's representative. The following procedure shall be followed:

a. The reply letter should advise the committee that its request concerns a case in which litigation or administrative action is pending or contemplated, and state that the file cannot be made available until the case is completed; and

b. Should briefly set forth the status of the case in as much detail as is practicable and prudent without jeopardizing the pending contemplated litigation or administrative action.

**B. REQUESTS FOR INTERVIEWS WITH DEPARTMENTAL PERSONNEL**

1. Requests for interviews with departmental personnel regarding any official matters within the Department should be reduced to writing, signed by the chairman of the committee, and addressed to the Deputy Attorney General. When the approval of the Deputy Attorney General is given, the employee is expected to discuss such matters freely and cooperatively with the representative, subject to the limitations prescribed in A respecting open cases and data in investigative reports;

2. Upon the completion of the interview with the committee representative the employee will prepare a summary of it for the file, with a copy routed to his division head and a copy routed to the Deputy Attorney General.

C. EMPLOYEES TESTIFYING BEFORE CONGRESSIONAL COMMITTEES

1. When an employee is requested to testify before a congressional committee regarding official matters within the Department the Deputy Attorney General shall be promptly informed. When the Deputy Attorney General's approval is given the employee is expected to testify freely subject to limitations prescribed in A respecting open cases and data in investigative reports;

2. An employee subpoenaed to testify before a congressional committee on official matters within the Department shall promptly notify the Deputy Attorney General. In general he shall be guided in testifying by Order 3229 (Revised) and the President's letter of May 17, 1954, cited at the beginning of this Order.

3. Upon the completion of his testimony the employee will prepare a memorandum outlining his testimony with a copy routed to his division head and a copy routed to the Deputy Attorney General.

D. REQUESTS OF CONGRESSIONAL COMMITTEES FOR THE TESTIMONY OF FEDERAL PRISONERS

Because of the custodial hazards involved and the extent to which their public testimony may affect the discipline and well-being of the institution, it is the policy of the Department not to deliver Federal prisoners outside the penal institution in which they are incarcerated for the purpose of being interviewed or examined under oath by congressional committees. However, when it appears that no pending investigation or legal proceeding will be adversely affected thereby and that the public interest will not be otherwise adversely affected, Federal prisoners may be interviewed or examined under oath by congressional committees in the institution in which they are incarcerated under the following procedures, and with the specific advance approval of the Deputy Attorney General.

1. Arrangements for interviewing and taking of sworn testimony from a Federal prisoner by a committee of the Congress or the authorized representatives of such a committee shall be made in the form of a written request by the chairman of the committee to the Deputy Attorney General.

2. Such written request shall be made at least ten (10) days prior to the requested date for the interview and the taking of testimony and shall be accompanied by written evidence that authorization for the interview or the taking of sworn testimony was approved by vote of the committee. Such request shall contain a statement of the purpose and the subjects upon which the prisoner will be interrogated as well as the names of all persons other than the representatives of the Department of Justice who will be present.

3. A member of the interested committee of the Congress shall be present during the entire time of the interrogation.



4. The warden of the penal institution in which the Federal prisoner is incarcerated shall, at least forty-eight (48) hours prior to the time at which the interview takes place, advise the Federal prisoner concerned of the proposed interview or taking of sworn testimony; and shall further advise that he is under the same, but no greater obligation to answer than any other witness who is not a prisoner.

5. The warden of the penal institution shall have complete authority in conformity with the requirements of security and the maintenance of discipline to limit the number of persons who will be present at the interview and taking of testimony.

6. The warden or his authorized representative shall be present at the interview and at the taking of testimony and the Department of Justice shall have the right to have one of its representatives present throughout the interview and taking of testimony.

7. The committee shall arrange to have a stenographic transcript made of the entire proceedings at committee expense and shall furnish a copy of the transcript to the Department of Justice.

E. OBSERVERS IN ATTENDANCE AT COMMITTEE HEARINGS

In order that the Department may be kept currently advised in matters within its responsibility, and in order that the Deputy Attorney General may properly coordinate the Department's liaison with Congress and its committees, each division that has an observer in attendance at a congressional hearing, will have the observer prepare a written summary of the proceeding which should be sent to the division head and a copy routed to the Deputy Attorney General.

/s/ Herbert Brownell, Jr.

Attorney General

NR003 WA CODE

1:45AM NITEL 6-28-75 TJT

TO ATLANTA

KNOXVILLE

BIRMINGHAM

LOS ANGELES

ALBANY

TAMPA

JACKSONVILLE

CHICAGO

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SENSTUDY 75

REBUTEL MAY 2, 1975.

INQUIRIES MADE OF BUREAU BY SENATE SELECT COMMITTEE (SSC) CONCERNING A NUMBER OF PRESENT AND FORMER FBI EMPLOYEES, INCLUDING THEIR CURRENT WHEREABOUTS, SUGGESTS THEY MAY BE INTERVIEWED BY SSC STAFF CONCERNING BUREAU'S FORMER INVESTIGATION OF MARTIN LUTHER KING, JR. SET OUT BELOW ARE NAMES AND LAST KNOWN ADDRESSES OF FORMER BUREAU EMPLOYEES AND OFFICE OF ASSIGNMENT OF INCUMBENTS, ALL OF WHOM SSC HAS INQUIRED ABOUT.

EACH OF THESE FORMER EMPLOYEES IS TO BE IMMEDIATELY CONTACTED AND ALERTED THAT HE MIGHT BE APPROACHED BY THE SSC STAFF ABOUT THE KING INVESTIGATION. THEY SHOULD BE TOLD THAT

*Ice alert*

*ASAC adv  
6/28  
JH*

*Dead 62-2368-4*

SEARCHED	INDEXED
SERIALIZED	FILED
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ASAC	

PAGE TWO

IN THE EVENT THEY ARE INTERVIEWED AND DURING THE COURSE OF SAME, QUESTIONS ARE ASKED WHICH RELATE TO SENSITIVE BUREAU OPERATIONS (SOURCES, METHODS, TECHNIQUES, THIRD AGENCY RULE AND ONGOING INVESTIGATIONS), THEY MAY REQUEST THAT AN FBI AGENT BE PRESENT. BUREAU WILL PROVIDE AGENT ON REQUEST OF INTERVIEWEE. AS A PRELUDE TO INTERVIEW, THE FORMER EMPLOYEE MAY, AFTER BEING CONTACTED BY SSC STAFF, CONTACT BUREAU'S LEGAL COUNSEL DIVISION BY COLLECT CALL FOR FULL INFORMATION TO ASSIST HIM, INCLUDING OBLIGATIONS AS TO CONFIDENTIALITY OF INFORMATION ACQUIRED AS FBI EMPLOYEE. IT IS EMPHASIZED THAT BUREAU'S OFFER OF ASSISTANCE IS NOT INTENDED TO IMPEDE SSC WORK BUT IS DONE AS COOPERATIVE GESTURE AND TO SAFEGUARD SENSITIVE BUREAU INFORMATION. CONTACTS WITH THESE FORMER EMPLOYEES TO BE HANDLED PERSONALLY BY SAC OR ASAC. IN EVENT THIS NOT FEASIBLE FOR JUST CAUSE, TO BE HANDLED BY A SENIOR SUPERVISOR.

INCUMBENT EMPLOYEES TO BE ADVISED THAT IF CONTACTED BY SSC STAFF FOR INTERVIEW, LEGAL COUNSEL DIVISION TO BE IMMEDIATELY NOTIFIED THROUGH SAC.

IMMEDIATELY AFTER CONTACT, RESULTS SHOULD BE FURNISHED

PAGE THREE

BUREAU BY TELETYPE IN ABOVE CAPTION. IF A FORMER EMPLOYEE IS NO LONGER IN YOUR TERRITORY OR TEMPORARILY AWAY, SET OUT LEAD TO OTHER OFFICE IMMEDIATELY WITH COPY TO FBI HEADQUARTERS.

ATLANTA: INCUMBENTS - DONALD P. BURGESS, RICHARD E. FUGATT, EDMUND F. HAGGERTY, O. RICHARD HAMILTON, CHARLES T. HAYNES, WILBUR W. SEITZER, ROBERT W. THOMSON. FORMER - MARION E. CHEEK, 1613 GAIL AVENUE, ALBANY, GEORGIA 31705; CHARLES T. HARDING, 2243 PINECLIFF DRIVE, NORTHEAST, ATLANTA, GEORGIA 30345.

BIRMINGHAM: LAWRENCE T. GURLEY, 1340 WESTMINISTER PLACE, BIRMINGHAM, ALABAMA 35235.

ALBANY: HENRY G. ROWSE, JR., 39 NORTH MAIN STREET, - *Burlington RA*  
ENOSBURG FALLS, VERMONT 05450.

JACKSONVILLE: WILLIAM LEE BOLYARD - INCUMBENT.

KNOXVILLE: W. JOHN BENTON - INCUMBENT.

LOS ANGELES: JAMES M. KELLOGG - INCUMBENT.

TAMPA: JAMES E. MCMAHON, 3110 COCOS ROAD, TAMPA, FLORIDA 33618.

CHICAGO: JOHN BASSETT - INCUMBENT.

END

GMM FBI ALBANY FOR 3 TELS

ALBANY CLR

F B I

001

Date: 6/28/75

Transmit the following in CODE  
(Type in plaintext or code)

Via TELETYPE NITEL  
(Priority)

TO: DIRECTOR, FBI (62-116395) *LRP*

FROM: SAC, ALBANY (62-2368)

SENSTUDY 75

RE BUTEL JUNE 28, 1975.

ON JUNE 28, 1975, FORMER SA HENRY G. ROWSE, JR., WAS CONTACTED BY ASAC JOHN J. HINCHCLIFFE AND ADVISED ~~THE~~ CONTENTS RE BUTEL. ROWSE STATED THAT SHOULD HE BE CONTACTED BY SCC, HE WILL CONTACT BUREAU'S LEGAL COUNSEL DIVISION. ROWSE CURRENTLY RESIDING C/O P.O. BOX 65, SHELDON, VT., 05483, TELEPHONE NO. 802-848-7418, OR 73 HIGHLAND AVE., RICHFORD, VT., 05476.

JER:lvv

62-2368-5

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ASAC *[Signature]*

Approved: *REK*  
Special Agent in Charge

Sent 3:47 P M Per *RVV*

NR051 WA CODE

9:37PM NITEL JULY 29, 1975 MSY

TO ALL SACS

FROM DIRECTOR

PERSONAL ATTENTION

ATTORNEY GENERAL'S REQUEST RE SENSITIVE INVESTIGATIVE  
TECHNIQUES.

THE ATTORNEY GENERAL, NOTING THE DEPARTMENT IS REVIEWING  
ACTIVITIES CONDUCTED UNDER PRESIDENTIAL AUTHORITY FOR  
USE OF WARRANTLESS ELECTRONIC SURVEILLANCE FOR FOREIGN  
INTELLIGENCE, INCLUDING COUNTERINTELLIGENCE PURPOSES, REQUESTED  
A REVIEW OF ALL OTHER ACTIVITIES WHICH ARE OR CAN BE CONDUCTED  
BY THE BUREAU INVOLVING NONCONSENSUAL, WARRANTLESS INTRUSION  
UPON REAL OR PERSONAL PROPERTY; NONELECTRONIC EAVESDROPPING  
UPON CONVERSATIONS THOUGHT BY THE PARTICIPANTS TO BE PRIVATE;  
INTERCEPTION OR OTHER RECEIPT NOT AUTHORIZED BY THE SENDER  
OR RECEIVER OF THE CONTENTS OF WIRE, RADIO OR WRITTEN  
COMMUNICATIONS; AND ALL OTHER ACTIVITIES, WHETHER OR NOT  
INVOLVING ELECTRONIC SURVEILLANCE OR PHYSICAL INTRUSION, THAT  
MIGHT BE CALLED INTO QUESTION OR SHOULD BE REVIEWED.

*1cc 66-2617  
Elsner*

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FBI-ALBANY	

*[Signature]*

PAGE TWO

THE ATTORNEY GENERAL REQUESTED A DESCRIPTION OF THE TYPES OF SUCH ACTIVITIES NOW BEING CONDUCTED BY THE BUREAU, AND ALSO ANY ADDITIONAL TYPES WHICH THE BUREAU CONSIDERS ITSELF AUTHORIZED TO CONDUCT. IN ADDITION, A REPORT ON ANY SUCH PAST ACTIVITIES WAS ALSO REQUESTED BY THE ATTORNEY GENERAL.

CANVASS YOUR PERSONNEL FOR ANY SUCH TYPES OF ACTIVITIES CONDUCTED IN YOUR OFFICE AND NOTE WHETHER USED IN ORGANIZED CRIME, GENERAL CRIMINAL, FOREIGN INTELLIGENCE, OR DOMESTIC SECURITY INVESTIGATIONS.

SUTEL BY CODED AND APPROPRIATELY CLASSIFIED NITEL,  
ATTENTION INTD.

ALL LEGATS ADVISED SEPARATELY.

END

LVV FBI ALBANY

CLR TKS

NR009 WA CODE

6:10PM NITEL 8-26-75 LXS

TO ALBANY

BALTIMORE

MIAMI

PHILADELPHIA

TAMPA

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SENSTUDY 75

REBUTEL MAY 2, 1975.

INQUIRIES MADE OF BUREAU BY SENATE SELECT COMMITTEE (SSC) CONCERNING BELOW-LISTED FORMER FBI EMPLOYEES SUGGESTS THEY MAY BE INTERVIEWED BY SSC STAFF. WHILE SUBJECT OF INTERVIEWS HAS NOT BEEN DISCUSSED BY SSC, INTERVIEWS WILL LIKELY PERTAIN TO THESE FORMER EMPLOYEES' DUTIES WHILE IN THE INTERNAL SECURITY AND/OR SUBVERSIVE CONTROL SECTIONS AND MAY ALSO RELATE TO THE FORMER BUREAU'S INVESTIGATIONS OF MARTIN LUTHER KING, JR., COMMUNIST INFLUENCES IN RACIAL MATTERS AND RELATED MATTERS. SET OUT BELOW ARE LAST KNOWN ADDRESSES OF THESE FORMER BUREAU

62-2368-7

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FBI-ALBANY	



PAGE TWO

EMPLOYEES.

EACH OF THESE FORMER EMPLOYEES IS TO BE IMMEDIATELY CONTACTED AND ALERTED THAT HE MIGHT BE APPROACHED BY THE SSC STAFF. THEY SHOULD BE TOLD THAT IN THE EVENT THEY ARE INTERVIEWED AND DURING COURSE OF SAME, QUESTIONS ARE ASKED WHICH RELATE TO SENSITIVE BUREAU OPERATIONS (SOURCES, METHODS AND TECHNIQUES, ONGOING INVESTIGATIONS, AND THIRD AGENCY RULE, INCLUDING IDENTITIES OF FOREIGN INTELLIGENCE AGENCIES), THEY MAY REQUEST AN FBI AGENT BE PRESENT. BUREAU WILL PROVIDE AGENT ON REQUEST OF INTERVIEWEE. AS A PRELUDE TO INTERVIEW, THE FORMER EMPLOYEE MAY, AFTER BEING CONTACTED BY SSC STAFF, CONTACT BUREAU'S LEGAL COUNSEL DIVISION BY COLLECT CALL FOR FULL INFORMATION TO ASSIST HIM, INCLUDING OBLIGATIONS AS TO CONFIDENTIALITY OF INFORMATION ACQUIRED AS FBI EMPLOYEE. IT IS EMPHASIZED THAT BUREAU'S OFFER OF ASSISTANCE IS NOT INTENDED TO IMPEDE SSC WORK BUT IS DONE AS COOPERATIVE GESTURE AND TO SAFEGUARD SENSITIVE BUREAU INFORMATION. CONTACTS WITH THESE FORMER EMPLOYEES TO BE HANDLED PERSONALLY BY SAC OR ASAC. IN EVENT THIS NOT FEASIBLE FOR JUST CAUSE, TO BE HANDLED BY A SENIOR SUPERVISOR.

PAGE THREE

IMMEDIATELY AFTER CONTACT, RESULTS SHOULD BE FURNISHED BUREAU BY TELETYPE IN ABOVE CAPTION. IF A FORMER EMPLOYEE NO LONGER IN YOUR TERRITORY OR TEMPORARILY AWAY, SET OUT LEAD TO OTHER OFFICE IMMEDIATELY WITH COPY TO FBI HEADQUARTERS.

ALBANY: JOHN H. KLEINKAUF, 1153 CULLEN AVENUE, SCHENECTADY, NEW YORK 12309; EMPLOYED AS DIRECTOR OF SECURITY AND SAFETY, UNION COLLEGE, SCHENECTADY, NEW YORK 12308.

BALTIMORE: JAMES F. BLAND, 4310 ROSEDALE AVENUE, BETHESDA, MARYLAND 20014.

MIAMI: FREDERICK F. FOX, 1450 WEST BISCAYNE CANAL ROAD, MIAMI, FLORIDA 33161.

PHILADELPHIA: MRS. KATHLEENFZOGAN, SPOUSE OF SA RICHARD E. LOGAN, ASSIGNED PHILADELPHIA OFFICE.

TAMPA: PAUL L. COX, U.S.N.A.T.O., P. O. BOX 1418, SARASOTA, FLORIDA 33578.

BEST INFORMATION BUREAU HAS CONCERNING COX'S WHEREABOUTS IS THAT HE IS CURRENTLY ON A LENGTHLY TRIP WITH A MOTOR TRAILER THROUGH CANADA AND THE MID-WEST. INDICATED ADDRESS BELIEVED TO BE A TRAILER COURT CONTACT POINT FOR MAILING PURPOSES. BUREAU DOES NOT DESIRE EXTENSIVE INVESTIGATION TO LOCATE COX AND

PAGE FOUR

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SOONER. TAMPA'S REPLY TO BUREAU SHOULD SET OUT WHAT ARRANGEMENTS  
FOR POSSIBLE CONTACT HAVE BEEN PERFECTED.

END

EXSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSS

FBI AL CLR FOR ONE TEE CJK

NR009 WA CODE

6:10PM NITEL 8-26-75 LXS

TO ALBANY

BALTIMORE

MIAMI

PHILADELPHIA

TAMPA

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SENSTUDY 75

REBUTEL MAY 2, 1975.

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PAGE TWO

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END

EXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

FBI AL CLR FOR ONE TEE CJK

8/25/75

SACs CONFERENCE

Senate Select Committee (SSC) Staff Interviews - Privileged Areas

In connection with the staff interviews there has been general agreement between the SSC, the Department and the Bureau that there are four main privileged areas and that current and ex-FBI employees need not answer questions which fall into these areas which are as follows:

- (1) Information which indentifies or may identify FBI sources.
- (2) Information which may adversely affect ongoing FBI investigations.
- (3) Information concerning sensitive methods and techniques.
- (4) Information obtained from third agencies, including foreign intelligence agencies.

*done*

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Date:

8/27/75

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Transmit the following in CODE

(Type in plaintext or code)

Via HITEL

(Priority)

TO DIRECTOR (62-116395) *SMD*

FROM SAC, ALBANY (62-2368)

SENSTUDY

REBUTEL AUGUST 26, 1975

ON AUGUST 27, 1975 JOHN H. KLEINKAUF WAS CONTACTED  
BY ASAC ALBANY ADVISED COMMENTS RE BUTEL.

JJH; jjh

62-2368-8

*[Handwritten initials in a box]*

SAC

*[Handwritten signature]*

Approved: *[Signature]*

Special Agent in Charge

Sent

11:36

PM

Per *[Signature]*

NRC33 WA CODE

6:16PM 9/4/75 NITEL AJM

TO ALL SACS

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION **REK/HA**  
✓  
SENSTUDY 75

REBUTEL MAY 2, 1975.

PURPOSES OF INSTANT TELETYPE ARE TO (1) REITERATE THAT FBI HAS PLEDGED FULL COOPERATION WITH THE SENATE SELECT COMMITTEE (SSC) AND WISHES TO ASSIST AND FACILITATE ANY INVESTIGATIONS UNDERTAKEN BY THE SSC WITH RESPECT TO THE FBI; AND (2) SET FORTH NEW PROCEDURE RELATING TO SSC STAFF INTERVIEWS OF CURRENT AND FORMER FBI EMPLOYEES.

FOR INFORMATION OF THOSE OFFICES WHICH HAVE NOT PREVIOUSLY HAD CURRENT OR FORMER EMPLOYEES IN ITS TERRITORY INTERVIEWED BY THE SSC, THE BUREAU FREQUENTLY LEARNS FROM THE SSC OR OTHERWISE THAT FORMER EMPLOYEES ARE BEING CONSIDERED FOR INTERVIEW BY THE SSC STAFF. INSTRUCTIONS ARE ISSUED FOR THE FIELD OFFICE TO CONTACT THE FORMER EMPLOYEE TO ALERT HIM AS TO POSSIBLE INTERVIEW, REMIND HIM OF HIS CONFIDENTIALITY AGREEMENT WITH THE BUREAU AND SUGGEST THAT IF HE IS CONTACTED FOR

ASAC \_\_\_\_\_  
GILBERT \_\_\_\_\_  
KEEFE \_\_\_\_\_  
LONERGAN \_\_\_\_\_

(Last)

icc  
dzt

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PAGE TWO

INTERVIEW, HE MAY CONTACT THE LEGAL COUNSEL DIVISION BY COLLECT CALL FOR FURTHER INFORMATION. IN THE USUAL CASE, AS CIRCUMSTANCES UNFOLD, THE FORMER EMPLOYEE IS TOLD (1) THAT HE HAS A RIGHT TO LEGAL COUNSEL, BUT THAT THE BUREAU CANNOT PROVIDE SAME; (2) THAT THE BUREAU HAS WAIVED THE CONFIDENTIALITY AGREEMENT FOR THE INTERVIEW WITHIN SPECIFIED PARAMETERS; AND (3) THAT THERE ARE FOUR PRIVILEGED AREAS IN WHICH HE IS NOT REQUIRED TO ANSWER QUESTION. THESE AREAS ARE RELATING TO INFORMATION WHICH MAY (A) IDENTIFY BUREAU SOURCES; (B) REVEAL SENSITIVE METHODS/TECHNIQUES; (C) REVEAL IDENTITIES OF THIRD AGENCIES, INCLUDING FOREIGN INTELLIGENCE AGENCIES, OR INFORMATION FROM SUCH AGENCIES; AND (D) ADVERSELY AFFECT ONGOING BUREAU INVESTIGATIONS.

HERETOFORE, BUREAU HAS OFFERED INTERVIEWEES CONSULTATION PRIVILEGES WHEREBY A BUREAU SUPERVISOR WOULD BE AVAILABLE NEARBY, ALTHOUGH NOT ACTUALLY AT INTERVIEW, SO INTERVIEWEE MIGHT CONSULT WITH HIM SHOULD QUESTIONS ARISE AS TO PARAMETERS OF INTERVIEW OR PRIVILEGED AREAS. THE CONSULTANT DID NOT ACT AS A LEGAL ADVISOR.

EFFECTIVE IMMEDIATELY, BUREAU WILL NO LONGER PROVIDE

PAGE THREE

ON-THE-SCENE PERSONNEL FOR CONSULTATION PURPOSES TO ASSIST EITHER CURRENT OF FORMER EMPLOYEES. PROSPECTIVE INTERVIEWEES SHOULD BE TOLD THAT, IF THEY DESIRE ASSISTANCE OF THIS NATURE DURING AN INTERVIEW, THEY MAY CONTACT EITHER PERSONALLY (IF INTERVIEW IS IN WASHINGTON, D. C.) OR BY COLLECT CALL, THE ASSISTANT DIRECTOR OF THE INTELLIGENCE DIVISION, MR. W. R. WANNALL, OR, IN HIS ABSENCE, SECTION CHIEF W. O. CREGAR.

THIS CHANGE IN PROCEDURE SHOULD NOT BE CONSTRUED AS LESSENING THE ASSISTANCE WE ARE FURNISHING TO CURRENT AND FORMER EMPLOYEES.

FOR YOUR ADDITIONAL INFORMATION, I AM WORKING WITH THE DEPARTMENT IN EXPLORING AVENUES TO ARRANGE LEGAL REPRESENTATION, WHEN NECESSARY, FOR CURRENT AND FORMER EMPLOYEES WITHOUT EXPENSE TO THEM. YOU WILL BE KEPT ADVISED OF DEVELOPMENTS IN THIS REGARD.

END

LVV FBI ALBANY

CLR

NR045 WA PLAIN

732PMNITEL 10/9/75 GHS

TO ALL SACS

FROM DIRECTOR

INTERVIEWS OF FBI EMPLOYEES BY CONGRESSIONAL COMMITTEES

BY MEMORANDUM TO ALL EMPLOYEES DATED MAY 28, 1975,  
CAPTIONED "INTERVIEWS OF FBI EMPLOYEES," ALL EMPLOYEES WERE  
ADVISED OF THE NECESSITY OF SECURING FBI HEADQUARTERS APPROVAL  
PRIOR TO SUBMITTING TO INTERVIEWS BY REPRESENTATIVES OF CON-  
GRESSIONAL COMMITTEES. THE NECESSITY OF SECURING THIS AP-  
PROVAL IS PROMPTED BY THE EMPLOYMENT AGREEMENT ALL EMPLOYEES  
HAVE SIGNED.

YOU WERE ADVISED THAT CONGRESSIONAL STAFF MEMBERS  
WERE CONDUCTING INTERVIEWS OF FORMER AND/OR CURRENT EMPLOYEES  
AND THAT THIS BUREAU HAD PLEDGED ITS COOPERATION WITH CON-  
GRESS. OUR COOPERATIVE EFFORTS, OF COURSE, MUST BE CONSISTENT  
WITH BUREAU PROCEDURES.

RECENTLY, WE HAVE HAD ATTEMPTS BY CONGRESSIONAL  
COMMITTEE STAFF MEMBERS TO INTERVIEW CURRENT EMPLOYEES WITHOUT  
PRIOR CONTACT WITH FBI HEADQUARTERS. YOU ARE AGAIN REMINDED

*ICC  
dest.*

62-2368-10

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PAGE TWO

THAT IF A REPRESENTATIVE OF A CONGRESSIONAL COMMITTEE SHOULD CONTACT A BUREAU EMPLOYEE, THAT EMPLOYEE SHOULD DECLINE TO RESPOND TO QUESTIONS POSED TO HIM AND ADVISE THE CONGRESSIONAL STAFF MEMBER OF THE NECESSITY OF RECEIVING FBI HEADQUARTERS APPROVAL BEFORE RESPONDING TO QUESTIONS.

END

LVV FBI ALBANY

ACK FOR THREE

UNITED STATES GOVERNMENT

# Memorandum

TO : ALL EMPLOYEES (62-2368)

DATE: 10/10/75

FROM : SAC ROBERT E. KENT *RK*

SUBJECT: INTERVIEWS OF FBI EMPLOYEES  
BY CONGRESSIONAL COMMITTEES

ReButel 10/9/75.

By memorandum to all employees dated May 28, 1975, captioned "Interviews of FBI Employees," all employees were advised of the necessity of securing FBI Headquarters approval prior to submitting to interviews by representatives of Congressional committees. The necessity of securing this approval is prompted by the employment agreement all employees have signed.

You were advised that Congressional staff members were conducting interviews of former and/or current employees and that this Bureau had pledged its cooperation with Congress. Our cooperative efforts, of course, must be consistent with Bureau procedures.

Recently, we have had attempts by Congressional committee staff members to interview current employees without prior contact with FBI Headquarters. You are again reminded that if a representative of a Congressional committee should contact a Bureau employee, that employee should decline to respond to questions posed to him and advise the Congressional staff member of the necessity of receiving FBI Headquarters approval before responding to questions.

All employees of the Albany Division are instructed that contacts received from representatives of Congressional committees should be immediately referred to the SAC without exception.

1 - Each Employee

① - 62-2368

1 - 66-11

REK:pac

*Sent 10/14*

*Dead*

*62-2368-11*

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OCT 14 1975	
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# Mr. Church's Cover-Up

By William Safire

WASHINGTON, Nov. 19—On Oct. 10, 1963, the then-Attorney General of the United States put his personal signature on a document that launched and legitimized one of the most horrendous abuses of Federal police power in this century.

In Senator Frank Church's subcommittee hearing room this week, the authorized wiretapping and subsequent unauthorized bugging and attempted blackmailing of Martin Luther King Jr. is being gingerly examined, with the "investigation" conducted in such a way as not to unduly embarrass officials of the Kennedy or Johnson Administrations.

With great care, the committee has focused on the F.B.I. Yesterday, when the committee counsel first set forth the result of shuffling through press clips, it seemed as if no Justice Department had existed in 1962; today, an F.B.I. witness pointed out that it was Robert Kennedy who authorized the wiretap of Dr. King, and that "the President of the United States and the Attorney General specifically discussed their concern of Communist influence with Dr. King."

But the Church committee showed no zest for getting further to the Kennedy root of this precedent to Watergate eavesdropping. If Senator Church were willing to let the chips fall where they may, he would call some knowledgeable witnesses into the glare of the camera lights and ask them some questions that have gone unasked for thirteen years.

For example, he could call Nicholas Katzenbach, Attorney General Kennedy's deputy and successor, and ask what he knows of the Kennedy decision to wiretap Dr. King. Who at Justice concurred in the recommendation? How does the F.B.I. know the President was consulted or informed?

After Mr. Katzenbach assumed office, and the wiretapping continued, he was told by angry newsmen that the F.B.I. was leaking scurrilous information about Dr. King. Why did he wait for four months, and for a thousand telephonic interceptions, to discontinue the officially approved tap?

Of course, this sort of testimony would erode Senator Church's political base. That is why we do not see former Assistant F.B.I. director Cartha (Deke) DeLoach, Lyndon Johnson's personal contact with the F.B.I. in the witness chair. What did President Johnson know about the character assassination plot and when did he know it? What conversations took place between Mr. DeLoach and President Johnson on the tapping of Dr. King, or about the use of the F.B.I. in any other intrusions into the lives of political figures?

The committee is not asking embarrassing questions even when answers are readily available. A couple of weeks ago, at an open hearing, an F.B.I. man inadvertently started to blurt out an episode about newsmen who were wiretapping in 1962 with the apparent knowledge of Attorney General Kennedy. The too-willing witness was promptly shooshed into silence, and told that such information would be developed only in executive session. Nobody raised an eyebrow.

That pattern of containment by the Church committee is vividly shown by the handling of the buggings at the 1964 Republican and Democratic con-

## ESSAY

ventions which were ordered by Lyndon Johnson. Such invasions of political headquarters were worse than the crime committed at Watergate, since they involved the use of the F.B.I., but the Church investigators seem to be determined not to probe too deeply.

If F.B.I. documents say that reports were made to specific Johnson aides, why are those men not given the same opportunity to publicly tell their story so avidly given the next President's men? If Lyndon Johnson committed this impeachable high crime of using the F.B.I. to spy on political opponents, who can be brought forward to tell us all about it?

But that would cause embarrassment to Democrats, and Senator Church wants to embarrass professional employees of investigatory agencies only. A new sense of Congressional decorum exists, far from the sense of outrage expressed in the Senate Watergate committee's hearing room. When it is revealed that the management of NBC News gave press credentials to L.B.J.'s spies at the 1964 convention, everybody blushes demurely—and nobody demands to know which network executive made what decision under what pressure.

I have been haranguing patient readers for years about the double standard applied to Democratic and Republican political crimes, and had hoped the day would come when the hardball precedents set by the Kennedy and Johnson men would be laid before the public in damning detail.

Obviously, Democrat Frank Church is not the man to do it. His jowl-shaking indignation is all too selective: the trail of high-level responsibility for the crimes committed against Dr. King and others is evidently going to be allowed to cool.

Duh. You'd think that after all the nation has been through in the past few years our political leaders would have learned that the one thing that brings you down is the art of covering up.

✓ SAC - RK  
✓ ASAS  
✓ Supv  
✓ Supv  
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THE NEW YORK TIMES  
THURSDAY, NOVEMBER 20th, 1975  
PAGE C-41



TO: SAC:

- Albany
- Albuquerque
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- Charlotte
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- El Paso
- Honolulu
- Houston
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- Kansas City
- Knoxville
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- New Haven
- New Orleans
- New York City
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- Sacramento
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- Salt Lake City
- San Antonio
- San Diego
- San Francisco
- San Juan
- Savannah
- Seattle
- Springfield
- Tampa
- Washington Field
- Quantico

TO LEGAT:

- Beirut
- Bern
- Bonn
- Brasilia
- Buenos Aires
- Caracas
- Hong Kong
- London
- Madrid
- Manila
- Mexico City
- Ottawa
- Paris
- Rome
- Singapore
- Tel Aviv
- Tokyo

RE: SENATE SELECT COMMITTEE  
ON INTELLIGENCE ACTIVITIES

Date 11/21/75

- For information     Retention optional     For appropriate action     Surep, by \_\_\_\_\_
- The enclosed is for your information. If used in a future report,  conceal all sources,  paraphrase contents.
- Enclosed are corrected pages from report of SA \_\_\_\_\_ dated \_\_\_\_\_

Remarks:

Enclosed for your information is a copy of an article by Mr. William Safire entitled "Mr. Church's Cover-Up" that appeared in the November 20, 1975, issue of "The New York Times."

Enc. (1) *[Signature]*  
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NR050 WA PLAIN

10:34PM NITEL 12/10/75 GHS

TO ALL SACS

FROM DIRECTOR

DIRECTOR'S APPEARANCE BEFORE SENATE SELECT COMMITTEE  
ON INTELLIGENCE ACTIVITIES, DECEMBER 10, 1975

A COPY OF THE STATEMENT I DELIVERED BEFORE THE SENATE  
SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES TODAY HAS BEEN  
SENT ALL OFFICES. FOR YOUR INFORMATION, THERE FOLLOWS A  
SYNOPSIS ACCOUNT OF THE MAJOR AREAS OF THE COMMITTEE'S  
QUESTIONS TO ME, TOGETHER WITH MY RESPONSES:

(1) REGARDING FBI INFORMANTS, QUESTIONS WERE ASKED  
WHETHER COURT APPROVAL SHOULD BE REQUIRED FOR FBI USE OF  
INFORMANTS IN INVESTIGATIONS OF ORGANIZATIONS (MY RESPONSE  
WAS THAT THE CONTROLS WHICH EXIST TODAY OVER USE OF INFORMANTS  
ARE SATISFACTORY); HOW CAN FBI KEEP INFORMANTS OPERATING  
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PERSONS (MY RESPONSE WAS THAT RELIANCE MUST BE PLACED ON THE  
INDIVIDUAL AGENTS HANDLING INFORMANTS AND THOSE SUPERVISING  
THE AGENTS' WORK, THAT INFORMANTS WHO VIOLATE THE LAW CAN BE

- ✓ ASAC \_\_\_\_\_
- ✓ GILBERT \_\_\_\_\_
- ✓ KEEFE \_\_\_\_\_
- ✓ LONERGAN \_\_\_\_\_

*JERSEY FILE*

*Dead*

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FBI - ALBANY	

PAGE TWO

PROSECUTED -- AS CAN ANY AGENT WHO COUNSELS AN INFORMANT TO COMMIT VIOLATIONS); AND DID FORMER KLAN INFORMANT GARY ROWE TESTIFY ACCURATELY WHEN HE TOLD THE COMMITTEE ON DECEMBER 2 THAT HE INFORMED FBI OF PLANNED ACTS OF VIOLENCE BUT FBI DID NOT ACT TO PREVENT THEM (MY RESPONSE WAS THAT ROWE'S TESTIMONY WAS NOT ACCURATE).

(2) IN RESPONSE TO QUESTIONS REGARDING IMPROPER CONDUCT BY FBI EMPLOYEES, I STATED THAT ALLEGED VIOLATIONS OF LAW BY FBI PERSONNEL SHOULD BE INVESTIGATED BY THE FBI OR OTHER APPROPRIATE AGENCY; THAT THE INSPECTION DIVISION HAS CONDUCTED INQUIRIES REGARDING ALLEGATIONS OF MISCONDUCT; THAT AN OFFICE OF PROFESSIONAL RESPONSIBILITY HAS JUST BEEN ESTABLISHED IN THE JUSTICE DEPARTMENT, AND WE WILL ADVISE THAT OFFICE OF OUR MAJOR INVESTIGATIONS OF DEPARTMENTAL PERSONNEL, INCLUDING FBI EMPLOYEES, FOR ALLEGED VIOLATIONS OF LAW, REGULATIONS, OR STANDARDS OF CONDUCT; THAT I WOULD RESERVE COMMENT REGARDING POSSIBLE CREATION OF A NATIONAL INSPECTOR GENERAL TO CONSIDER MATTERS OF MISCONDUCT BY EMPLOYEES OF ANY FEDERAL AGENCY.

PAGE THREE

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PAGE FOUR

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A FULL TRANSCRIPT OF THE QUESTIONS AND ANSWERS WILL BE FURNISHED TO EACH OFFICE AS SOON AS IT IS AVAILABLE.

ALL LEGATS ADVISED SEPARATELY.

END

PLS ACK FOR 2 TELS

LVV FBI ALBANY

ACK FOR TWO CLR

TKS

NR050 WA PLAIN

10:34PM NITEL 12/10/75 GHS

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LVV FBI ALBANY

ACK FOR TWO CLR

TKS



UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

FOR RELEASE  
10 A.M., EST  
WEDNESDAY, DECEMBER 10, 1975

STATEMENT OF

CLARENCE M. KELLEY

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES

U. S. SENATE

WASHINGTON, D. C.

DECEMBER 10, 1975

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I welcome the interest which this Committee has shown in the FBI and most particularly in our operations in the intelligence and internal security fields.

I share your high regard for the rights guaranteed by the Constitution and laws of the United States. Throughout my 35-year career in law enforcement you will find the same insistence, as has been expressed by this Committee, upon programs of law enforcement that are themselves fully consistent with law.

I also have strongly supported the concept of legislative oversight. In fact, at the time my appointment as Director of the FBI was being considered by the Senate Judiciary Committee two and one-half years ago, I told the members of that Committee of my firm belief in Congressional oversight.

This Committee has completed the most exhaustive study of our intelligence and security operations that has ever been undertaken by anyone

outside the FBI other than the present Attorney General. At the outset, we pledged our fullest cooperation and promised to be as candid and forthright as possible in responding to your questions and complying with your requests.

I believe we have lived up to those promises.

The members and staff of this Committee have had unprecedented access to FBI information.

You have talked to the personnel who conduct security-type investigations and who are personally involved in every facet of our day-to-day intelligence operations.

You have attended numerous briefings by FBI officials who have sought to familiarize the Committee and its staff with all major areas of our activities and operations in the national security and intelligence fields.

In brief, you have had a firsthand examination of these matters that is unmatched at any time in the history of the Congress.

As this Committee has stated, these hearings have, of necessity, focused largely on certain errors and abuses. I credit this Committee for its forthright recognition that the hearings do not give a full or balanced account of the FBI's record of performance.

It is, perhaps, in the nature of such hearings to focus on abuses to the exclusion of positive accomplishments of the organization.

The Counterintelligence Programs which have received the lion's share of public attention and critical comment constituted an infinitesimal portion of our overall work.

A Justice Department Committee which was formed last year to conduct a thorough study of the FBI's Counterintelligence Programs has reported that in the five basic ones it found 3,247 Counterintelligence proposals were submitted to FBI Headquarters from 1956 to 1971. Of this total, 2,370 -- less than three-fourths -- were approved.

I repeat, the vast majority of those 3,247 proposals were being devised, considered, and many were rejected, in an era when the FBI was handling an average of 700,000 investigative matters per year.

Nonetheless, the criticism which has been expressed regarding the Counterintelligence Programs is most legitimate and understandable.

The question might well be asked what I had in mind when I stated last year that for the FBI to have done less than it did under the circumstances then existing would have been an abdication of its responsibilities to the American people.

What I said then -- in 1974 -- and what I believe today, is that the FBI employees involved in these programs did what they felt was expected of them by the President, the Attorney General, the Congress, and the people of the United States.

Bomb explosions rocked public and private offices and buildings; rioters led by revolutionary extremists laid siege to military, industrial, and educational facilities; and killings, maimings, and other atrocities accompanied such acts of violence from New England to California..

The victims of these acts were human beings -- men, women, and children. As is the case in time of peril -- whether real or perceived -- they looked to their Government, their elected and appointed leadership, and to the FBI and other law enforcement agencies to protect their lives, their property, and their rights.

There were many calls for action from Members of Congress and others, but few guidelines were furnished. The FBI and other law enforcement agencies were besieged by demands...impatient demands...for immediate action.

FBI employees recognized the danger; felt they had a responsibility to respond; and, in good faith,

initiated actions designed to counter conspiratorial efforts of self-proclaimed revolutionary groups, and to neutralize violent activities.

In the development and execution of these programs, mistakes of judgment admittedly were made.

Our concern over whatever abuses occurred in the Counterintelligence Programs -- and there were some substantial ones -- should not obscure the underlying purpose of those programs.

We must recognize that situations have occurred in the past and will arise in the future where the Government may well be expected to depart from its traditional role -- in the FBI's case, as an investigative and intelligence-gathering agency -- and take affirmative steps which are needed to meet an imminent threat to human life or property.

In short, if we learn a murder or bombing is to be carried out NOW, can we truly meet our responsibilities by investigating only after the crime has occurred, or should we have the ability to prevent? I refer to those instances where there is a strong sense of urgency because of an imminent threat to human life.

Where there exists the potential to penetrate and disrupt, the Congress must consider the question of

whether or not such preventive action should be available to the FBI.

These matters are currently being addressed by a task force in the Justice Department, including the FBI, and I am confident that Departmental guidelines and controls can be developed in cooperation with pertinent Committees of Congress to insure that such measures are used in an entirely responsible manner.

Probably the most important question here today is what assurances can I give that the errors and abuses which arose under the Counterintelligence Programs will not occur again?

First, let me assure the Committee that some very substantial changes have been made in key areas of the FBI's methods of operations since I took the oath of office as Director on July 9, 1973.

Today we place a high premium on openness -- openness both within and without the service.

I have instituted a program of open, frank discussion in the decision-making process which insures that no future program or major policy decision will ever be adopted without a full and critical review of its propriety.



Participatory management has become a fact in the FBI.

I have made it known throughout our Headquarters and Field Divisions that I welcome all employees, regardless of position or degree of experience, to contribute their thoughts and suggestions, and to voice whatever criticisms or reservations they may have concerning any area of our operations.

The ultimate decisions in the Bureau are mine, and I take full responsibility for them. My goal is to achieve maximum critical analysis among our personnel without in any manner weakening or undermining our basic command structure.

The results of this program have been most beneficial...to me personally...to the FBI's disciplined performance...and to the morale of our employees.

In addition, since some of the mistakes of the past were occasioned by direct orders from higher authorities outside the FBI, we have welcomed Attorney General Edward Levi's guidance, counsel, and his continuous availability -- in his own words -- "as a 'lightning rod' to deflect improper requests."

Within days after taking office, Attorney General Levi instructed that I immediately report to him any

requests or practices which, in my judgment, were improper or which, considering the context of the request, I believed presented the appearance of impropriety.

I am pleased to report to this Committee as I have to the Attorney General that during my nearly two and one-half years as Director under two Presidents and three Attorneys General, no one has approached me or made overtures -- directly or otherwise -- to use the FBI for partisan political or other improper purposes.

I can assure you that I would not for a moment consider honoring any such request.

I can assure you, too, in my administration of the FBI I routinely bring to the attention of the Attorney General and the Deputy Attorney General major policy questions, including those which arise in my continuing review of our operations and practices. These are discussed openly and candidly in order that the Attorney General can exercise his responsibilities over the FBI.

I am convinced that the basic structure of the FBI today is sound. But it would be a mistake to think that integrity can be assured only through institutional means.

Integrity is a human quality. It depends upon the character of the person who occupies the office of Director and every member of the FBI under him.

I am proud of the 19,000 men and women with whom it is my honor to serve today. Their dedication, their professionalism, their standards, and the self-discipline which they personally demand of themselves and expect of their associates are the Nation's ultimate assurance of proper and responsible conduct at all times by the FBI.

The Congress and the members of this Committee in particular have gained a great insight into the problems confronting the FBI in the security and intelligence fields -- problems which all too often we have been left to resolve without sufficient guidance from the Executive Branch or the Congress itself.

As in all human endeavors, errors of judgment have been made. But no one who is looking for the cause of our failures should confine his search solely to the FBI, or even to the Executive Branch.

The Congress itself has long possessed the mechanism for FBI oversight; yet, seldom has it been exercised.

An initial step was taken in the Senate in 1973 when the Committee on the Judiciary established a Subcommittee on FBI Oversight. Hearings had been

commenced, and we were fully committed to maximum participation with the members of that Subcommittee.

I laud their efforts. However, those efforts are of very recent origin in terms of the FBI's history.

One of the greatest benefits of the study this Committee has made is the expert knowledge you have gained of the complex problems confronting the FBI. But I respectfully submit that those benefits are wasted if they do not lead to the next step -- a step that I believe is absolutely essential -- a legislative charter, expressing Congressional determination of intelligence jurisdiction for the FBI.

Action to resolve the problems confronting us in the security and intelligence fields is urgently needed; and it must be undertaken in a forthright manner. Neither the Congress nor the public can afford to look the other way, leaving it to the FBI to do what must be done, as too often has occurred in the past.

This means too that Congress must assume a continuing role, not in the initial decision-making process but in the review of our performance.

I would caution against a too-ready reliance upon the Courts to do our tough thinking for us. Some proposals that have been advanced during these hearings would extend the role of the Courts into the early stages

of the investigative process and, thereby, would take over what historically have been Executive Branch decisions.

I frankly feel that such a trend, if unchecked, would seriously undermine the independence of the Judiciary and cast them in a role not contemplated by the authors of our Constitution. Judicial review cannot be a substitute for Congressional oversight or Executive decision.

The FBI urgently needs a clear and workable determination of our jurisdiction in the intelligence field, a jurisdictional statement that the Congress finds to be responsive to both the will and the needs of the American people.

Senators, first and foremost, I am a police officer -- a career police officer. In my police experience, the most frustrating of all problems that I have discovered facing law enforcement in this country -- Federal, state, or local -- is when demands are made of them to perform their traditional role as protector of life and property without clear and understandable legal bases to do so.

I recognize that the formulation of such a legislative charter will be a most precise and demanding task.

It must be sufficiently flexible that it does not stifle FBI effectiveness in combating the growing incidence of crime and violence across the United States. That charter must clearly address the demonstrated problems of the past; yet, it must amply recognize the fact that times change and so also do the nature and thrust of our criminal and subversive challenges.

The fact that the Department of Justice has commenced the formulation of operational guidelines governing our intelligence activities does not in any manner diminish the need for legislation. The responsibility for conferring jurisdiction resides with the Congress.

In this regard, I am troubled by some proposals which question the need for intelligence gathering, suggesting that information needed for the prevention of violence can be acquired in the normal course of criminal investigations.

As a practical matter, the line between intelligence work and regular criminal investigations is often difficult to describe. What begins as an intelligence investigation may well end in arrest and prosecution of the subject. But there are some fundamental differences between these

investigations that should be recognized -- differences in scope, in objective and in the time of initiation. In the usual criminal case, a crime has occurred and it remains only for the Government to identify the perpetrator and to collect sufficient evidence for prosecution. Since the investigation normally follows the elements of the crime, the scope of the inquiry is limited and fairly well defined.

By contrast, intelligence work involves the gathering of information, not necessarily evidence. The purpose may well be not to prosecute, but rather to thwart crime or to insure that the Government has enough information to meet any future crisis or emergency. The inquiry is necessarily broad because it must tell us not only the nature of the threat, but also whether the threat is imminent, the persons involved, and the means by which the threat will be carried out. The ability of the Government to prevent criminal acts is dependent on our anticipation of those unlawful acts. Anticipation, in turn, is dependent on advance information -- that is intelligence.

Certainly, reasonable people can differ on these issues. Given the opportunity, I am confident that the continuing need for intelligence work can be documented to the full satisfaction of the Congress. We

recognize that what is at stake here is not the interests of the FBI, but rather the interests of every citizen of this country. We recognize also that the resolution of these matters will demand extensive and thoughtful deliberation by the Congress. To this end, I pledge the complete cooperation of the Bureau with this Committee or its successor in this important task.

In any event, you have my unqualified assurance as Director that we will carry out both the letter and the spirit of such legislation as the Congress may enact.





UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

FOR RELEASE  
10 A.M., EST  
WEDNESDAY, DECEMBER 10, 1975

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WASHINGTON, D. C.

DECEMBER 10, 1975

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Participatory management has become a fact  
in the FBI.

I have made it known throughout our Headquarters and Field Divisions that I welcome all employees, regardless of position or degree of experience, to contribute their thoughts and suggestions, and to voice whatever criticisms or reservations they may have concerning any area of our operations.

The ultimate decisions in the Bureau are mine, and I take full responsibility for them. My goal is to achieve maximum critical analysis among our personnel without in any manner weakening or undermining our basic command structure.

The results of this program have been most beneficial...to me personally...to the FBI's disciplined performance...and to the morale of our employees.

In addition, since some of the mistakes of the past were occasioned by direct orders from higher authorities outside the FBI, we have welcomed Attorney General Edward Levi's guidance, counsel, and his continuous availability -- in his own words -- "as a 'lightning rod' to deflect improper requests."

Within days after taking office, Attorney General Levi instructed that I immediately report to him any



requests or practices which, in my judgment, were improper or which, considering the context of the request, I believed presented the appearance of impropriety.

I am pleased to report to this Committee as I have to the Attorney General that during my nearly two and one-half years as Director under two Presidents and three Attorneys General, no one has approached me or made overtures -- directly or otherwise -- to use the FBI for partisan political or other improper purposes.

I can assure you that I would not for a moment consider honoring any such request.

I can assure you, too, in my administration of the FBI I routinely bring to the attention of the Attorney General and the Deputy Attorney General major policy questions, including those which arise in my continuing review of our operations and practices. These are discussed openly and candidly in order that the Attorney General can exercise his responsibilities over the FBI.

I am convinced that the basic structure of the FBI today is sound. But it would be a mistake to think that integrity can be assured only through institutional means.

Integrity is a human quality. It depends upon the character of the person who occupies the office of Director and every member of the FBI under him.

I am proud of the 19,000 men and women with whom it is my honor to serve today. Their dedication, their professionalism, their standards, and the self-discipline which they personally demand of themselves and expect of their associates are the Nation's ultimate assurance of proper and responsible conduct at all times by the FBI.

The Congress and the members of this Committee in particular have gained a great insight into the problems confronting the FBI in the security and intelligence fields -- problems which all too often we have been left to resolve without sufficient guidance from the Executive Branch or the Congress itself.

As in all human endeavors, errors of judgment have been made. But no one who is looking for the cause of our failures should confine his search solely to the FBI, or even to the Executive Branch.

The Congress itself has long possessed the mechanism for FBI oversight; yet, seldom has it been exercised.

An initial step was taken in the Senate in 1973 when the Committee on the Judiciary established a Subcommittee on FBI Oversight. Hearings had been

commenced, and we were fully committed to maximum participation with the members of that Subcommittee.

I laud their efforts. However, those efforts are of very recent origin in terms of the FBI's history.

One of the greatest benefits of the study this Committee has made is the expert knowledge you have gained of the complex problems confronting the FBI. But I respectfully submit that those benefits are wasted if they do not lead to the next step -- a step that I believe is absolutely essential -- a legislative charter, expressing Congressional determination of intelligence jurisdiction for the FBI.

Action to resolve the problems confronting us in the security and intelligence fields is urgently needed; and it must be undertaken in a forthright manner. Neither the Congress nor the public can afford to look the other way, leaving it to the FBI to do what must be done, as too often has occurred in the past.

This means too that Congress must assume a continuing role, not in the initial decision-making process but in the review of our performance.

I would caution against a too-ready reliance upon the Courts to do our tough thinking for us. Some proposals that have been advanced during these hearings would extend the role of the Courts into the early stages

of the investigative process and, thereby, would take over what historically have been Executive Branch decisions.

I frankly feel that such a trend, if unchecked, would seriously undermine the independence of the Judiciary and cast them in a role not contemplated by the authors of our Constitution. Judicial review cannot be a substitute for Congressional oversight or Executive decision.

The FBI urgently needs a clear and workable determination of our jurisdiction in the intelligence field, a jurisdictional statement that the Congress finds to be responsive to both the will and the needs of the American people.

Senators, first and foremost, I am a police officer -- a career police officer. In my police experience, the most frustrating of all problems that I have discovered facing law enforcement in this country -- Federal, state, or local -- is when demands are made of them to perform their traditional role as protector of life and property without clear and understandable legal bases to do so.

I recognize that the formulation of such a legislative charter will be a most precise and demanding task.

It must be sufficiently flexible that it does not stifle FBI effectiveness in combating the growing incidence of crime and violence across the United States. That charter must clearly address the demonstrated problems of the past; yet, it must amply recognize the fact that times change and so also do the nature and thrust of our criminal and subversive challenges.

The fact that the Department of Justice has commenced the formulation of operational guidelines governing our intelligence activities does not in any manner diminish the need for legislation. The responsibility for conferring jurisdiction resides with the Congress.

In this regard, I am troubled by some proposals which question the need for intelligence gathering, suggesting that information needed for the prevention of violence can be acquired in the normal course of criminal investigations.

As a practical matter, the line between intelligence work and regular criminal investigations is often difficult to describe. What begins as an intelligence investigation may well end in arrest and prosecution of the subject. But there are some fundamental differences between these

investigations that should be recognized -- differences in scope, in objective and in the time of initiation. In the usual criminal case, a crime has occurred and it remains only for the Government to identify the perpetrator and to collect sufficient evidence for prosecution. Since the investigation normally follows the elements of the crime, the scope of the inquiry is limited and fairly well defined.

By contrast, intelligence work involves the gathering of information, not necessarily evidence. The purpose may well be not to prosecute, but rather to thwart crime or to insure that the Government has enough information to meet any future crisis or emergency. The inquiry is necessarily broad because it must tell us not only the nature of the threat, but also whether the threat is imminent, the persons involved, and the means by which the threat will be carried out. The ability of the Government to prevent criminal acts is dependent on our anticipation of those unlawful acts. Anticipation, in turn, is dependent on advance information -- that is intelligence.

Certainly, reasonable people can differ on these issues. Given the opportunity, I am confident that the continuing need for intelligence work can be documented to the full satisfaction of the Congress. We

recognize that what is at stake here is not the interests of the FBI, but rather the interests of every citizen of this country. We recognize also that the resolution of these matters will demand extensive and thoughtful deliberation by the Congress. To this end, I pledge the complete cooperation of the Bureau with this Committee or its successor in this important task.

In any event, you have my unqualified assurance as Director that we will carry out both the letter and the spirit of such legislation as the Congress may enact.

EXCERPTS OF REMARKS MADE BY  
ASSISTANT TO THE DIRECTOR --  
DEPUTY ASSOCIATE DIRECTOR JAMES B. ADAMS  
TESTIFYING BEFORE THE  
SENATE SELECT COMMITTEE  
PERTAINING TO THE KU KLUX KLAN,  
GARY ROWE, FORMER FBI INFORMANT, AND  
PREVIOUS ATTEMPTS OF THE FBI  
TO PREVENT VIOLENCE

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DECEMBER 2, 1975

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QUESTION:           ....You do use informants and do instruct them to spread dissention among certain groups that they are informing on, do you not?

MR. ADAMS:           We did when we had the COINTEL programs which were discontinued in 1971, and I think the Klan is probably one of the best examples of a situation where the law was ineffective at the time. We heard the term, State's Rights used much more than we hear today. We saw with the Little Rock situation the President of the United States sending in the troops pointing out the necessity to use local law enforcement. We must have local law enforcement use the troops only as a last resort. When you have a situation like this where you do try to preserve the respective roles in law enforcement, you have historical problems.

          With the Klan coming along, we had situations where the FBI and the Federal Government was almost powerless to act. We had local law enforcement officers in some areas participating in Klan violence. The incidents mentioned by Mr. Rowe--everyone of those he saw them from the lowest level--the informant. He didn't see what action was taken with that information as he pointed out during his testimony. Our files show that this information was reported to the police departments in every instance.

          We also know that in certain instances the information upon being received was not being acted upon. We also disseminated simultaneously through letterhead

memorandum to the Department of Justice the problem. And here we were--the FBI--in a position where we had no authority in the absence of an instruction from the Department of Justice to make an arrest. Section 241 and 242 don't cover it because you don't have evidence of a conspiracy. It ultimately resulted in a situation where the Department called in U. S. Marshals who do have authority similar to local law enforcement officials.

So historically, in those days, we were just as frustrated as anyone else was, that when we got information from someone like Mr. Rowe--good information, reliable information--and it was passed on to those who had the responsibility to do something about it, it was not always acted upon as he indicated.

QUESTION: In none of these cases, then, there was adequate evidence of conspiracy to give you jurisdiction to act.

MR. ADAMS: The Departmental rules at that time, and still do, require Departmental approval where you have a conspiracy. Under 241, it takes two or more persons acting together. You can have a mob scene and you can have blacks and whites belting each other, but unless you can show that those that initiated the action acted in concert, in a conspiracy, you have no violation.

Congress recognized this and it wasn't until 1968 that they came along and added Section 245 to the Civil Rights Statute which added punitive measures against an

individual. There didn't have to be a conspiracy. This was a problem that the whole country was grappling with--the President of the United States, Attorneys General--we were in a situation where we had rank lawlessness taking place. As you know from the memorandum we sent you that we sent to the Attorney General the accomplishments we were able to obtain in preventing violence and in neutralizing the Klan and that was one of the reasons.

QUESTION: ....A local town meeting on a controversial social issue might result in disruption. It might be by hecklers rather than by those holding the meeting. Does this mean that the Bureau should investigate all groups organizing or participating in such meetings because they may result in violent government disruption?

MR ADAMS: No sir, and we don't....

QUESTION: Isn't that how you justify spying on almost every aspect of the peace movement?

MR. ADAMS: No sir. When we monitor demonstrations, we monitor demonstrations where we have an indication that the demonstration itself is sponsored by a group that we have an investigative interest in, a valid investigative interest in, or where members of one of these groups are participating where there is a potential that they might change the peaceful nature of the demonstration.

This is our closest question of trying to draw guidelines to avoid getting into an area of infringing on the 1st Amendment right, yet at the same time, being

aware of groups such as we have had in greater numbers in the past than we do at the present time. We have had periods where the demonstrations have been rather severe and the courts have said that the FBI has the right, and indeed the duty, to keep itself informed with respect to the possible commission of crime. It is not obliged to wear blinders until it may be too late for prevention. Now that's a good statement if applied in a clear-cut case.

Our problem is where we have a demonstration and we have to make a judgment call as to whether it is one that clearly fits the criteria of enabling us to monitor the activities. That's where I think most of our disagreements fall.

QUESTION: In the Rowe Case, in the Rowe testimony that we just heard, what was the rationale again for not intervening when violence was known about. I know we have asked this several times--I'm still having trouble understanding what the rationale, Mr. Wannall, was in not intervening in the Rowe situation when violence was known.

MR. WANNALL: Senator Schweiker, Mr. Adams did address himself to that and if you have no objections, I'll ask that he be the one to answer the question.

MR. ADAMS: The problem we had at the time, and it is the problem today, we are an investigative agency; we do not have police powers even like the U. S. Marshals do. The Marshals

since about 1795 I guess, or some period like that, had authorities that almost border on what a sheriff has. We are the investigative agency of the Department of Justice, and during these times the Department of Justice had us maintain the role of an investigative agency.

We were to report on activities. We furnished the information to the local police who had an obligation to act. We furnished it to the Department of Justice in those areas where the local police did not act. It resulted finally in the Attorney General sending 500 U. S. Marshals down to guarantee the safety of people who were trying to march in protest of their civil rights.

This was an extraordinary measure because it came at a time of Civil Rights versus Federal Rights and yet there was a breakdown in law enforcement in certain areas of the country. This doesn't mean to indict all law enforcement agencies in the South at the time either, because many of them did act upon the information that was furnished to them. But we have no authority to make an arrest on the spot because we would not have had evidence that was a conspiracy available. We could do absolutely nothing in that regard. In Little Rock the decision was made, for instance, that if any arrests need to be made, the Army should make them. And next to the Army, the U. S. Marshals should make them--not the FBI, even though we developed the violations. We have over the years as you know at the

Time there were many questions raised. Why doesn't the FBI stop this? Why don't you do something about it? Well, we took the other route and effectively destroyed the Klan as far as committing acts of violence and, of course, we exceeded statutory guidelines in that area.

QUESTION:           What would be wrong, just following up on your point there, Mr. Adams, with setting up a program since it is obvious to me that a lot of our informers are going to have preknowledge of violence of using U. S. Marshals on some kind of long-range basis to prevent violence?

MR. ADAMS:           We do. We have them in Boston in connection with the busing incident. We are investigating the violations under the Civil Rights Act, but the Marshals are in Boston. They are in Louisville, I believe, at the same time and this is the approach that the Federal Government finally recognized.

QUESTION:           On an immediate and fairly contemporary basis that kind of help can be sought instantly as opposed to waiting till it gets to a Boston state. I realize a departure from the past and not saying it isn't, but it seems to me we need a better remedy than we have.

MR ADAMS:           Well, fortunately we are at a time where conditions have subsided in the country even from the 60's and the 70's, or 50's and 60's. We report to the Department of Justice on potential trouble spots around the country as we learn of them so that the Department will be aware of them. The planning

for Boston, for instance, took place a year in advance, with state officials, city officials, the Department of Justice and the FBI sitting down together saying "How are we going to protect the situation in Boston"? I think we have learned a lot from the days back in the early 60's. But, the Government had no mechanics which protected people at that time.

QUESTION: Next I would like to ask, back in 1965, I guess during the height of the effort to destroy the Klans as you put it a few moments ago, I believe the FBI has released figures that we had something like 2,000 informers of some kind or another infiltrating the Klan out of roughly 10,000 estimated membership.

MR. ADAMS: That's right.

QUESTION: I believe these are FBI figures or estimates. That would mean that 1 out of every 5 members of the Klan at that point was an informant paid by the Government and I believe the figure goes on to indicate that 70 percent of the new members in the Klan that year were FBI informants. Isn't that an awful overwhelming quantity of people to put in an effort such as that? I'm not criticizing that we shouldn't have informants in the Klan and know what is going on to revert violence but it just seems to me that the tail is sort of wagging the dog. For example today we supposedly have only 1594 total informants, both domestic informants and potential informants. Yet, here we have 2,000 in just the Klan alone.

MR. ADAMS: Well, this number of 2,000 did include all racial matters and informants at that particular time and I think the figures

we tried to reconstruct as to the actual number of Klan informants in relation to Klan members was around 6 percent, I think after we had read some of the testimony on it. Isn't that right, Bill? Now the problem we had on the Klan is the Klan had a group called the Action Group. This was the group if you remember from Mr. Rowe's testimony that he was left out of in the beginning. He attended the open meetings and heard all the hoorahs and this type of information but he never knew what was going on because each one had an Action Group that went out and considered themselves in the missionary field. Theirs was the violence. In order to penetrate those you have to direct as many informants as you possibly can against it. Bear in mind that I think the newspapers, the President, Congress, everyone, was concerned about the murder of the three civil rights workers, the Lemul Penn case, the Violet Liuzzo case, the bombings of the church in Birmingham. We were faced with one tremendous problem at that time.

QUESTION: I acknowledge that.

MR. ADAMS: Our only approach was through informants. Through the use of informants we solved these cases. The ones that were solved. There were some of the bombing cases we never solved. They're extremely difficult, but, these informants as we told the Attorney General and as we told the President, we moved informants like Mr. Rowe up to the top leadership. He was the bodyguard to the head man. He was in a position where he could see that this could continue forever unless we could



create enough disruption that these members will realize that if I go out and murder three civil rights, even though the Sheriff and other law enforcement officers are in on it, if that were the case, and in some of that was the case, that I will be caught, and that's what we did, and that's why violence stopped because the Klan was insecure and just like you say 20 percent, they thought 50 percent of their members ultimately were Klan members, and they didn't dare engage in these acts of violence because they knew they couldn't control the conspiracy any longer.

QUESTION: I just have one quick question. Is it correct that in 1971 we were using around 6500 informers for a black ghetto situation?

MR ADAMS: I'm not sure if that's the year. We did have a year where we had a number like that of around 6000 and that was the time when the cities were being burned. Detroit, Washington, areas like this, we were given a mandate to know what the situation is, where is violence going to break out next. They weren't informants like an individual that is penetrating an organization. They were listening posts in the community that would help tell us that we have another group here that is getting ready to start another fire fight or something.

QUESTION: ... Without going into that subject further of course we have had considerable evidence this morning where no attempt was made to prevent crime when you had information that it was going to occur. I am sure there were instances where you have.

MR. ADAMS: We disseminated every single item which he reported to us.

QUESTION: To a police department which you knew was an accomplice to the crime.

MR. ADAMS: Not necessarily knew.

QUESTION: Your informant told you that, hadn't he?

MR. ADAMS: The informant is on one level. We have other informants and we have other information.

QUESTION: You were aware that he had worked with certain members of the Birmingham Police in order...

MR. ADAMS: That's right. He furnished many other instances also.

QUESTION: So you really weren't doing a whole lot to prevent that incident by telling the people who were already a part of it.

MR. ADAMS: We were doing everything we could lawfully do at the time and finally the situation was corrected when the Department agreeing that we had no further jurisdiction, sent the U.S. Marshals down to perform certain law enforcement functions.

QUESTION: ...This brings up the point as to what kind of control you can exercise over this kind of informant and to this kind of organization and to what extent an effort is made to prevent these informants from engaging in the kind of thing that you were supposedly trying to prevent.

MR. ADAMS: A good example of this was Mr. Rowe who became active in an Action Group and we told him to get out or we were no longer using him as an informant in spite of the information he had furnished in the past. We have cases, Senator where we have had

QUESTION: But you also told him to participate in violent activities

MR. ADAMS: We did not tell him to participate in violent activities.

QUESTION: That's what he said.

MR. ADAMS: I know that's what he says, but that's what lawsuits are all about is that there are two sides to issues and our Agent handlers have advised us, and I believe have advised your staff members, that at no time did they advise him to engage in violence.

QUESTION: Just to do what was necessary to get the information.

MR. ADAMS: I do not think they made any such statement to him along that line either and we have informants who have gotten involved in the violation of a law and we have immediately converted their status from an informant to the subject and have prosecuted I would say off hand, I can think of around 20 informants that we have prosecuted for violating the laws once it came to our attention and even to show you our policy of disseminating information on violence in this case during the review of the matter the Agents have told me that they found one case where an Agent had been working 24 hours a day and he was a little late in disseminating the information to the police department. No violence occurred but it showed up in a file review and he was censured for his delay in properly notifying local authorities. So we not only have a policy, I feel that we do follow reasonable safeguards in order to carry it out, including periodic review of all informant files.

QUESTION: Mr. Rowe's statement is substantiated to some extent with an acknowledgment by the Agent in Charge that if he were going

to be a Klansman and he happened to be with someone and they decided to do something, he couldn't be an angel. These are words of the Agent. And be a good informant. He wouldn't take the lead but the implication is that he would have to go along or would have to be involved if he was going to maintain his liability as a ---

MR. ADAMS: There is no question that an informant at times will have to be present during demonstrations, riots, fistfights that take place but I believe his statement was to the effect that, and I was sitting in the back of the room and I do not recall it exactly, but that some of them were beat with chains and I did not hear whether he said he beat someone with a chain or not but I rather doubt that he did, because it is one thing being present, it is another thing taking an active part in a criminal action.

QUESTION: It's true. He was close enough to get his throat cut apparently.

QUESTION: How does the collection of information about an individual's personal life, social, sex life and becoming involved in that sex life or social life is a requirement for law enforcement or crime prevention.

MR. ADAMS: Our Agent handlers have advised us on Mr. Rowe that they gave him no such instruction, they had no such knowledge concerning it and I can't see where it would be of any value whatsoever.

QUESTION:            You don't know of any such case where these instructions  
                         were given to an Agent or an informant?

MR. ADAMS:            To get involved in sexual activity?    No Sir.

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RE: HEARINGS BEFORE THE SENATE  
SELECT COMMITTEE

Date December 4, 1975

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Remarks:

For your assistance in responding to local press inquiries, attached is a copy of unedited excerpted remarks by Assistant to the Director--Deputy Associate Director James B. Adams while testifying before the Senate Select Committee on 12/2/75, concerning anti-FBI allegations made by Gary Rowe, former FBI informant.

*Rowe's by file*

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In our opinion

# FBI betrayed nation's trust

A disgusting tale is unfolding before the Senate Intelligence Subcommittee:

It is a story of the FBI in the 1960s and early '70s using its awesome power to subvert traditional constitutional rights of citizens.

FBI threats and intimidation of the late Dr. Martin Luther King are getting the headlines, but as Senator Philip A. Hart (D-Mich.) says, "Lots of people named Jones and Smith, who never came close to a Nobel Prize (which Dr. King received in 1964) have had their First Amendment rights trampled on."

A couple of examples:

The FBI would send anonymous letters intended to break up marriages of dissenters, or it would send similar letters to colleges and/or newspapers aimed at getting speakers the FBI didn't like barred from using campus facilities.

James B. Adams, deputy associate FBI director, conceded that the FBI had "no statutory authority" for its harassment activities. That's certainly an understatement.

The current hearings point up the need for tighter control over the FBI. We should never again have a situation where the FBI director can "run amuck," free from control from the Attorney General and Congress. That's exactly what happened during the last years of J. Edgar Hoover's tenure.

The FBI — and Hoover — served the nation well for many years.

But that is not, and should never be, a license to be above the law.

If our law enforcement agencies cannot stay within both the letter and spirit of the law, our "nation of laws" may soon become a nation of thugs.

(Indicate page, name of newspaper, city and state.)

THE DAILY STAR  
ONEONTA, N. Y.

PAGE 4

Date: 11/22/75

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Author:

Editor:

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Classification: 100-18761

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Being Investigated

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RE: TESTIMONY OF ASSISTANT TO THE DIRECTOR--  
 DEPUTY ASSOCIATE DIRECTOR JAMES B. ADAMS  
 BEFORE THE SENATE SELECT COMMITTEE ON  
 12/2/75: Date December 5, 1975

- For information  Retention optional  For appropriate action  Surep, by \_\_\_\_\_
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Remarks:

Re Bureau R/S of 12/4/75 which provided excerpts of Mr. Adams' testimony.

Attached for your information and assistance, is the complete transcript of above-referenced testimony.

Enc. (1)  
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**UNEDITED TRANSCRIPT**

41/62-2368-16



Vol. 15

# The United States Senate

Report of Proceedings

Hearing held before

Select Committee to Study Governmental Operations

With Respect to Intelligence Activities

INTELLIGENCE INVESTIGATION

## UNEDITED TRANSCRIPT

Tuesday, December 2, 1975

Washington, D. C.

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11            Senator Tower.. The next witnesses to appear before the  
12            Committee are Mr. James Adams, Assistant to the Director-  
13            Deputy Associate Director, Investigation, responsible for all  
14            investigative operations; Mr. W. Raymond Wannall, Assistant  
15            Director, Intelligence Division, responsible for internal  
16            security and foreign counterintelligence investigations; Mr.  
17            John A. Mintz, Assistant Director, Legal Counsel Division;  
18            Joseph G. Deegan, Section Chief, extremist investigations;  
19            Mr. Robert L. Schackelford, Section Chief, subversive  
20            investigations; Mr. Homer A. Newman, Jr., Assistant to Section  
21            Chief, supervises extremist informants; Mr. Edward P. Grigala,  
22            Unit Chief, supervises subversive informants; Joseph G. Kelley,  
23            Assistant Section Chief, Civil Rights Section, General Invest-  
24            gative Division.

25            Gentlemen, will you all rise and be sworn.

Phone (Area 202) 544-6000

WARD &amp; PAUL

410 First Street, S.E., Washington, D.C. 20003

1 . Do you solemnly swear the testimony you are about to give  
2 before this Committee is the truth, the whole truth, and nothing  
3 but the truth, so help you God?

4 Mr. Adams. I do.

5 Mr. Wannall. I do.

6 Mr. Mintz. I do.

7 Mr. Deegan. I do.

8 Mr. Schackelford. I do.

9 Mr. Newman. I do.

10 Mr. Grigalus. I do.

11 Mr. Kelley. I do.

12 Senator Tower. It is intended that Mr. Wannall will be  
13 the principal witness, and we will call on others as questioning  
14 might require, and I would direct each of you when you do  
15 respond, to identify yourselves, please, for the record.

16 I think that we will spend just a few more minutes to allow  
17 the members of the Committee to return from the floor.

18 (A brief recess was taken.)

19 Senator Tower. The Committee will come to order.

20 Mr. Wannall, according to data, informants provide '83  
21 percent of your intelligence information.

22 Now, will you provide the Committee with some information  
23 on the criteria for the selection of informants?

24

25

1 TESTIMONY OF W. RAYMOND WANNALL, ASSISTANT DIRECTOR,  
2 INTELLIGENCE DIVISION, FEDERAL BUREAU OF INVESTIGATION  
3 ACCOMPANIED BY: JAMES B. ADAMS, ASSISTANT TO THE  
4 DIRECTOR-DEPUTY ASSOCIATE DIRECTOR (INVESTIGATION);  
5 JOHN A. MINTZ, ASSISTANT DIRECTOR, LEGAL COUNSEL  
6 DIVISION; JOSEPH G. DEEGAN, SECTION CHIEF; ROBERT L.  
7 SCHACKELFORD, SECTION CHIEF; HOMER A. NEWMAN, JR.,  
8 ASSISTANT TO SECTION CHIEF; EDWARD P. GRIGALUS, UNIT  
9 CHIEF; AND JOSEPH G. KELLEY, ASSISTANT SECTION CHIEF,  
10 CIVIL RIGHTS SECTION, GENERAL INVESTIGATIVE DIVISION

11 Mr. Wannall. Mr. Chairman, that is not FBI data that you  
12 have quoted. That was prepared by the General Accounting  
13 Office.

14 Senator Tower. That is GAO.

15 Mr. Wannall. Based on a sampling of about 93 cases.

16 Senator Tower. Would that appear to be a fairly accurate  
17 figure.

18 Mr. Wannall. I have not seen any survey which the FBI  
19 itself has conducted that would confirm that, but I think that  
20 we do get the principal portion of our information from live  
21 sources.

22 Senator Tower. It would be a relatively high percentage  
23 then?

24 Mr. Wannall. I would say yes. And your question is  
25 criteria?

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Senator Tower. What criteria do you use in the selection of informants?

Mr. Wannall. Well, the criteria vary with the needs. In our cases relating to extremist matters, surely in order to get an informant who can meld into a group which is engaged in a criminal type activity, you're going to have a different set of criteria. If you're talking about our internal security matters, I think we set rather high standards. We do require that a preliminary inquiry be conducted which would consist principally of checks of our headquarters indices, our field office indices, checks with other informants who are operating in the same area, and in various established sources such as local police departments.

Following this, if it appears that the person is the type who has credibility, can be depended upon to be reliable, we would interview the individual in order to make a determination as to whether or not he will be willing to assist the FBI in discharging its responsibilities in that field.

Following that, assuming that the answer is positive, we would conduct a rather in depth investigation for the purpose of further attempting to establish credibility and reliability.

Senator Tower. How does the Bureau distinguish between the use of informants for law enforcement as opposed to intelligence collection?

Is the guidance different, or is it the same, or what?

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1 Mr. Wannall. Well, Mr. Adams can probably best address  
2 the use of informants on criminal matters since he is over  
3 the operational division on that.

4 Mr. Adams. You do have somewhat of a difference in the fact  
5 that a criminal informant in a law enforcement function, you  
6 are trying to develop evidence which will be admissible in  
7 court for prosecution, whereas with intelligence, the informant  
8 alone, your purpose could either be prosecution or it could be  
9 just for purposes of pure intelligence.

10 The difficulty in both is retaining the confidentiality  
11 of the individual and protecting the individual, and trying to,  
12 through use of the informant, obtain evidence which could be  
13 used independently of the testimony of the informant so that  
14 he can continue operating as a criminal informant.

15 Senator Tower. Are these informants ever authorized to  
16 function as provocateurs?

17 Mr. Adams. No, sir, they're not. We have strict regula-  
18 tions against using informants as provocateurs. This gets  
19 into that delicate area of entrapment which has been addressed  
20 by the courts on many occasions and has been concluded by the  
21 courts that providing an individual has a willingness to engage  
22 in an activity, the government has the right to provide him the  
23 opportunity. This does not mean, of course, that mistakes don't  
24 occur in this area, but we take whatever steps we can to  
25 avoid this. Even the law has recognized that informants can

1 engage in criminal activity, and the courts have held that,  
2 especially the Supreme Court in the Newark County Case, that  
3 the very difficulty of penetrating an ongoing operation, that  
4 an informant himself can engage in criminal activity, but  
5 because there is lacking this criminal intent to violate a  
6 law, we stay away from that. Our regulations fall short of that.

7 If we have a situation where we felt that an informant  
8 has to become involved in some activity in order to protect  
9 or conceal his use as an informant, we go right to the United  
10 States Attorney or to the Attorney General to try to make sure  
11 we are not stepping out of bounds insofar as the use of our  
12 informants.

13 Senator Tower. But you do use these informants and do  
14 instruct them to spread dissension among certain groups that  
15 they are informing on, do you not?

16 Mr. Adams. We did when we had the COINTELPRO programs,  
17 which were discontinued in 1971, and I think the Klan is probably  
18 one of the best examples of a situation where the law was  
19 in effect at the time. We heard the term States Rights used  
20 much more then than we hear it today. We saw in the Little  
21 Rock situation the President of the United States, in sending  
22 in the troops, pointing out the necessity to use local law  
23 enforcement. We must have local law enforcement, to use the  
24 troops only as a last resort.

25 And then you have a situation like this where you do try

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1 to preserve the respective roles in law enforcement. You have  
2 historical problems with the Klan coming along. We had  
3 situations where the FBI and the Federal Government was almost  
4 powerless to act. We had local law enforcement officers in  
5 some areas participating in Klan violence.

6 The instances mentioned by Mr. Rowe, every one of those,  
7 he saw them from the lowest level of the informant. He didn't  
8 see what action was taken with that information, as he pointed  
9 out in his testimony. Our files show that this information was  
10 reported to the police departments in every instance. We  
11 also knew that in certain instances the information, upon being  
12 received, was not being acted upon. We also disseminated  
13 simultaneously through letterhead memoranda to the Department  
14 of Justice the problem, and here, here we were, the FBI, in a  
15 position where we had no authority in the absence of instruction  
16 from the Department of Justice, to make an arrest.

17 Sections 241 and 242 don't cover it because you don't have  
18 evidence of a conspiracy, and it ultimately resulted in  
19 a situation where the Department called in United States  
20 Marshals who do have authority similar to local law enforcement  
21 officials.

22 So, historically, in those days, we were just as frus-  
23 trated as anyone else was, and when we got information from  
24 someone like Mr. Rowe, good information, reliable information,  
25 and it was passed on to those who had the responsibility to



1 do something about it, it was not always acted upon, as he  
2 indicated.

3 Senator Tower. None of these cases, then, there was  
4 adequate evidence of conspiracy to give you jurisdiction to  
5 act?

6 Mr. Adams. The Departmental rules at that time, and still  
7 require Departmental approval where you have a conspiracy.  
8 Under 241, it takes two or more persons acting together. You  
9 can have a mob scene, and you can have blacks and whites  
10 belting each other, but unless you can show that those that  
11 initiated the action acted in concert in a conspiracy, you have  
12 no violation.

13 Congress recognized this, and it wasn't until 1968  
14 that they came along and added Section 245 to the civil rights  
15 statute, which added punitive measures against an individual  
16 that didn't have to be a conspiracy. But this was a problem  
17 that the whole country was grappling with: the President of  
18 the United States, Attorney General. We were in a situation  
19 where we had rank lawlessness taking place, as you know from  
20 a memorandum we sent you that we sent to the Attorney General.  
21 The accomplishments we were able to obtain in preventing  
22 violence, and in neutralizing the Klan -- and that was one  
23 of the reasons.

24 Senator Tower. What was the Bureau's purpose in con-  
25 tinuing or urging the continued surveillance of the Vietnam

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1 Veterans Against the War?

2 Was there a legitimate law enforcement purpose, or was the  
3 intent to halter political expression?

4 Mr. Adams. We had information on the Vietnam Veterans  
5 Against the War that indicated that there were subversive  
6 groups involved. They were going to North Vietnam and meeting  
7 with the Communist forces. They were going to Paris, attending  
8 meetings paid for and sponsored by the Communist Party, the  
9 International Communist Party. We feel that we had a very valid  
10 basis to direct our attention to the VVAW.

11 It started out, of course, with Gus Hall in 1967, who was  
12 head of the Communist Party, USA, and the comments he made,  
13 and what it finally boiled down to was a situation where it  
14 split off into the Revolutionary Union, which was a Maost  
15 group, and the hard-line Communist group, and at that point  
16 factionalism developed in many of the chapters, and they closed  
17 those chapters because there was no longer any intent to follow  
18 the national organization.

19 But we had a valid basis for investigating it, and we  
20 investigated chapters to determine if there was affiliation  
21 and subservience to the national office.

22 Senator Tower. Mr. Hart?

23 Senator Hart of Michigan. But in the process of chasing  
24 after the Veterans Against the War, you got a lot of information  
25 that clearly has no relationship to any Federal criminal

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1 statute.

2 Mr. Adams. I agree, Senator.

3 Senator Hart of Michigan. Why don't you try to shut that  
4 stuff off by simply telling the agent, or your informant?

5 Mr. Adams. Here is the problem that you have with that.  
6 When you're looking at an organization, do you report only the  
7 violent statements made by the group or do you also show that  
8 you may have one or two violent individuals, but you have  
9 some of these church groups that were mentioned, and others,  
10 that the whole intent of the group is not in violation of the  
11 statutes. You have to report the good, the favorable along  
12 with the unfavorable, and this is a problem. We wind up with  
13 information in our files. We are accused of being vacuum  
14 cleaners, and you are a vacuum cleaner. If you want to know the  
15 real purpose of an organization, do you only report the  
16 violent statements made and the fact that it is by a small  
17 minority, or do you also show the broad base of the organization  
18 and what it really is?

19 And within that is where we have to have the guidelines  
20 we have talked about before. We have to narrow down, because  
21 we recognize that we do wind up with too much information in  
22 our files.

23 Senator Hart of Michigan. But in that vacuuming process,  
24 you are feeding into Departmental files the names of people  
25 who are, who have been engaged in basic First Amendment

1 exercises, and this is what hangs some of us up.

2 Mr. Adams. It hangs me up. But in the same files I  
3 imagine every one of you has been interviewed by the FBI, either  
4 asking you about the qualifications of some other Senator  
5 being considered for a Presidential appointment, being inter-  
6 viewed concerning some friend who is applying for a job.

7 Were you embarrassed to have that in the files of the  
8 FBI?

9 Now, someone can say, as reported at our last session, that  
10 this is an indication, the mere fact that we have a name in our  
11 files has an onerous impression, a chilling effect. I agree.  
12 It can have, if someone wants to distort what we have in our  
13 files, but if they recognize that we interviewed you because  
14 of considering a man for the Supreme Court of the United  
15 States, and that isn't distorted or improperly used, I don't  
16 see where any harm is served by having that in our files.

17 Senator Hart of Michigan. But if I am Reverend Smith  
18 and the vacuum cleaner picked up the fact that I was helping  
19 the veterans, Vietnam Veterans Against the War, and two years  
20 later a name check is asked on Reverend Smith and all your  
21 file shows is that he was associated two years ago with a group  
22 that was sufficient enough, held sufficient doubtful patriotism  
23 to justify turning loose a lot of your energy in pursuit on  
24 them --

25 Mr. Adams. This is a problem.

1 Senator Hart of Michigan. This is what should require  
2 us to rethink this whole business.

3 Mr. Adams. Absolutely.

4 And this is what I hope the guidelines committees as well  
5 as the Congressional input are going to address themselves to.

6 Senator Hart of Michigan. We've talked about a wide range  
7 of groups which the Bureau can and has had informant penetration  
8 and report on. Your manual, the Bureau manual's definition  
9 of when an extremist or security investigation may be under-  
10 taken refers to groups whose activity either involves violation  
11 of certain specified laws, or which may result in the violation  
12 of such law, and when such an investigation is opened, then  
13 informants may be used.

14 Another guideline says that domestic intelligence  
15 investigations now must be predicated on criminal violations.  
16 The agent need only cite a statute suggesting an investigation  
17 relevant to a potential violation. Even now, with an improved,  
18 upgraded effort to avoid some of these problems, we are back  
19 again in a world of possible violations or activities which  
20 may result in illegal acts.

21 Now, any constitutionally protected exercise of the  
22 right to demonstrate, to assemble, to protest, to petition,  
23 conceivably may result in violence or disruption of a local  
24 town meeting, when a controversial social issue might result  
25 in disruption. It might be by hecklers rather than those holding

1 the meeting.

2 Does this mean that the Bureau should investigate all  
3 groups organizing or participating in such a meeting because  
4 they may result in violence, disruption?

5 Mr. Adams. No, sir.

6 Senator Hart of Michigan. Isn't that how you justify  
7 spying on almost every aspect of the peace movement?

8 Mr. Adams. No, sir. When we monitor demonstrations, we  
9 monitor demonstrations where we have an indication that the  
10 demonstration itself is sponsored by a group that we have an  
11 investigative interest in, a valid investigative interest in,  
12 or where members of one of these groups are participating where  
13 there is a potential that they might change the peaceful  
14 nature of the demonstration.

15 But this is our closest question of trying to draw  
16 guidelines to avoid getting into an area of infringing on the  
17 First Amendment rights of people, yet at the same time being  
18 aware of groups such as we have had in greater numbers in the  
19 past than we do at the present time. But we have had periods  
20 where the demonstrations have been rather severe, and the  
21 courts have said that the FBI has a right, and indeed a duty,  
22 to keep itself informed with respect to the possible commission  
23 of crime. It is not obliged to wear blinders until it may be  
24 too late for prevention.

25 And that's a good statement if applied in a clearcut

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case. Our problem is where we have a demonstration and we have to make a judgment call as to whether it is one that clearly fits the criteria of enabling us to monitor the activities, and that's where I think most of our disagreements fall.

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1 Senator Hart of Michigan. Let's assume that the rule  
2 for opening an investigation on a group is narrowly drawn. The  
3 Bureau manual states that informants investigating a subversive  
4 organization should not only report on what that group is  
5 doing but should look at and report on activities in which  
6 the group is participating.

7 There is a Section 87B3 dealing with reporting on  
8 connections with other groups. That section says that the  
9 field office shall "determine and report on any significant  
10 connection or cooperation with non-subversive groups." Any  
11 significant connection or cooperation with non-subversive  
12 groups.

13 Now let's look at this in practice. In the spring of  
14 1969 there was a rather heated national debate over the  
15 installation of the anti-ballistic missile system. Some of us  
16 remember that. An FBI informant and two FBI confidential  
17 sources reported on the plan's participants and activities  
18 of the Washington Area Citizens Coalition Against the ABM,  
19 particularly in open public debate in a high school auditorium,  
20 which included speakers from the Defense Department for the  
21 ABM and a scientist and defense analyst against the ABM.

22 The informants reported on the planning for the meeting,  
23 the distribution of materials to churches and schools,  
24 participation by local clergy, plans to seek resolution on the  
25 ABM from nearby town councils. There was also information on



1 plans for a subsequent town meeting in Washington with the  
2 names of local political leaders who would attend.

3 Now the information, the informant information came as  
4 part of an investigation of an allegedly subversive group  
5 participating in that coalition. Yet the information dealt  
6 with all aspects and all participants. The reports on the  
7 plans for the meeting and on the meeting itself were disseminated  
8 to the State Department, to military intelligence, and to the  
9 White House.

10 How do we get into all of that?

11 Mr. Adams. Well --

12 Senator Hart of Michigan. Or if you were to rerun it,  
13 would you do it again?

14 Mr. Adams. Well, not in 1975, compared to what 1969  
15 was. The problem we had at the time was where we had an  
16 informant who had reported that this group, this meeting was  
17 going to take place and it was going to be the Daily World,  
18 which was the east coast communist newspaper that made comments  
19 about it. They formed an organizational meeting. We took  
20 a quick look at it. The case apparently was opened in May 28,  
21 1969 and closed June 5 saying there was no problem with this  
22 organization.

23 Now the problem we get into is if we take a quick look  
24 and get out, fine. We've had cases, though, where we have  
25 stayed in too long. When you're dealing with security it is like

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1 Soviet espionage where they can put one person in this country  
 2 and they supported him with total resources of the Soviet  
 3 Union, false identification, all the money he needs, communi-  
 4 cations networks, satellite assistance, and everything, and  
 5 you're working with a paucity of information.

6 The same problem exists to a certain extent in domestic  
 7 security. You don't have a lot of black and white situations.  
 8 So someone reports something to you which you feel, you take  
 9 a quick look at and there's nothing to it, and I think that's  
 10 what they did.

11 Senator Hart of Michigan. You said that was '69. Let  
 12 me bring you up to date, closer to current, a current place  
 13 on the calendar.

14 This one is the fall of last year, 1975. President  
 15 Ford announced his new program with respect to amnesty, as  
 16 he described it, for draft resisters. Following that there  
 17 were several national conferences involving all the groups  
 18 and individuals interested in unconditional amnesty.

19 Now parenthetically, while unconditional amnesty is  
 20 not against -- while unconditional amnesty is not yet the law,  
 21 we agreed that advocating it is not against the law either.

22 Mr. Adams. That's right.

23 Senator Hart of Michigan. Some of the sponsors were  
 24 umbrella organizations involving about 50 diverse groups around  
 25 the country. FBI informants provided advance information on

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1 plans for the meeting and apparently attended and reported on  
2 the conference. The Bureau's own reports described the  
3 participants as having represented diverse perspectives on  
4 the issue of amnesty, including civil liberties and human  
5 rights groups, G.I. rights spokesmen, parents of men killed  
6 in Vietnam, wives of ex-patriates in Canada, experts on draft  
7 counselling, religious groups interested in peace issues,  
8 delegates from student organizations, and aides of House and  
9 Senate members, drafting legislation on amnesty.

10 The informant apparently was attending in his role as  
11 a member of a group under investigation as allegedly subversive  
12 and it described the topics of the workshop.

13 Ironically, the Bureau office report before them noted  
14 that in view of the location of the conference at a theological  
15 seminary, the FBI would use restraint and limit its coverage  
16 to informant reports.

17 Now this isn't five or ten years ago. This is last  
18 fall. And this is a conference of people who have the point  
19 of view that I share, that the sooner we have unconditional  
20 amnesty, the better for the soul of the country.

21 Now what reason is it for a vacuum cleaner approach on  
22 a thing like that? Don't these instances illustrate how broad  
23 informant intelligence really is, that would cause these groups  
24 in that setting having contact with other groups, all and  
25 everybody is drawn into the vacuum and many names go into the

1 Bureau files.

2 Is this what we want?

3 Mr. Adams. I'll let Mr. Wannall address himself to this.

4 He is particular knowledgeable as to this operation.

5 Mr. Wannall. Senator Hart, that was a case that was  
6 opened on November 14 and closed November 20, and the information  
7 which caused us to be interested in it were really two particular  
8 items. One was that a member of the steering committee there,  
9 was a three man steering committee, and one of those members  
10 of the national conference was in fact a national officer  
11 of the VVAW in whom we had suggested before we did have a  
12 legitimate investigative interest.

13 Senator Hart of Michigan. Well, I would almost say so what  
14 at that point.

15 Mr. Wannall. The second report we had was that the  
16 VVAW would actively participate in an attempt to pack the  
17 conference to take it over. And the third report we had --

18 Senator Hart of Michigan. And incidentally, all of the  
19 information that your Buffalo informant had given you with  
20 respect to the goals and aims of the VVAW gave you a list of  
21 goals which were completely within Constitutionally protected  
22 objectives. There wasn't a single item out of that VVAW that  
23 jeopardizes the security of this country at all.

24 Mr. Wannall. Well, of course, we did not rely entirely  
25 on the Buffalo informant, but even there we did receive

1 from that informant information which I considered to be  
2 significant.

3 The Buffalo chapter of the VVAW was the regional office  
4 covering New York and northern New Jersey. It was one of the  
5 five most active VVAW chapters in the country and at a  
6 national conference, or at the regional conference, this  
7 informant reported information back to us that an attendee  
8 at the conference announced that he had run guns into Cuba  
9 prior to the Castro take-over. He himself said that he during  
10 the Cuban crisis had been under 24 hour surveillance. There  
11 was also discussion at the conference of subjugating the  
12 VVAW to the revolutionary union. There were some individuals  
13 in the chapter or the regional conference who were not in  
14 agreement with us, but Mr. Adams has addressed himself to the  
15 interest of the revolutionary union.

16 So all of the information that we had on the VVAW did  
17 not come from that source but even that particular source did  
18 give us information which we considered to be of some  
19 significance in our appraisal of the need for continuing the  
20 investigation of that particular chapter of the VVAW.

21 Senator Hart of Michigan. But does it give you the  
22 right or does it create the need to go to a conference, even  
23 if it is a conference that might be taken over by the VVAW  
24 when the subject matter is how and by what means shall we  
25 seek to achieve unconditional amnesty? What threat?

1 Mr. Wannall. Our interest, of course, was the VVAW  
2 influence on a particular meeting, if you ever happened to be  
3 holding a meeting, or whatever subject it was.

4 Senator Hart of Michigan. What if it was a meeting to  
5 seek to make more effective the food stamp system in this  
6 country?

7 Mr. Wannall. Well, of course there had been some  
8 organizations.

9 Senator Hart of Michigan. Would the same logic follow?

10 Mr. Wannall. I think that if we found that if the  
11 Communist Party USA was going to take over the meeting and  
12 use it as a front for its own purposes, there would be a logic  
13 in doing that. You have a whole scope here and it's a matter  
14 of where you do and where you don't, and hopefully, as we've  
15 said before, we will have some guidance, not only from this  
16 committee but from the guidelines that are being developed.  
17 But within the rationale of what we're doing today, I was  
18 explaining to you our interest not in going to this thing and  
19 not gathering everything there was about it.

20 In fact, only one individual attended and reported to us,  
21 and that was the person who had, who was not developed for  
22 this reason; an informant who had been reporting on other  
23 matters for some period of time.

24 And as soon as we got the report of the outcome of the  
25 meeting and the fact that in the period of some of the re

1 discontinued any further interest.

2           Senator Hart of Michigan. Well, my time has expired  
3 but even this brief exchange, I think, indicates that if we  
4 really want to control the dangers to our society of using  
5 informants to gather domestic political intelligence, we have  
6 to restrict sharply domestic intelligence investigations. And  
7 that gets us into what I would like to raise with you when  
8 my turn comes around again, and that's the use of warrants,  
9 obliging the Bureau to obtain a warrant before a full-fledged  
10 informant can be directed by the Bureau against a group or  
11 individuals.

12           I know you have objections to that and I would like to  
13 review that with you.

14           Senator Mondale, pursue that question.

15           Senator Hart of Michigan. I am talking now about an  
16 obligation to obtain a warrant before you turn loose a full-  
17 fledged informant. I'm not talking about tipsters that run  
18 into you or you run into, or who walk in as information sources.  
19 The Bureau has raised some objections in this memorandum to the  
20 Committee. The Bureau argues that such a warrant requirement  
21 might be unconstitutional because it would violate the First  
22 Amendment rights of FBI informants to communicate with their  
23 government.

24           Now that's a concern for First Amendment rights that  
25 ought to        hearten all the civil libertarians.

1 But why would that vary, why would a warrant requirement  
2 raise a serious constitutional question?

3 Mr. Adams. Well, for one thing it's the practicability  
4 of it or the impactability of getting a warrant which  
5 ordinarily involves probable cause to show that a crime has  
6 been or is about to be committed.

7 In the intelligence field we are not dealing necessarily  
8 with an imminent criminal action. We're dealing with activities  
9 such as with the Socialist Workers Party, which we have  
10 discussed before, where they say publicly we're not to engage  
11 in any violent activity today, but we guarantee you we still  
12 subscribe to the tenets of communism and that when the time  
13 is ripe, we're going to rise up and help overthrow the United  
14 States.

15 Well, now, you can't show probable cause if they're about  
16 to do it because they're telling you they're not going to do it  
17 and you know they're not going to do it at this particular  
18 moment.

19 It's just the mixture somewhat of trying to mix in a  
20 criminal procedure with an intelligence gathering function, and  
21 we can't find any practical way of doing it. We have a particular  
22 organization. We may have an informant that not only belongs  
23 to the Communist Party, but belongs to several other organization:  
24 and as part of his function he may be sent out by the Communist  
25 Party to try to infiltrate one of these clean organizations.



1 We don't have probable cause for him to target against  
2 that organization, but yet we should be able to receive informa-  
3 tion from him that he as a Communist Party member, even  
4 though in an informant status, is going to that organization  
5 and don't worry about it. We're making no headway on it.  
6 It's just from our standpoint the possibility of informants,  
7 the Supreme Court has held that informants per se do not  
8 violate the First, Fourth, or Fifth Amendments. They have  
9 recognized the necessity that the government has to have  
10 individuals who will assist them in carrying out their  
11 governmental duties.

12 Senator Hart of Michigan. I'm not sure I've heard anything  
13 yet in response to the constitutional question, the very  
14 practical question that you addressed.

15 Quickly, you are right that the court has said that the  
16 use of the informant per se is not a violation of constitutional  
17 rights of the subject under investigation. But Congress  
18 can prescribe some safeguards, some rules and some standards,  
19 just as we have with respect to your use of electronic  
20 surveillance, and could do it with respect to informants.

21 That's quite different from saying that the warrant  
22 procedure itself would be unconstitutional.

23 But with respect to the fact that you couldn't show  
24 probable cause, and therefore, you couldn't get a warrant,  
25 therefore you oppose the proposal to require you to get a

1 warrant. It seems to beg the question.

2 Assuming that you say that since we use informants and  
3 investigate groups which may only engage in lawful activities  
4 but which might engage in activities that can result in  
5 violence or illegal acts, and you can't use the warrant, but  
6 Congress could say that the use of informants is subject to  
7 such abuse and poses such a threat to legitimate activity,  
8 including the willingness of people to assemble and discuss  
9 the anti-ballistic missile system, and we don't want you to  
10 use them unless you have indication of criminal activity or  
11 unless you present your request to a magistrate in the same  
12 fashion as you are required to do with respect to, in most  
13 cases, to wiretap.

14 This is an option available to Congress.

15 Senator Tower. Senator Schweiker.

16 Senator Schweiker. Thank you very much.

17 Mr. Wannall, what's the difference between a potential  
18 security informant and a security informant?

19 Mr. Wannall. I mentioned earlier, Senator Schweiker,  
20 that in developing an informant we do a preliminary check on  
21 him before talking with him and then we do a further in-depth  
22 background check.

23 A potential security informant is someone who is under  
24 consideration before he is approved by headquarters for use as  
25 an informant. He is someone who is under current consideration.

End Tape 6

Begin Tape 7

1 On some occasions that person will have been developed to a  
2 point where he is in fact furnishing information and we are  
3 engaged in checking upon his reliability.

4 In some instances he may be paid for information furnished,  
5 but it has not gotten to the point yet where we have satisfied  
6 ourselves that he meets all of our criteria. When he does,  
7 the field must submit its recommendations to headquarters, and  
8 headquarters will pass upon whether that individual is an  
9 approved FBI informant.

10 Senator Schweiker. So it's really the first step of  
11 being an informant, I guess.

12 Mr. Wannall. It is a preliminary step, one of the  
13 preliminary steps.

14 Senator Schweiker. In the Rowe case, in the Rowe  
15 testimony that we just heard, what was the rationale again  
16 for not intervening when violence was known?

17 I know we asked you several times but I'm still having  
18 trouble understanding what the rationale, Mr. Wannall, was  
19 in not intervening in the Rowe situation when violence was  
20 known.

21 Mr. Wannall. Senator Schweiker, Mr. Adams did address  
22 himself to that. If you have no objection, I'll ask him to  
23 answer that.

24 Senator Schweiker. All right.

25 Mr. Adams. The problem we had at the time, and it's the

1 problem today, we are an investigative agency. We do not  
2 have police powers like the United States marshalls do.  
3 About 1795, I guess, or some period like that, marshalls have  
4 had the authority that almost borders on what a sheriff has.  
5 We are the investigative agency of the Department of Justice  
6 and during these times the Department of Justice had us maintain  
7 the role of an investigative agency. We were to report on  
8 activities to furnish the information to the local police,  
9 who had an obligation to act. We furnished it to the Department  
10 of Justice.

11 In those areas where the local police did not act, it  
12 resulted finally in the Attorney General sending 500 United  
13 States marshalls down to guarantee the safety of people who  
14 were trying to march in protest of their civil rights.

15 This was an extraordinary measure because it came at a  
16 time of civil rights versus federal rights, and yet there was  
17 a breakdown in law enforcement in certain areas of the country.

18 This doesn't mean to indict all law enforcement agencies  
19 in itself at the time either because many of them did act  
20 upon the information that was furnished to them. But we  
21 have no authority to make an arrest on the spot because we  
22 would not have had evidence that there was a conspiracy  
23 available. We can do absolutely nothing in that regard.

24 In Little Rock, the decision was made, for instance, that  
25 if any arrests need to be made, the Army should make them and

1 next to the Army, the United States marshalls should make them,  
2 not the FBI, even though we developed the violations.

3 And over the years, as you know, at the time there were many  
4 questions raised. Why doesn't the FBI stop this? Why don't  
5 you do something about it?

6 Well, we took the other route and effectively destroyed  
7 the Klan as far as committing acts of violence, and of course  
8 we exceeded statutory guidelines in that area.

9 Senator Schweiker. What would be wrong, just following  
10 up your point there, Mr. Adams, with setting up a program  
11 since it's obvious to me that a lot of informers are going to  
12 have pre-knowledge of violence of using U.S. marshalls on some  
13 kind of a long-range basis to prevent violence?

14 Mr. Adams. We do. We have them in Boston in connection  
15 with the busing incident. We are investigating the violations  
16 under the Civil Rights Act. But the marshalls are in Boston,  
17 they are in Louisville, I believe at the same time, and this  
18 is the approach, that the Federal government finally recognized,  
19 was the solution to the problem where you had to have added  
20 Federal import.

21 Senator Schweiker. But instead of waiting until it  
22 gets to a Boston state, which is obviously a pretty advanced  
23 confrontation, shouldn't we have somewhere a coordinated program  
24 that when you go up the ladder of command in the FBI, that  
25 on an immediate and fairly contemporary basis, that kind of

1 help can be sought instantly as opposed to waiting until it  
2 gets to a Boston state?

3 I realize it's a departure from the past. I'm not  
4 saying it isn't. But it seems to me we need a better remedy  
5 than we have.

6 Mr. Adams. Well, fortunately, we're at a time where  
7 conditions have subsided in the country, even from the '60s  
8 and the '70s and periods -- or '50s and '60s. We report to the  
9 Department of Justice on potential troublespots around the  
10 country as we learn of them so that the Department will be  
11 aware of them. The planning for Boston, for instance, took  
12 place a year in advance with state officials, city officials,  
13 the Department of Justice and the FBI sitting down together  
14 saying, how are we going to protect the situation in Boston?

15 I think we've learned a lot from the days back in the  
16 early '60s. But the government had no mechanics which protected  
17 people at that time.

18 Senator Schweiker. I'd like to go, if I may, to the  
19 Robert Hardy case. I know he is not a witness but he  
20 was a witness before the House. But since this affects my  
21 state, I'd like to ask Mr. Wannall. Mr. Hardy, of course, was  
22 the FBI informer who ultimately led and planned and organized  
23 a raid on the Camden draft board. And according to Mr. Hardy's  
24 testimony before our Committee, he said that in advance of the  
25 raid someone in the Department had even acknowledged the fact

1 that they had all the information they needed to clamp down  
2 on the conspiracy and could arrest people at that point in time,  
3 and yet no arrests were made.

4 Why, Mr. Wannall, was this true?

5 Mr. Wannall. Well, I can answer that based only on the  
6 material that I have reviewed, Senator Schweiker. It was not  
7 a case handled in my division but I think I can answer your  
8 question.

9 There was, in fact, a representative of the Department  
10 of Justice on the spot counselling and advising continuously  
11 as that case progressed as to what point the arrest should be  
12 made and we were being guided by those to our mentors, the  
13 ones who are responsible for making decisions of that sort.

14 So I think that Mr. Hardy's statement to the effect that  
15 there was someone in the Department there is perfectly true.

16 Senator Schweiker. That responsibility rests with who  
17 under your procedures?

18 Mr. Wannall. We investigate decisions on making arrests,  
19 when they should be made, and decisions with regard to  
20 prosecutions are made either by the United States attorneys  
21 or by Federals in the Department.

22 Mr. Adams. At this time that particular case did have  
23 a departmental attorney on the scene because there are questions  
24 of conspiracy. Conspiracy is a tough violation to prove and  
25 sometimes a question of do you have the added value of catching

1 someone in the commission of the crime as further proof,  
2 rather than relying on one informant and some circumstantial  
3 evidence to prove the violation.

4 Senator Schweiker. Well, in this case, though, they  
5 even had a dry run. They could have arrested them on the  
6 dry run.

7 That's getting pretty close to conspiracy, it seems to  
8 me. They had a dry run and they could have arrested them on  
9 the dry run.

10 I'd like to know why they didn't arrest them on the dry  
11 run. Who was this Department of Justice official who made  
12 that decision?

13 Mr. Adams. Guy Goodwin was the Department official.

14 Senator Schweiker. Next I'd like to ask back in 1965,  
15 during the height of the effort to destroy the Klan, as you  
16 put it a few moments ago, I believe the FBI has released  
17 figures that we had something like 2,000 informers of some  
18 kind or another infiltrating the Klan out of roughly 10,000  
19 estimated membership.

20 I believe these are either FBI figures or estimates.  
21 That would mean that one out of every five members of the Klan  
22 at that point was an informant paid by the government.

23 And I believe the figure goes on to indicate that 70  
24 percent of the new members of the Klan that year were FBI  
25 informants.



1           Isn't this an awfully overwhelming quantity of people  
2 to put in an effort such as that? I'm not criticizing that  
3 you shouldn't have informants in the Klan and know what's  
4 going on for violence, but it seems to me that this is the  
5 tail wagging the dog.

6           For example, today we supposedly have only 1594 total  
7 informants for both domestic informants and potential informants  
8 and that here we had 2,000 just in the Klan alone.

9           Mr. Adams. Well, this number 2,000 did include all  
10 racial matters, informants at that particular time, and I  
11 think the figures we tried to reconstruct as to the actual  
12 number of Klan informants in relation to Klan members was around  
13 6 percent, I think, after we had read some of the testimony.

14           Now the problem we had on the Klan is the Klan had a  
15 group called the Action Group. This was the group that you  
16 remember from Mr. Rowe's testimony, that he was left af-  
17 ter the meeting. He attended the open meetings and heard  
18 all of the hurrahs and this type of thing from information,  
19 but he never knew what was going on because each one had an  
20 action group that went out and considered themselves in the  
21 missionary field.

22           Theirs was the violence.

23           In order to penetrate those, it takes, you have to direct  
24 as many informants as you possibly can against it. Bear in  
25 mind that I think the newspapers, the President and Congress and

1 everyone is concerned about the murder of the civil rights  
2 workers, the Linió Kent case, the Viola Liuzzo case, the  
3 bombings of the church in Birmingham. We were faced with one  
4 tremendous problem at that time.

5 Senator Schweiker. I acknowledge that.

6 Mr. Adams. Our only approach was through informants  
7 and through the use of informants we solved these cases, the  
8 ones that were solved. Some of the bombing cases we have  
9 never solved. They are extremely difficult.

10 These informants, as we told the Attorney General, and  
11 as we told the President, that we had moved informants like  
12 Mr. Rowe up to the top leadership. He was the bodyguard to the  
13 head man. He was in a position where he could forewarn us  
14 of violence, could help us on cases that had transpired, and  
15 yet we knew and conceived that this could continue forever  
16 unless we can create enough disruption that these members will  
17 realize that if I go out and murder three civil rights workers,  
18 even though the sheriff and other law enforcement officers are  
19 in on it, if that were the case and with some of them it was  
20 the case, that I would be caught. And that's what we did and  
21 that's why violence stopped, was because the Klan was insecure  
22 and just like you say, 20 percent, they thought 50 percent of  
23 their members ultimately were Klan members and they didn't  
24 dare engage in these acts of violence because they knew they  
25 couldn't control the conspiracy any longer.

1 Senator Schweiker. My time is expired. I just have  
2 one quick question.

3 Is it correct that in 1971 we're using around 6500  
4 informers for black ghetto situations?

5 Mr. Adams. I'm not sure if that's the year. We did  
6 have one year where we had a number like that which probably  
7 had been around 6000, and that was the time when the cities  
8 were being burned, Detroit, Washington, areas like this. We  
9 were given a mandate to know what the situation is, where is  
10 violence going to break out, what next?

11 They weren't informants like an individual penetrating  
12 an organization. They were listening posts in the community  
13 that would help tell us that we have a group here that's getting  
14 ready to start another fire-fight or something.

15 Senator Tower. At this point, there are three more  
16 Senators remaining for questioning. If we can try to get  
17 everything in in the first round, we will not have a second  
18 round and I think we can finish around 1:00, and we can go  
19 on and terminate the proceedings.

20 However, If anyone feels that they have another question  
21 that they want to return to, we can come back here by 2:00.

22 Senator Mondale?

23 Senator Mondale. Mr. Adams, it seems to me that the  
24 record is now fairly clear that when the FBI operates in the  
25 field of crime investigating, it may be the best professional

1 organization of its kind in the world. And when the FBI acts  
2 in the field of political ideas, it has bungled its job, it  
3 has interfered with the civil liberties, and finally, in the  
4 last month or two, through its public disclosures, heaped  
5 shame upon itself and really led toward an undermining of  
6 the crucial public confidence in an essential law enforcement  
7 agency of this country.

8 In a real sense, history has repeated itself because it  
9 was precisely that problem that led to the creation of the FBI  
10 in 1924.

11 In World War I, the Bureau of Investigation strayed from  
12 its law enforcement functions and became an arbiter and  
13 protector of political ideas. And through the interference  
14 of civil liberties and Palmer Raids and the rest, the public  
15 became so offended that later through Mr. Justice Stone and  
16 Mr. Hoover, the FBI was created. And the first statement  
17 by Mr. Stone was that never again will this Justice Department  
18 get involved in political ideas.

19 And yet here we are again looking at a record where with  
20 Martin Luther King, with anti-war resistors, with -- we even  
21 had testimony this morning of meetings with the Council of  
22 Churches. Secretly we are investigating this vague, ill-defined,  
23 impossible to define idea of investigating dangerous ideas.

24 It seems to be the basis of the strategy that people  
25 can't protect themselves, that you somehow need to use the

1 tools of law enforcement to protect people from subversive  
2 or dangerous ideas, which I find strange and quite profoundly  
3 at odds with the philosophy of American government.

4 I started in politics years ago and the first thing we  
5 had to do was to get the communists out of our parts and out  
6 of the union. We did a very fine job. As far as I know, and  
7 I'm beginning to wonder, but as far as I know, we had no help  
8 from the FBI or the CIA. We just rammed them out of the meetings  
9 on the grounds that they weren't Democrats and they weren't  
10 good union leaders when we didn't want anything to do with them.  
11 And yet, we see time and time again that we're going to  
12 protect the blacks from Martin Luther King because he's  
13 dangerous, that we're going to protect veterans from whatever  
14 it is, and we're going to protect the Council of Churches  
15 from the veterans, and so on, and it just gets so gummy and  
16 confused and ill-defined and dangerous, that don't you agree  
17 with me that we have to control this, to restrain it, so that  
18 precisely what is expected of the FBI is known by you, by the  
19 public, and that you can justify your actions when we ask  
20 you?

21 Mr. Adams. I agree with that, Senator, and I would like  
22 to point out that when the Attorney General made his statement  
23 Mr. Hoover subscribes to it, we followed that policy for about  
24 ten years until the President of the United States said that  
25 we should investigate the Nazi Party.

1 I for one feel that we should investigate the Nazi Party.  
2 I feel that our investigation of the Nazi Party resulted in  
3 the fact that in World War II, as contrasted with World War I,  
4 there wasn't one single incident of foreign directed sabotage  
5 which took place in the United States.

6 Senator Mondale. And under the criminal law you could  
7 have investigated these issues of sabotage.

8 Isn't sabotage a crime?

9 Mr. Adams. Sabotage is a crime.

10 Senator Mondale. Could you have investigated that?

11 Mr. Adams. After it happened.

12 Senator Mondale. You see, every time we get involved  
13 in political ideas, you defend yourself on the basis of  
14 crimes that could have been committed. It's very interesting.

15 In my opinion, you have to stand here if you're going to  
16 continue what you're now doing and as I understand it, you  
17 still insist that you did the right thing with the Vietnam  
18 Veterans Against the War, and investigating the Council of  
19 Churches, and this can still go on. This can still go on under  
20 your interpretation of your present powers, what you try to  
21 justify on the grounds of your law enforcement activities  
22 in terms of criminal matters.

23 Mr. Adams. The law does not say we have to wait until  
24 we have been murdered before we can --

25 Senator Mondale. Absolutely, but that's the field of

1 law again. You're trying to defend apples with oranges. That's  
2 the law. You can do that.

3 Mr. Adams. That's right, but how do you find out which  
4 of the 20,000 Bund members might have been a saboteur. You  
5 don't have probable cause to investigate anyone, but you can  
6 direct an intelligence operation against the German-American  
7 Bund, the same thing we did after Congress said --

8 Senator Mondale. Couldn't you get a warrant for that?  
9 Why did you object to going to court for authority for that?

10 Mr. Adams. Because we don't have probable cause to  
11 go against an individual and the law doesn't provide for  
12 probable cause to investigate an organization.

13 There were activities which did take place, like one time  
14 they outlined the Communist Party --

15 Senator Mondale. What I don't understand is why it  
16 wouldn't be better for the FBI for us to define authority  
17 that you could use in the kind of Bonn situation where under  
18 court authority you can investigate where there is probable  
19 cause or reasonable cause to suspect sabotage and the rest.

20 Wouldn't that make a lot more sense than just making these  
21 decisions on your own?

22 Mr. Adams. We have expressed complete concurrence in  
23 that. We feel that we're going to go <sup>to</sup> beat to death in the  
24 next 100 years, you're damned if you do, and damned if you  
25 don't if we don't have a delineation of our responsibility

1 in this area. But I won't agree with you, Senator, that we  
2 have bungled the intelligence operations in the United States.  
3 I agree with you that we have made some mistakes. Mr. Kelley  
4 has set a pattern of being as forthright as any Director of the  
5 FBI in acknowledging mistakes that had been made, but I think  
6 that as you said, and I believe Senator Tower said, and  
7 Senator Church, that we have to watch these hearings because  
8 of the necessity that we must concentrate on these areas of  
9 abuse. We must not lose sight of the  
10 overall law enforcement and intelligence community, and I  
11 still feel that this is the freest country in the world.  
12 I've travelled much, as I'm sure you have, and I know we have  
13 made some mistakes, but I feel that the people in the United  
14 States are less chilled by the mistakes we have made than they  
15 are by the fact that there are 20,000 murders a year in the  
16 United States and they can't walk out of their houses at night  
17 and feel safe.

18 Senator Mondale. That's correct, and isn't that an  
19 argument then, Mr. Adams, for strengthening our powers to go  
20 after those who commit crimes rather than strengthening or  
21 continuing a policy which we now see undermines the public  
22 confidence you need to do your job.

23 Mr. Adams. Absolutely. The mistakes we have made are  
24 what have brought on this embarrassment to us.

25 I'm not blaming the Committee. I'm saying we made some



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1 mistakes and in doing so this is what has hurt the FBI. But  
 2 at the same time I don't feel that a balanced picture comes  
 3 out, as you have said yourselves, because of the necessity  
 4 of zercing in on abuses.

5 I think that we have done one tremendous job. I think  
 6 the accomplishments in the Klan was the finest hour of the  
 7 FBI and yet, I'm sure in dealing with the Klan that we made  
 8 some mistakes. But I just don't agree with bungling.

End Tape

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1 Senator Mondale. I don't want to argue over terms, but  
2 I think I sense an agreement that the FBI has gotten into trouble  
3 over it in the political idea trouble, and that that's where we  
4 need to have new legal standards.

5 Mr. Adams. Yes, I agree with that.

6 Senator Tower. Senator Huddleston.

7 Senator Huddleston. Thank you, Mr. Chairman.

8 Mr. Adams, these two instances we have studied at some  
9 length seems to have been an inclination on the part of  
10 the Bureau to establish a notion about an individual or a group  
11 which seems to be very hard to ever change or dislodge. In  
12 the case of Dr. King, where the supposition was that he was  
13 being influenced by Communist individuals, extensive investi-  
14 gation was made, surveillance, reports came back indicating that  
15 this in fact was untrue, and directions continued to go out  
16 to intensify the investigation. There never seemed to be a  
17 willingness on the part of the Bureau to accept its own facts.

18 Ms. Cook testified this morning that something similar  
19 to that happened with the Vietnam Veterans Against the War, that  
20 every piece of information that she supplied to the Bureau  
21 seemed to indicate that the Bureau was not correct in its  
22 assumption that this organization planned to commit violence,  
23 or that it was being manipulated, and yet you seemed to insist  
24 that this investigation go on, and this information was used  
25 against the individuals.

1 Now, are there instances where the Bureau has admitted that  
2 its first assumptions were wrong and they have changed their  
3 course?

4 Mr. Adams. We have admitted that. We have also shown  
5 from one of the cases that Senator Hart brought up, that after  
6 five days we closed the case. We were told something by an  
7 individual that there was a concern of an adverse influence  
8 in it, and we looked into it. On the Martin Luther King  
9 situation there was no testimony to the effect that we just  
10 dragged on and on, or admitted that we dragged on and on and  
11 on, ad infinitum. The wiretaps on Martin Luther King were  
12 all approved by the Attorney General. Microphones on Martin  
13 Luther King were approved by another Attorney General. This  
14 wasn't the FBI, and the reason they were approved was that  
15 there was a basis to continue the investigation up to a point.

16 What I testified to was that we were improper in discrediting  
17 Dr. King, but it's just like --

18 Senator Huddleston. The Committee has before it memoranda  
19 written by high officials of the Bureau indicating that the  
20 information they were receiving from the field, from these  
21 surveillance methods, did not confirm what their supposition  
22 was.

23 Mr. Adams. That memorandum was not on Dr. King. That  
24 was on another individual that I think somehow got mixed up  
25 in the discussion, one where the issue was can we make people

smn 3

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1 prove they aren't a Communist before we will agree not to  
2 investigate them.

3 But the young lady appearing this morning making the  
4 comment that she never knew of anything she told us that  
5 she considers herself a true member of the VVAW-WSO inasmuch  
6 as she feels in general agreement of the principles of it, and  
7 agreed to cooperate with the FBI in providing information regard-  
8 ing the organization to aid in preventing violent individuals  
9 from associating themselves with the VVAW-WSO. She is most  
10 concerned about efforts by the Revolutionary Union to take over  
11 the VVAW-WSO, and she is working actively to prevent this..

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12 I think that we have a basis for investigating the VVAW-  
13 WSO in certain areas today. In other areas we have stopped  
14 the investigation. They don't agree with these principles  
15 laid down by the --

16 Senator Huddleston. That report was the basis of your  
17 continuing to pay informants and continuing to utilize that  
18 information against members who certainly had not been involved  
19 in violence, and apparently to get them fired from their job  
20 or whatever?

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21 Mr. Adams. It all gets back to the fact that even in the  
22 criminal law field, you have to detect crime, and you have to  
23 prevent crime, and you can't wait until something happens. The  
24 Attorney General has clearly spoken in that area, and even our  
25 statutory jurisdiction provides that we don't --

smn 4

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1 Senator Huddleston. Well, of course we've had considerable  
2 evidence this morning where no attempt was made to prevent  
3 crime, when you had information that it was going to occur.  
4 But I'm sure there are instances where you have.

5 Mr. Adams. We disseminated every single item which he  
6 reported to us.

7 Senator Huddleston. To a police department which you  
8 knew was an accomplice to the crime.

9 Mr. Adams. Not necessarily.

10 Senator Huddleston. Your informant had told you that,  
11 hadn't he?

12 Mr. Adams. Well, the informant is on one level. We have  
13 other informants, and we have other information.

14 Senator Huddleston. Yes, but you were aware that he  
15 had worked with certain members of the Birmingham police in  
16 order to --

17 Mr. Adams. Yes. He furnished many other instances also.

18 Senator Huddleston. So you weren't really doing a whole  
19 lot to prevent that incident by telling the people who were  
20 already part of it.

21 Mr. Adams. We were doing everything we could lawfully  
22 do at the time, and finally the situation was corrected, so that  
23 when the Department, agreeing that we had no further juris-  
24 diction, could sent the United States Marshal down to perform  
25 certain law enforcement functions.

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1 Senator Huddleston. Now, the Committee has received  
2 documents which indicated that in one situation the FBI assisted  
3 an informant who had been established in a white hate group  
4 to establish a rival white hate group, and that the Bureau paid  
5 his expenses in setting up this rival organization.

6 Now, does this not put the Bureau in a position of being  
7 responsible for what actions the rival white hate group might  
8 have undertaken?

9 Mr. Adams. I'd like to see if one of the other gentlemen  
10 knows that specific case, because I don't think we set up a  
11 specific group.

12 This is Joe Deegan.

13 Mr. Deegan. Senator, it's my understanding that the  
14 informant we're talking about decided to break off from the  
15 group he was with. He was with the Macon Klan group of  
16 the United Klans of America, and he decided to break off. This  
17 was in compliance with our regulations. His breaking off,  
18 we did not pay him to set up the organization. He did it  
19 on his own. We paid him for the information he furnished  
20 us concerning the operation. We did not sponsor the organiza-  
21 tion.

22 Senator Huddleston. Concerning the new organization that  
23 he set up, he continued to advise you of the activities of that  
24 organization?

25 Mr. Deegan. He continued to advise us of that organization

1 and other organizations. He would advise us of planned  
2 activities.

3 Senator Huddleston. The new organization that he formed,  
4 did it operate in a very similar manner to the previous one?

5 Mr. Deegan. No, it did not, and it did not last that  
6 long.

7 Senator Huddleston. There's also evidence of an FBI  
8 informant in the Black Panther Party who had a position of  
9 responsibility within the Party with the knowledge of his  
10 FBI contact of supplying members with weapons and instructing  
11 them in how to use those weapons. Presumably this was in the  
12 knowledge of the Bureau, and he later became -- came in contact  
13 with the group that was contracting for murder, and he partici-  
14 pated in this group with the knowledge of the FBI agent, and  
15 this group did in fact stalk a victim who was later killed with  
16 the weapon supplied by this individual, presumably all in the  
17 knowledge of the FBI.

18 How does this square with your enforcement and crime  
19 prevention responsibilities.

20 Mr. Deegan. Senator, I'm not familiar with that particular  
21 case. It does not square with our policy in all respects, and  
22 I would have to look at that particular case you're talking  
23 about to give you an answer.

24 Senator Huddleston. I don't have the documentation on that  
25 particular case, but it brings up the point as to what kind of

1 control you exercised over this kind of informant in this kind  
2 of an organization and to what extent an effort is made to  
3 prevent these informants from engaging in the kind of thing  
4 that you are supposedly trying to prevent.

5 Mr. Adams. A good example of this was Mr. Rowe, who became  
6 active in an action group, and we told him to get out or  
7 we would no longer use him as an informant, in spite of the  
8 information he had furnished in the past.

9 We have had cases, Senator, where we have had --

10 Senator Huddleston. But you also told him to participate  
11 in violent activities.

12 Mr. Adams. We did not tell him to participate in violent  
13 activities.

14 Senator Huddleston. That's what he said.

15 Mr. Adams. I know that's what he said. But that's what  
16 lawsuits are all about, is that there are two sides to the  
17 issue, and our agents handling this have advised us, and I  
18 believe have advised your staff, that at no time did they  
19 advise him to engage in violence.

20 Senator Huddleston. Just to do what was necessary to  
21 get the information, I believe maybe might have been his  
22 instructions.

23 Mr. Adams. I don't think they made any such statement  
24 to him along that line, and we have informants, we have  
25 informants who have gotten involved in the violation of the law,



smn 8

1 and we have immediately converted their status from an informant  
2 to the subject, and have prosecuted I would say, offhand, I  
3 can think of around 20 informants that we have prosecuted for  
4 violating the laws, once it came to our attention, and even  
5 to show you our policy of disseminating information on violence  
6 in this case, during the review of the matter, the agents told  
7 me that they found one case where their agent had been working  
8 24 hours a day, and he was a little late in disseminating the  
9 information to the police department. No violence occurred,  
10 but it showed up in a file review, and he was censured for  
11 his delay in properly notifying local authorities.

12 So we not only have a policy, I feel that we do follow  
13 reasonable safeguards in order to carry it out, including periodic  
14 review of all informant files.

15 Senator Huddleston. Well, Mr. Rowe's statement is  
16 substantiated to some extent with the acknowledgement by the  
17 agent in charge that if you're going to be a Klansman and you  
18 happen to be with someone and they decide to do something, that  
19 he couldn't be an angel. These were the words of the agent,  
20 and be a good informant. He wouldn't take the lead, but the  
21 implication is that he would have to go along and would have  
22 to be involved if he was going to maintain his credibility.

23 Mr. Adams. There's no question but that an informant at  
24 times will have to be present during demonstrations, riots,  
25 fistfights that take place, but I believe his statement was

1 to the effect that -- and I was sitting in the back of the  
2 room and I don't recall it exactly, but some of them were  
3 beat with chains, and I didn't hear whether he said he beat  
4 someone with a chain or not, but I rather doubt that he did  
5 because it's one thing being present, and it's another thing  
6 taking an active part in criminal actions.

7 Senator Huddleston. He was close enough to get his  
8 throat cut.

9 How does the gathering of information --

10 Senator Tower. Senator Mathias is here, and I think that  
11 we probably should recess a few minutes.

12 Could we have Senator Mathias' questions and then should  
13 we convene this afternoon?

14 Senator Huddleston. I'm finished. I just had one more  
15 question.

16 Senator Tower. Go ahead.

17 Senator Huddleston. I wanted to ask how the selection of  
18 information about an individual's personal life, social, sex  
19 life and becoming involved in that sex life or social life  
20 is a requirement for law enforcement or crime prevention.

21 Mr. Adams. Our agent handlers have advised us on Mr.  
22 Rowe, that they gave him no such instruction, they had no  
23 such knowledge concerning it, and I can't see where it would  
24 be of any value whatsoever.

25 Senator Huddleston. You aren't aware of any case where

1 these instructions were given to an agent or an informant?

2 Mr. Adams. To get involved in sexual activity? No, sir.

3 Senator Huddleston. Thank you, Mr. Chairman.

4 Senator Tower. Senator Mathias.

5 Senator Mathias. Thank you, Mr. Chairman.

6 I would like to come back very briefly to the Fourth  
7 Amendment considerations in connection with the use of informants  
8 and in posing these questions we're not thinking of the one  
9 time volunteer who walks in to an FBI office and says I have  
10 a story I want to tell you and that's the only time that you  
11 may see him. I'm thinking of the kind of situations in which  
12 there is a more extended relationship which could be of varying  
13 degrees. It might be in one case that the same individual  
14 will have some usefulness in a number of situations. But when  
15 the FBI orders a regular agent to engage in a search, the first  
16 test is a judicial warrant, and what I would like to explore  
17 with you is the difference between a one time search which  
18 requires a warrant, and which you get when you make that  
19 search, and a continuous search which uses an informant, or  
20 the case of a continuous search which uses a regular undercover  
21 agent, someone who is totally under your control, and is in a  
22 slightly different category than an informant.

23 Mr. Adams. Well, we get there into the fact that the  
24 Supreme Court has still held that the use of informants does  
25 not invade any of these constitutionally protected areas, and

1 if a person wants to tell an informant something that isn't  
2 protected by the Supreme Court.

3 An actual search for legal evidence, that is a protected  
4 item, but information and the use of informants have been  
5 consistently held as not posing any constitutional problems.

6 Senator Mathias. I would agree, if you're talking about  
7 the fellow who walks in off the street, as I said earlier,  
8 but is it true that under existing procedures informants are  
9 given background checks?

10 Mr. Adams. Yes, sir.

11 Senator Mathias. And they are subject to a testing period.

12 Mr. Adams. That's right, to verify and make sure they  
13 are providing to us reliable information.

14 Senator Mathias. And during the period that the relation-  
15 ship continues, they are rather closely controlled by the  
16 handling agents.

17 Mr. Adams. That's true.

18 Senator Mathias. So in effect they can come in a very  
19 practical way agents themselves to the FBI.

20 Mr. Adams. They can do nothing --

21 Senator Mathias. Certainly agents in the common law use  
22 of the word.

23 Mr. Adams. That's right, they can do nothing, and we  
24 instruct our agents that an informant can do nothing that the  
25 agent himself cannot do, and if the agent can work himself into

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1 an organization in an undercover capacity, he can sit there and  
2 glean all the information that he wants, and that is not in the  
3 Constitution as a protected area. But we do have this problem.

4 Senator Mathias. But if a regular agent who is a member  
5 of the FBI attempted to enter these premises, he would require  
6 a warrant?

7 Mr. Adams. No, sir, if a regular -- it depends on the  
8 purpose for which he is entering. If a regular agent by  
9 concealing his identity, by -- was admitted as a member of the  
10 Communist Party, he can attend Communist Party meetings, and he  
11 can enter the premises, he can enter the building, and there's  
12 no constitutionally invaded area there.

13 Senator Mathias. And so you feel that anyone who has  
14 a less formal relationship with the Bureau than a regular  
15 agent, who can undertake a continuous surveillance operation  
16 as an undercover agent or as an informant. --

17 Mr. Adams. As long as he commits no illegal acts.

18 Senator Mathias. Let me ask you why you feel that it is  
19 impractical to require a warrant since, as I understand it,  
20 headquarters must approve the use of an informant. Is that  
21 degree of formal action required?

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1 Mr. Adams. The main difficulty is the particularity  
1 which has to be shown in obtaining a search warrant. You  
2 have to go after particular evidence. You have to specify  
3 what you're going after, and an informant operates in an  
4 area that you just cannot specify. He doesn't know what's  
5 going to be discussed at that meeting. It may be a plot to  
6 blow up the Capitol again or it may be a plot to blow up the  
7 State Department building.

8 Senator Mathias. If it were a criminal investigation,  
9 you would have little difficulty with probable cause, wouldn't  
10 you?

11 Mr. Adams. We would have difficulty in a warrant to  
12 use someone as an informant in that area because the same  
13 difficulty of particularity exists. We can't specify.

14 Senator Mathias. I understand the problem because it's  
15 very similar to one that we discussed earlier in connection  
16 say wiretaps on a national security problem.

17 Mr. Adams. That's it, and there we face the problem of  
18 where the Soviet, an individual identified as a Soviet spy  
19 in a friendly country and they tell us he's been a Soviet spy  
20 there and now he's coming to the United States, and if we can't  
21 show under a probable cause warrant, if we couldn't show that  
22 he was actually engaging in espionage in the United States,  
23 we couldn't get a wiretap under the probable cause requirements  
24 which have been discussed. If the good fairy didn't drop the  
25

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1 evidence in our hands that this individual is here conducting  
2 espionage, we again would fall short of this, and that's  
3 why we're still groping with it.

4 Senator Mathias. When you say fall short, you really,  
5 you would be falling short of the requirements of the Fourth  
6 Amendment.

7 Mr. Adams. That's right, except for the fact that the  
8 President, under this Constitutional powers, to protect this  
9 nation and make sure that it survives first, first of all  
10 national survival, and these are the areas that not only the  
11 President but the Attorney General are concerned in and we're  
12 all hoping that somehow we can reach a legislative middle  
13 ground in here.

14 Senator Mathias. Which we discussed in the other national  
15 security area as to curtailling a warrant to that particular  
16 need.

17 Mr. Adams. And if you could get away from probable  
18 cause and get some degree of reasonable cause and get some  
19 method of sealing indefinitely your interest, say, in an  
20 ongoing espionage case and can work out those difficulties,  
21 we may get their yet.

22 Senator Mathias. And you don't despair of finding that  
23 middle ground?

24 Mr. Adams. I don't because I think that today there's  
25 more of an open mind between Congress and the Executive Branch

1 and the FBI and everyone concerning the need to get these  
2 areas resolved.

3 Senator Mathias. And you believe that the Department,  
4 if we could come together, would support, would agree to that  
5 kind of a warrant requirement if we could agree on the language?

6 Mr. Adams. If we can work out problems and the Attorney  
7 General is personally interested in that also.

8 Senator Mathias. Do you think that this agreement might  
9 extend to some of those other areas that we talked about?

10 Mr. Adams. I think that that would be a much greater  
11 difficulty in an area of domestic intelligence informant who  
12 reports on many different operations and different types of  
13 activities that might come up rather than say in a Soviet  
14 espionage or a foreign espionage case where you do have a little  
15 more degree of specificity to deal with.

16 Senator Mathias. I suggest that we arrange to get  
17 together and try out some drafts with each other, but in the  
18 meantime, of course, there's another alternative and that  
19 would be the use of wiretap procedure by which the Attorney  
20 General must approve a wiretap before it is placed, and the  
21 same general process could be used for informants, since  
22 you come to headquarters any way.

23 Mr. Adams. That could be an alternative. I think it  
24 would be a very burdensome alternative and I think at some  
25 point after we attack the major abuses, or what are considered



1 major abuses of Congress and get over this hurdle, I think  
2 we're still going to have to recognize that heads of agencies  
3 have to accept the responsibility for managing that agency  
4 and we can't just keep pushing every operational problem up  
5 to the top because there just aren't enough hours in the day.

6 Senator Mathias. But the reason that parallel suggests  
7 itself is of course the fact that the wiretap deals generally  
8 with one level of information in one sense of gathering  
9 information. You hear what you hear from the tap.

10 Mr. Adams. But you're dealing in a much smaller number  
11 also.

12 Senator Mathias. Smaller number, but that's all the  
13 more reason. When an informant goes in, he has all of his  
14 senses. He's gathering all of the information a human being  
15 can acquire from a situation and has access to more information  
16 than the average wiretap.

17 And it would seem to me that for that reason a parallel  
18 process might be useful and in order.

19 Mr. Adams. Mr. Mintz pointed out one other main  
20 distinction. to me which I had overlooked from our prior  
21 discussions, which is the fact that with an informant he is  
22 more in the position of being a central monitor in that one  
23 of the two parties to the conversation agrees, such as like  
24 central monitoring of telephones and microphones and  
25 anything else versus the wiretap itself where the individual

1 whose telephone is being tapped is not aware and there is,  
2 and neither of the two parties talking had agreed that their  
3 conversation could be monitored.

4 Senator Mathias. I find that one difficult to accept.  
5 If I'm the third party overhearing a conversation that is taking  
6 place in a room where I am, and my true character isn't perceived  
7 by the two people who are talking, in effect they haven't  
8 consented to my overhearing my conversation. Then they consent  
9 if they believe that I am their friend or their, a partisan  
10 of theirs.

11 But if they knew in fact that I was an informant for  
12 someone else, they wouldn't be consenting.

13 Mr. Adams. Well, that's like I believe Senator Hart  
14 raised earlier, that the courts thus far have made this  
15 distinction with no difficulty, but that doesn't mean that  
16 there may not be some legislative compromise which might be  
17 addressed.

18 Senator Mathias. Well, I particularly appreciate your  
19 attitude in being willing to work on these problems because  
20 I think that's the most important thing that can evolve from  
21 these hearings, so that we can actually look at the Fourth  
22 Amendment as the standard that we have to achieve. But the  
23 way we get there is obviously going to be a lot easier if we  
24 can work toward them together.

25 I just have one final question, Mr. Chairman, and that

1 deals with whether we shouldn't impose a standard of probable  
2 cause that a crime has been committed as a means of controlling  
3 the use of informants and the kind of information that they  
4 collect.

5 Do you feel that this would be too restrictive?

6 Mr. Adams. Yes, sir, I do.

7 When I look at informants and I see that each year  
8 informants provide us, locate 5000 dangerous fugitives, they  
9 provide subjects in 2000 more cases, they recover \$86 million  
10 in stolen property and contraband, and that's irrespective  
11 of what we give the local law enforcement and other Federal  
12 agencies, which is almost a comparable figure, we have almost  
13 reached a point in the criminal law where we don't have much  
14 left. And in the intelligence field we still, I think when  
15 we carve all of the problems away, we still have to make sure  
16 that we have the means to gather information which will permit  
17 us to be aware of the identity of individuals and organizations  
18 that are acting to overthrow the government of the United  
19 States. And I think we still have some areas to look hard  
20 at as we have discussed, but I think informants are here to  
21 stay. They are absolutely essential to law enforcement.  
22 Everyone uses informants. The press has informants, Congress  
23 has informants, you have individuals in your community that  
24 you rely on, not for ulterior purposes, but to let you know  
25 what's the feel of the people, am I serving them properly,

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1 am I carrying out this?

2 It's here to say. It's been here throughout history  
3 and there will always be informants. And the thing we want to  
4 avoid is abuses like provocateurs, criminal activities, and  
5 to ensure that we have safeguards that will prevent that.  
6 But we do need informants.

7 Senator Tower. Senator Hart, do you have any further  
8 questions?

9 Senator Hart of Michigan. Yes. I ask unanimous request  
10 perhaps with a view to giving balance to the record, the  
11 groups that we have discussed this morning into which the  
12 Bureau has put informants, in popular language, our liberal  
13 groups -- I would ask unanimous consent that be printed in  
14 the record, the summary of the opening of the headquarters  
15 file by the Bureau of Dr. Carl McIntyre when he announced  
16 that he was organizing a group to counter the American Civil  
17 Liberties Union and other "liberal and communist groups,"  
18 is not a left only pre-occupation.

19 Senator Tower. Without objection, so ordered.

20 (The material referred to follows:)

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Senator Tower. Any more questions?

Then the Committee will have an Executive Session this afternoon in Room 3110 in the Dirksen Building at 3:00, and I hope everyone will be in attendance.

Tomorrow morning we will hear from Courtney Evans, Cartha DeLoach. Tomorrow afternoon, former Attorneys General Ramsey Clark and Edward Katzenbach.

The Committee, the hearings are recessed until 10:00 a.m. tomorrow morning.

(Whereupon, at 1:10 o'clock p.m., the hearing in the above mentioned matter was concluded, to reconvene on Wednesday December 3rd, 1975, at 10:00 o'clock a.m.)

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Vol. 20

*Copy 5*

**The United States Senate**

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**Report of Proceedings**

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**Hearing held before**

Select Committee to Study Governmental Operations

With Respect to Intelligence Activities

**INTELLIGENCE INVESTIGATION**

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Wednesday, December 10, 1975

Washington, D. C.

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STATEMENT OF:

PAGE

The Honorable Clarence M. Kelley,  
Director, Federal Bureau of Investigation

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INTELLIGENCE INVESTIGATION

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Wednesday, December 10, 1975

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United States Senate,  
Select Committee to Study Governmental  
Operations with Respect to  
Intelligence Activities,  
Washington, D. C.

The Committee met, pursuant to notice, at 10:10  
o'clock a.m., in Room 318, Russell Senate Office Building,  
the honorable Frank Church (Chairman of the Committee)  
presiding.

Present: Senators Church (presiding), Hart of Michigan,  
Mondale, Huddleston, Hart of Colorado, Baker, Goldwater and  
Mathias.

Also present: William G. Miller, Staff Director; Frederick  
A. O. Schwarz, Jr., Chief Counsel; Curtis R. Smothers, Minority  
Counsel; Paul Michel, Joseph diGenova, Barbara Banoff, Frederick  
Baron, Mark Gitenstein, Loch Johnson, David Bushong, Charles  
Lombard, John Bayly, Charles Kirbow, Michael Madigan, Bob  
Kelley, John Elliff, Elliot Maxwell, Andy Postal, Pat Shea,  
Michael Epstein and Burt Wides, Professional Staff Members.

- - -

The Chairman. The Committee's witness this morning is



1 the Honorable Clarence M. Kelley, the Director of the Federal  
2 Bureau of Investigation.

3 Mr. Kelley was appointed Director in July of 1973 in a  
4 troubled time for the FBI. His experience as an innovative  
5 law enforcement administrator in charge of the Kansas City  
6 Police Department for over ten years, and his previous work as  
7 a Special Agent of the FBI have made him uniquely qualified  
8 to lead the Bureau.

9 The Select Committee is grateful for the cooperation  
10 extended by Director Kelley in the course of its inquiry over  
11 the past months. The Committee is also impressed by the  
12 openness of the FBI's witnesses before this Committee, and  
13 their willingness to consider the need for legislation to  
14 clarify the Bureau's intelligence responsibility.

15 It is important to remember from the outset that this  
16 Committee is examining only a small portion of the FBI's  
17 activities. Our hearings have concentrated on FBI domestic  
18 intelligence operations. We have consistently expressed our  
19 admiration and support for the Bureau's criminal investigative  
20 and law enforcement work, and we recognize the vital importance  
21 of counterespionage in the modern world. But domestic  
22 intelligence has raised many difficult questions.

23 The Committee has also concentrated on the past rather  
24 than on present FBI activities. The abuses brought to light  
25 in our hearings occurred years and even decades before Director

1 Kelley took charge.

2 The Staff has advised the Committee that under Director  
3 Kelley the FBI has taken significant steps to rethink previous  
4 policies and to establish new safeguards against abuse. The  
5 FBI is now placing greater emphasis on foreign related intelli-  
6 gence operations, and less on purely domestic surveillance.  
7 The FBI is working more closely with the Justice Department in  
8 developing policies and standards for intelligence. These  
9 are welcome developments.

10 Nevertheless, many important issues remain unresolved.  
11 Therefore, we have invited Director Kelley to share with the  
12 Committee his views on some of the considerations the Congress  
13 should take into account in thinking about the future of  
14 FBI intelligence. Among these issues are whether FBI surveil-  
15 lance should extend beyond the investigation of persons  
16 likely to commit specific crimes; whether there should be  
17 outside supervision or approval before the FBI conducts certain  
18 types of investigations or uses certain surveillance techniques;  
19 whether foreign related intelligence activities should be  
20 strictly separated from the FBI's domestic law enforcement  
21 functions, and what should be done to the information already  
22 in the FBI files and that which may go into those files in  
23 the future.

24 The Committee looks forward to a constructive exchange  
25 of views with Director Kelley this morning, with Attorney

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General Levi tomorrow, and with both the FBI and the Justice Department in the next months as the Committee considers recommendations that will strengthen the American people's confidence in the Federal Bureau of Investigation. That confidence is vital for the effective enforcement of Federal law and for the security of the nation against foreign espionage.

Director Kelley, we are pleased to welcome you, and if you would have a prepared statement you would like to lead off with, please proceed.

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1 STATEMENT OF THE HONORABLE CLARENCE M. KELLEY,  
2 DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

3 Mr. Kelley. Thank you very much, Senator Church and  
4 gentlemen.

5 I welcome the interest which this Committee has shown in  
6 the FBI and most particularly in our operations in the intelli-  
7 gence and internal security fields.

8 I share your high regard for the rights guaranteed by the  
9 Constitution and laws of the United States. Throughout my  
10 35 year career in law enforcement you will find the same insis-  
11 tence, as has been expressed by this Committee, upon programs  
12 of law enforcement that are themselves fully consistent with  
13 law.

14 I also have strongly supported the concept of legislative  
15 oversight. In fact, at the time my appointment as Director of  
16 the FBI and was being considered by the Senate Judiciary  
17 Committee two and one half years ago, I told the members of  
18 that Committee of my firm belief in Congressional oversight.

19 This Committee has completed the most exhaustive study  
20 of our intelligence and security operations that has ever been  
21 undertaken by anyone outside the FBI other than the present  
22 Attorney General. At the outset, we pledged our fullest  
23 cooperation and promised to be as candid and forthright as  
24 possible in responding to your questions and complying with your  
25 requests.

1 I believe we have lived up to those promises.

2 The members and staff of this Committee have had unprece-  
3 dented access to FBI information.

4 You have talked to the personnel who conduct security-type  
5 investigations and who are personally involved in every facet  
6 of our day-to-day intelligence operations.

7 You have attended numerous briefings by FBI officials who  
8 have sought to familiarize the Committee and its staff with  
9 all major areas of our activities and operations in the national  
10 security and intelligence fields.

11 In brief, you have had firsthand examination of these  
12 matters that is unmatched at any time in the history of the  
13 Congress.

14 As this Committee has stated, these hearings have, of  
15 necessity, focused largely on certain errors and abuses. I  
16 credit this Committee for its forthright recognition that the  
17 hearings do not give a full or balanced account of the FBI's  
18 record of performance.

19 It is perhaps in the nature of such hearings to focus  
20 on abuses to the exclusion of positive accomplishments of the  
21 organization.

22 The Counterintelligence Programs which have received the  
23 lion's share of public attention and critical comment constituted  
24 an infinitesimal portion of our overall work.

25 A Justice Department Committee which was formed last year

1 to conduct a thorough study of the FBI's Counterintelligence  
2 Programs has reported that in the five basic ones it found  
3 3,247 Counterintelligence Programs were submitted to FBI  
4 Headquarters from 1956 to 1971. Of this total, 2,370,  
5 less than three fourths, were approved.

6 I repeat, the vast majority of those 3,247 proposals were  
7 being devised, considered, and many were rejected, in an era  
8 when the FBI was handling an average of 700,000 investigative  
9 matters per year.

10 Nonetheless, the criticism which has been expressed  
11 regarding the Counterintelligence Programs is most legitimate  
12 and understandable.

13 The question might well be asked what I had in mind when  
14 I stated last year that for the FBI to have done less than it  
15 did under the circumstances then existing would have been an  
16 abdication of its responsibilities to the American people..

17 What I said then, in 1974, and what I believe today, is  
18 that the FBI employees involved in these programs did what they  
19 felt was expected of them by the President, the Attorney General,  
20 the Congress, and the people of the United States.

21 Bomb explosions rocked public and private offices and  
22 buildings; rioters led by revolutionary extremists laid seige  
23 to military, industrial, and educational facilities; and  
24 killings, maimings, and other atrocities accompanied such  
25 acts of violence from New England to California.

1           The victims of these acts were human beings, men, women,  
2           and children. As is the case in time of peril, whether real or  
3           perceived, they looked to their Government, their elected and  
4           appointed leadership, and to the FBI and other law enforcement  
5           agencies to protect their lives, their property, and their  
6           rights.

7           There were many calls for action from Members of Congress  
8           and others, but few guidelines were furnished. The FBI and other  
9           law enforcement agencies were besieged by demands, impatient  
10          demands, for immediate action.

11          FBI employees recognized the danger; felt they had a  
12          responsibility to respond; and in good faith initiated actions  
13          designed to counter conspiratorial efforts of self-proclaimed  
14          revolutionary groups, and to neutralize violent activities.

15          In the development and execution of these programs,  
16          mistakes of judgment admittedly were made.

17          Our concern over whatever abuses occurred in the Counter-  
18          intelligence Programs, and there were some substantial ones,  
19          should not obscure the underlying purpose of those programs.

20          We must recognize that situations have occurred in the  
21          past and will arise in the future where the Government may well  
22          be expected to depart from its traditional role, in the FBI's  
23          case, as an investigative and intelligence-gathering  
24          agency, and take affirmative steps which are needed to meet  
25          an imminent threat to human life or property.

1 In short, if we learn a murder or bombing is to be carried  
2 out now, can we truly meet our responsibilities by investigating  
3 only after the crime has occurred, or should we have the  
4 ability to prevent? I refer to those instances where there is  
5 a strong sense of urgency because of an imminent threat to  
6 human life.

7 Where there exists the potential to penetrate and disrupt,  
8 the Congress must consider the question of whether or not such  
9 preventive action should be available to the FBI.

10 These matters are currently being addressed by a task  
11 force in the Justice Department, including the FBI,  
12 and I am confident that Departmental guidelines and controls can  
13 be developed in cooperation with pertinent Committees of Congress  
14 to insure that such measures are used in an entirely responsible  
15 manner.

16 Probably the most important question here today is what  
17 assurances I can give that the errors and abuses which arose  
18 under the Counterintelligence Programs will not occur again?

19 First, let me assure the Committee that some very sub-  
20 stantial changes have been made in key areas of the FBI's  
21 methods of operations since I took the oath of office as  
22 Director on July 9, 1973.

23 Today we place a high premium on openness, openness  
24 both within and without the service.

25 I have instituted a program of open, frank discussion



1 in the decision-making process which insures that no future  
2 program or major policy decision will ever be adopted without a  
3 full and critical review of its propriety.

4 Participatory management has become a fact in the FBI.

5 I have made it known throughout our Headquarters and  
6 Field Divisions that I welcome all employees, regardless of  
7 position or degree of experience, to contribute their thoughts  
8 and suggestions, and to voice whatever criticisms or  
9 reservations they may have concerning any area of our operations.

10 The ultimate decisions in the Bureau are mine, and I take  
11 full responsibility for them. My goal is to achieve maximum  
12 critical analysis among our personnel without in any manner  
13 weakening or undermining our basic command structure.

14 The results of this program have been most beneficial, to  
15 me personally, to the FBI's disciplined performance, and to  
16 the morale of our employees.

17 In addition, since some of the mistakes of the past  
18 were occasioned by direct orders from higher authorities outside  
19 the FBI, we have welcomed Attorney General Edward Levi's  
20 guidance, counsel, and his continuous availability, in his  
21 own words, "as a 'lightning rod' to deflect improper requests."

22 Within days after taking office, Attorney General Levi  
23 instructed that I immediately report to him any requests  
24 or practices which, in my judgment, were improper or which,  
25 considering the context of the request, I believed presented

1 the appearances of impropriety.

2 I am pleased to report to this Committee as I have to the  
3 Attorney General that during my nearly two and one half years as  
4 Director under two Presidents and three Attorneys General, no  
5 one has approached me or made overtures, directly or otherwise,  
6 to use the FBI for partisan political or other improper  
7 purposes.

8 I can assure you that I would not for a moment consider  
9 honoring any such request.

10 I can assure you, too, in my administration of the FBI  
11 I routinely bring to the attention of the Attorney General and  
12 the Deputy Attorney General major policy questions, including  
13 those which arise in my continuing review of our operations and  
14 practices. These are discussed openly and candidly in order  
15 that the Attorney General can exercise his responsibilities  
16 over the FBI.

17 I am convinced that the basic structure of the FBI today  
18 is sound. But it would be a mistake to think that integrity  
19 can be assured only through institutional means.

20 Integrity is a human quality. It depends upon the  
21 character of the person who occupies the office of the  
22 Director and every member of the FBI under him.

23 I am proud of the 19,000 men and women with whom it is  
24 my honor to serve today. Their dedication, their professionalism,  
25 their standards, and the self-discipline which they personally

1 demand of themselves and expect of their associates are the  
2 nation's ultimate assurance of proper and responsible conduct  
3 at all times by the FBI.

4 The Congress and the members of this Committee in  
5 particular have gained a great insight into the problems  
6 confronting the FBI in the security and intelligence fields,  
7 problems which all too often we have left to resolve without  
8 sufficient guidance from the Executive Branch or the Congress  
9 itself.

10 As in all human endeavors, errors of judgment have been  
11 made. But no one who is looking for the cause of our  
12 failures should confine his search solely to the FBI, or even  
13 to the Executive Branch.

14 The Congress itself has long possessed the mechanism for  
15 FBI oversight; yet, seldom has it been exercised.

16 An initial step was taken in the Senate in 1973 when the  
17 Committee on the Judiciary established a Subcommittee on FBI  
18 Oversight. Hearings had been commenced, and we were fully  
19 committed to maximum participation with the members of that  
20 Subcommittee.

21 I laud their efforts. However, those efforts are of very  
22 recent origin in terms of the FBI's history.

23 One of the greatest benefits of the study this Committee  
24 has made is the expert knowledge you have gained of the complex  
25 problems confronting the FBI. But I respectfully submit that

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1 those benefits are wasted if they do not lead to the next step,  
2 a step that I believe is absolutely essential, a legislative  
3 charter, expressing Congressional determination of intelligence  
4 jurisdiction for the FBI.

5 Action to resolve the problems confronting us in the  
6 security and intelligence fields is urgently needed; and it  
7 must be undertaken in a forthright manner. Neither the Congress  
8 nor the public can afford to look the other way, leaving it to  
9 the FBI to do what must be done, as too often has occurred in  
10 the past.

11 This means too that Congress must assume a continuing role  
12 not in the initial decision-making process but in the review of  
13 our performance.

14 I would caution against a too-ready reliance upon the  
15 courts to do our tough thinking for us. Some proposals that  
16 have been advanced during these hearings would extend the role  
17 of the courts into the early stages of the investigative  
18 process and, thereby, would take over what historically have  
19 been Executive Branch decisions.

20 I frankly feel that such a trend, if unchecked, would  
21 seriously undermine the independence of the Judiciary and cast  
22 them in a role not contemplated by the authors of our  
23 Constitution. Judicial review cannot be a substitute for Con-  
24 gressional oversight or Executive decision.

25 The FBI urgently needs a clear and workable determination

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1 of our jurisdiction in the intelligence field, a jurisdictional  
2 statement that the Congress finds to be responsive to both  
3 the will and the needs of the American people.

4 Senators, first and foremost, I am a police officer, a  
5 career police officer. In my police experience, the most  
6 frustrating of all problems that I have discovered facing  
7 law enforcement in this country, Federal, state, and local, is  
8 when demands are made of them to perform their traditional  
9 role as protector of life and property without clear and  
10 understandable legal bases to do so.

11 I recognize that the formulation of such a legislative  
12 charter will be a most precise and demanding task.

13 It must be sufficiently flexible that it does not stifle  
14 the FBI's effectiveness in combating the growing incidence  
15 of crime and violence across the United States. That charter  
16 must clearly address the demonstrated problems of the past;  
17 yet, it must amply recognize the fact that times change and  
18 so also do the nature and thrust of our criminal and subversive  
19 challenges.

20 The fact that the Department of Justice has commenced  
21 the formulation of operational guidelines governing our  
22 intelligence activities does not in any manner diminish the need  
23 for legislation. The responsibility for conferring juris-  
24 diction resides with the Congress.

25 In this regard, I am troubled by some proposals which

1 question the need for intelligence gathering, suggesting that  
2 information needed for the prevention of violence can be  
3 acquired in the normal course of criminal investigations.

4 As a practical matter, the line between intelligence  
5 work and regular criminal investigations is often difficult  
6 to describe. What begins as an intelligence investigation may  
7 well end in arrest and prosecution of the subject. But there  
8 are some fundamental differences between these investigations  
9 that should be recognized, differences in scope, in objective  
10 and in the time of initiation. In the usual criminal case, a  
11 crime has occurred and it remains only for the Government to  
12 identify the perpetrator and to collect sufficient evidence  
13 for prosecution. Since the investigation normally follows  
14 the elements of the crime, the scope of the inquiry is  
15 limited and fairly well defined.

16 By contrast, intelligence work involves the gathering of  
17 information, not necessarily evidence. The purpose may well be  
18 not to prosecute, but to thwart crime or to insure that the  
19 Government has enough information to meet any future crisis  
20 or emergency. The inquiry is necessarily broad because it  
21 must tell us not only the nature of the threat, but also whether  
22 the threat is imminent, the persons involved, and the  
23 means by which the threat will be carried out. The ability  
24 of the Government to prevent criminal acts is dependent on  
25 our anticipation of those criminal acts. Anticipation,

1 in turn, is dependent on advance information, that is, intelli-  
2 gence.

3 Certainly, reasonable people can differ on these issues.  
4 Given the opportunity, I am confident that the continuing need  
5 for intelligence work can be documented to the full satisfaction  
6 of the Congress. We recognize that what is at stake here is not  
7 the interests of the FBI, but rather the interests of every  
8 citizen of this country. We recognize also that the resolution  
9 of these matters will demand extensive and thoughtful  
10 deliberation by the Congress. To this end, I pledge the  
11 complete cooperation of the Bureau with this Committee or  
12 its successors in this important task.

13 In any event, you have my unqualified assurance as  
14 Director that we will carry out both the letter and the spirit  
15 of such legislation as the Congress may enact.

16 That is the substance of my prepared statement.

17 I would also like to say extemporaneously that I note  
18 that on this panel are some gentlemen who were on the Judiciary  
19 Committee which heard my testimony at the time I was presented  
20 to them for candidacy as Director of the FBI. At that time  
21 I took very seriously the charge which may possibly result  
22 in the deliberation of this Committee and of the full Senate.  
23 I have been well aware of the problems of the FBI since that  
24 time. I have also been well aware of the capabilities of  
25 the FBI to discharge those responsibilities. I don't take

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1 them lightly. I am of sufficient experience and age that I  
2 have pledged myself to do what is good and proper. I say this  
3 not as a self-serving statement but in order that we might  
4 place in context my position within the FBI. I could seek  
5 sanctuary and perhaps a safe sanctuary by saying during the  
6 period these things occurred I was with the local police  
7 department in Kansas City, Missouri. Prior to that time,  
8 however, I was in the FBI.

9 During the time I was with the FBI, during the time I  
10 was with the police department, I continued throughout that  
11 period a close acquaintance with and a strong affection for  
12 the FBI.

13 I only want to point out that based on those years, based  
14 on those observations, we have here a very fine and very  
15 sensitive and a very capable organization. I feel that there  
16 is much that can still be done. I know that we are not without  
17 fault. I know that from those experiences I have had. We  
18 will not be completely without fault in the future. But I  
19 assure you that we look upon this inquiry, we look upon any  
20 mandate which you may feel you have, that you should look at --  
21 this is good and proper, and we do not intend -- I only want  
22 to place in your thinking the fact that you have here a  
23 matchless organization, one which I continue to say was  
24 not motivated in some of these instances, and in most of  
25 them, and I cannot justify some, that the motivation was of the



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1 best. I am not pleading, as does a defense attorney. I am  
 2 only putting in your thinking my objective observations as  
 3 a citizen who is somewhat concerned about the future of this  
 4 organization. It is too precious for us to have it in  
 5 a condition of jeopardy.

6 Thank you very much.

7 The Chairman. Thank you, Director Kelley.

8 I want to turn first to Senator Hart who won't be able  
 9 to remain through the whole morning. I think he has one  
 10 question he would like to ask.

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1 Senator Hart of Michigan. Thank you, Mr. Chairman.

2 Senator Mathias and I have Judiciary Committee hearings at 10:30.

3 I have several questions, and I'm sure they'll be  
4 covered by others, but the ones that I have is a result of  
5 reading your testimony and listening to it this morning, and  
6 it relates to your comment at the foot of page 10 and at the  
7 top of 11.

8 There you are indicating that you caution us about  
9 extending the court's role in the early stages of investigations  
10 suggesting that this might take us beyond the role contemplated  
11 for the courts under the Constitution.

12 Now as you have said, aside from the so-called national  
13 security wiretap problem, the main focus of our discussions  
14 and concern has been on the possibility requiring court  
15 approval for the use of informants, informants directed to  
16 penetrate and report on some group.

17 And one of the witnesses yesterday, Professor Dorsen,  
18 pointed out that really those informants are the most pervasive  
19 type of an eavesdropping device. It is a human device. It's  
20 really, an informant is really more intrusive on my privacy  
21 than a bug or a tap because he can follow me anywhere. He  
22 can ask me questions to get information the government would  
23 like to have.

24 Now we certainly involve the courts in approval of the  
25 wiretaps for physical searches with the intent of the drafters

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1 of the Constitution to have a neutral third party magistrate  
2 screen use of certain investigative techniques. And the  
3 informant is such a technique. He functions sort of like a  
4 general warrant, and I don't see why requiring court approval  
5 would violate the role envisaged for the courts.

6 And as I leave, I would like to get your reactions to  
7 my feelings.

8 Mr. Kelley. I do not feel that there is any use of the  
9 informant in intrusion, which is to this extent objectionable.  
10 It has of course been approved, the concept of the informant,  
11 by numerous court decisions.

12 Let us go down not to the moral connotation of the use  
13 of the informant.

14 I think, as in many cases, that is a matter of balance.  
15 You have only very few ways of solving crimes. You have  
16 basically in the use of the informant, I think, the protection  
17 of the right of the victim to be victimized. You have within  
18 the Constitution certain grants that are under ordinary  
19 circumstances abrogation of rights. The right of search and  
20 seizure, which, of course, can't be unreasonable, but none-  
21 theless, you have the right.

22 I think that were we to lose the right of the informant,  
23 we would lose to a great measure our capability of doing our  
24 job.

25 Now I'm not arguing with you, Senator, that it is not an

1 unusual procedure. I'm not even going to say that it is not  
2 an intrusion, because it is. But it has to be one I think  
3 that is by virtue of the benefits must be counted.

4 We don't like to use it. We don't like the problems that  
5 are attendant. We take great care.

6 Now you say about the court having possibility taking  
7 jurisdiction over them and guiding. I think that possibly we  
8 could present the matter to the court but what are they going  
9 to do insofar as monitoring their effort? Are they going to  
10 have to follow it all the way through?

11 Also, there is, of course, urgency in the other contacts.  
12 Must the court be contacted for each and approval of the court  
13 given for each contact?

14 There are a great many problems insofar as administration  
15 of it.

16 I frankly feel, and again, all I can do is give you my  
17 idea -- I frankly feel that there is a satisfactory control over  
18 the informants as we now exercise it today. Yes, there are  
19 going to be some who will get beyond our control, but this  
20 is going to happen no matter what you do.

21 Senator Hart of Michigan. Well, I appreciate your  
22 reaction.

23 I was not suggesting that there is consideration here to  
24 prohibit informants. I was reflecting a view that I felt and  
25 hold that the use of an informant does require some balance, as

1 you yourself said, and I would be more comfortable with a  
2 third party making a judgment as to whether the intrusion is  
3 warranted by the particular circumstance. But I do understand  
4 your position.

5 Thank you, Mr. Chairman.

6 The Chairman. Thank you, Senator Hart.

7 (Senator Hart leaves the hearing room.)

8 The Chairman. Senator Baker, do you have questions?

9 Senator Baker. Mr. Chairman, thank you very much.

10 Mr. Kelley, I have a great respect for you and your  
11 organization and I personally regret that the organization is  
12 in political distress, but we've both got to recognize that  
13 it is, along with other agencies and departments of the  
14 government.

15 I think you probably would agree with me that even though  
16 that is extraordinarily unpleasant and in many respects  
17 unfortunate, that it also has a plus side. That is, it gives  
18 us an indication of our future direction and the opportunity,  
19 at least, to improve the level of competency and service of  
20 the government itself.

21 With that hopeful note, would you be agreeable then to  
22 volunteering for me any suggestions you have on how to improve  
23 the responsiveness of the Federal Bureau of Investigation, or  
24 indeed, for any other law enforcement agencies of the government,  
25 to the Congress, to the Attorney General, to the President, and

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1 beyond that, would you give me any suggestions you have on  
2 how you would provide the methods, the access, the documents,  
3 the records, the authority, for the Congress to perform its  
4 essential, I believe, essential oversight responsibility to  
5 see that these functions, these delicate functions are being  
6 undertaken properly?

7 And before you answer, let me tell you two or three things  
8 I am concerned about.

9 It hasn't been long ago that the FBI Director was not  
10 even confirmed by the Senate of the United States. I believe  
11 you are the first one to be confirmed by the Senate of the  
12 United States. I think that is a movement in the right  
13 direction. I think the FBI has taken on a stature that, an  
14 additional importance that requires it to have closer supervision  
15 and scrutiny by us.

16 At the same time I rather doubt that we can become  
17 involved in the daily relationship between you and the Attorney  
18 General.

19 Therefore, I tend to believe that the Attorney General  
20 needs to be more directly involved in the operations of the  
21 FBI.

22 I would appreciate any comments on that.

23 Second, I rather believe that major decisions of the  
24 intelligence community and the FBI ought to be in writing, so  
25 that the Congress can, if it needs to in the future, take a

1 look at these decisions and the process by which they were  
2 made to decide that you are or you are not performing your  
3 services diligently.

4 I don't think you can have oversight unless you have  
5 access to records, and in many cases records don't exist  
6 and in some cases the people who made those decisions are now  
7 departed and in other cases you have conflicts.

8 How would you suggest then that you improve the quality  
9 of service of your agency? How would you propose that you  
10 increase the opportunity for oversight of the Congress of the  
11 United States? What other suggestions do you have for improving  
12 the level of law enforcement in the essential activity that  
13 is required?

14 Mr. Kelley. I would possibly be repetitious in answering  
15 this Senator, but I get a great deal of pleasure from telling  
16 what I think is necessary and what I hope that I have followed,  
17 one which is beyond my control, but which I think is very  
18 important is that the position of Director, the one to which  
19 great attention should be paid in choosing the man who will  
20 properly acquit himself.

21 I feel that the Judiciary Committee, at least in going  
22 over me, did a pretty good job. I feel that it is most  
23 necessary that care be taken that his philosophy, his means  
24 of management, his facility to adapt to change, his tendency  
25 toward consulting with other members of the official family,

1 that he be willing to, for example, go through oversight with  
2 no reticence, and that I think that he should be chosen very  
3 carefully.

4 I think further that he should be responsible for those  
5 matters which indicate impropriety or illegality.

6 Senator Baker. Could you stop for just a second? Who  
7 does he work for? Does the Director, in your view, work for  
8 the President of the United States, for the Attorney General,  
9 for the Justice Department, for the Executive Branch?

10 Who does the executive of the FBI, the Director of the  
11 FBI, be responsible to, who should he be responsible to?

12 Mr. Kelley. Jurisdictionally, to the Attorney General,  
13 but I think this is such an important field of influence that  
14 it is not at all unlikely that we can expand it to the  
15 judiciary, the legislative, and of course, we are under the  
16 Attorney General.

17 Senator Baker. Do you have any problems with the idea  
18 of the President of the United States calling the Director of  
19 the FBI and asking for performance of a particular task?

20 Does that give you any difficulty? Or do you think that  
21 the relationship between the FBI Director and the President  
22 is such that that is desirable, or should it be conduited  
23 through the Attorney General?

24 Mr. Kelley. I think it should be in the great majority  
25 of the cases conduited through the Attorney General. There



1 has been traditionally some acceptance of the fact that if  
2 the President wants to see and talk with the Director, he  
3 may do so, call him directly.

4 It has been my practice in such an event to thereafter  
5 report to the Attorney General, whoever it might be, that I  
6 have been called over and I discussed and was told. And this  
7 was revealed in full to them.

8 Senator Baker. I suppose we could pass a statute that  
9 says the President has to go through the Attorney General,  
10 although I rather suspect it would be a little presumptuous.

11 But to go the next step, do you think it is necessary  
12 for the pursuit of effective oversight on the part of the  
13 Congress, to have some sort of document written, or at least  
14 some sort of account of a Presidential order or an order of  
15 the Attorney General given to a Director of the FBI?

16 Do you think that these things need to be handled in  
17 a more formal way?

18 Mr. Kelley. Personally, it would be my practice in  
19 the event I receive such an order, to request that it be  
20 documented. This is a protection as well as a clarification  
21 as to whether or not it should be placed as part of legislation.  
22 I frankly would like to reserve that for some more considera-  
23 tion.

24 I don't know whether it would be, but I think that it  
25 can be worked very easily.

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1 Senator Baker. Mr. Kelley, Attorney General Levi, I  
2 believe, has already established some sort of agency or  
3 function within the Department that is serving as the equivalent,  
4 I suppose, of an Inspector General of the Justice Department,  
5 including the FBI.

6 Are you familiar with the steps that Mr. Levi has  
7 taken in that respect? I think he calls it the Office of  
8 Professional Responsibility.

9 Mr. Kelley. Yes, sir, I'm familiar with it.

10 Senator Baker. Do you have any comment on that? Will  
11 you give us any observations as to whether you think that  
12 will be useful, helpful, or whether it will not be useful or  
13 helpful, how it affects the FBI, how you visualize your  
14 relationship to it in the future?

15 Mr. Kelley. I don't object to this, which is to some  
16 extent an oversight within the Department of Justice under the  
17 Attorney General.

18 Frankly, it just came out. I have not considered it  
19 completely, but to the general concept, yes, I very definitely  
20 subscribe.

21 Senator Baker. How would you feel about extending that  
22 concept of government-wide operation, a national Inspector  
23 General who is involved with an oversight of all of the  
24 agencies of government as they interface with the Constitutionally  
25 protected rights of the individual citizen? Would you care

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1 to comment on that, or would you rather save that for a while?

2 Mr. Kelley. I would like to reserve that one.

3 Senator Baker. I'm not surprised. Would you think about  
4 it and let us know what you think about it?

5 Mr. Kelley. I will..

6 Senator Baker. All right. Mr. Chairman, thank you very  
7 much.

8 The Chairman. Senator Huddleston.

9 Senator Huddleston. Thank you, Mr. Chairman.

10 Mr. Kelley, you describe on page 4 the conditions that  
11 existed when much of the abuse that we have talked about during  
12 this inquiry occurred, indicating that the people within the  
13 Bureau felt like they were doing what was expected of them  
14 by the President, by the Attorney General, the Congress and  
15 the people of the United States.

16 Does not this suggest that there has been a reaction  
17 there to prevailing attitudes that might have existed in the  
18 country because of certain circumstances rather than any  
19 clear and specific direct instructions that might have been  
20 received from proper authorities? And if that is the case,  
21 is it possible in developing this charter, this guideline,  
22 to provide for that kind of specific instruction?

23 Mr. Kelley. I think so, yes. I think that they can  
24 logically be incorporated and that --

25 Senator Huddleston. You can see there would be a continuing

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1 danger if any agency is left to simply react to whatever the  
2 attitudes may be at a specific time in this country because --

3 Mr. Kelley. Senator, I don't contemplate it might be  
4 a continuing danger, but it certainly would be a very acceptable  
5 guidepost whereby we can, in the event such a need seems  
6 to arise, know what we can do.

7 Senator Huddleston. Well, in pursuing the area which  
8 Senator Hart was discussing, that is whether or not we can  
9 provide sufficient guidelines would replace a decision by the  
10 court in determining what action might be proper and specific-  
11 ally in protecting individual's rights, can't we also  
12 provide the restrictions and guidelines and the various  
13 techniques that might be used?

14 For instance, supposing we do establish the fact, as  
15 has already been done, that informants are necessary and  
16 desirable. How do we keep that informant operating within the  
17 proper limits so that he in fact is not violating individual  
18 rights?

19 Mr. Kelley. Well, of course, much of the reliance must  
20 be placed on the agent and the supervision of the FBI to assure  
21 that there is no infringement of rights.

22 Senator Huddleston. But this is an aware we've gotten  
23 into some difficulty in the past. We have assumed that the  
24 particular action was necessary, that there was a present  
25 threat that some intelligence programs should be initiated, but

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1 in many cases it has gone beyond what would appear to have been  
2 necessary to have addressed the original threat.

3 How do we keep within the proper balance there?

4 Mr. Kelley. Well, actually, it's just about like any  
5 other offense. It is an invasion of the other individual's  
6 right and it is by an officer and an FBI agent is an officer.  
7 There's the possibility of criminal prosecution against him.

8 This is one which I think might flow if he counsels  
9 the informant.

10 Now insofar as his inability to control the informant,  
11 I don't suppose that would warrant prosecution, but there is  
12 still supervisory control over that agent and over that  
13 informant by insisting that control is exercised on a continuing  
14 basis.

15 Senator Huddleston. It brings up an interesting point  
16 as to whether or not a law enforcement agency ought to be  
17 very alert to any law violations of its own members or anyone  
18 else.

19 If a White House official asks the FBI or someone to do  
20 something unlawful, the question seems to me to occur as to  
21 whether or not that is not a violation that should be reported  
22 by the FBI.

23 Mr. Kelley. I think that any violation which comes to  
24 our attention should either be handled by us or the proper  
25 authority.

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Senator Huddleston. But that hasn't been the case in the past.

Mr. Kelley. Well, I don't know what you're referring to but I would think your statement is proper.

Senator Huddleston. Well, we certainly have evidence of unlawful activity taking place in various projects that have been undertaken, which certainly were not brought to light willingly by the FBI or by other law enforcement agencies.

The question that I'm really concerned about is as we attempt to draw a guideline and charters that would give the Agency the best flexibility that they may need, a wide range of threats, how do we control what happens within each of those actions to keep them from going beyond what was intended to begin with?

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1 Mr. Kelley. You're still speaking of informants.

2 Senator Huddleston. Not only informants but the agents  
3 themselves as they go into surveillance, wiretaps, or whatever  
4 intelligence gathering techniques.

5 The original thrust of my question was, even though we  
6 may be able to provide guidelines of a broad nature, how do  
7 we control the techniques that might be used, that in themselves  
8 might be used, that in themselves might be a serious violation  
9 of the rights.

10 Mr. Kelley. Well, first, I don't know whether it's  
11 germane to your question but I do feel that it should be pointed  
12 out that the association to, the relationship between the  
13 informant and his agent handler is a very confidential one,  
14 and I doubt very seriously whether we could have any guide-  
15 lines, where there might be an extension of any monitors here  
16 because thereby you do have a destruction of that relationship.  
17 Insofar as the activities of agents, informants or others  
18 which may be illegal, we have on many occasions learned of  
19 violations of the law on the part of informants, and either  
20 prosecuted ourselves, through the reporting of it to the  
21 United States Attorney, or turned it over to the local authority.  
22 We have done this on many a time, many occasions. Insofar  
23 as our own personnel, we have an internal organization, the  
24 Inspection Division, which reviews this type of activity, and  
25 if there be any violation, yes, no question about it, we would

1 pursue it to the point of prosecution.

2 Senator Huddleston. But it could be helped by periodic  
3 review.

4 Mr. Kelley. We do, on an annual basis, review the  
5 activities of our 59 offices through that same Inspection  
6 Division, and they have a clear charge to go over this as well  
7 as other matters.

8 Senator Huddleston. Mr. Kelley, you pointed out the  
9 difference in the approaches when gathering intelligence, in  
10 gathering evidence after a crime has been committed.

11 Would there be any advantage, or would it be feasible to  
12 attempt to separate these functions within the Agency, in the  
13 departments, for instance, with not having a mixing of  
14 gathering intelligence and gathering evidence? Are the techniques  
15 definable and different?

16 Mr. Kelley. Senator, I think they are compatible. I  
17 see no objection to the way that they are now being handled  
18 on a management basis. I think, as a matter of fact, it is  
19 a very fine association whereby the intelligence, stemming as  
20 it does from a substantive violation, is a natural complement.

21 Senator Huddleston. Now, another area, the FBI furnishes  
22 information to numerous government agencies.

23 Is this properly restricted and controlled at the present  
24 time in your judgment as to just who can ask the FBI for  
25 information, what kind of information they can ask for, and



1 who might also be inclined to call the Director and ask him  
2 to do specific things?

3         Could there be some clearcut understanding as to whether  
4 or not the Director would be obligated to undertake any such  
5 project, that just anybody at the White House might suggest?

6         Mr. Kelley. It's very clear to me that any request must  
7 come from Mr. Buchen's office, and that it be, in any case,  
8 wherein it is a request for action, that it be followed with  
9 a letter so requesting.

10         This has come up before during the Watergate hearings, as  
11 I think it has been placed very vividly in our minds, in  
12 take care that you just don't follow the request of some  
13 underling who does not truly reflect the desire of the President.

14         Senator Huddleston. Just one more question about  
15 techniques, aside from the guidelines of authority on broad  
16 projects undertaken.

17         Would it be feasible from time to time in a Congressional  
18 oversight committee, would be able to discuss with the Department,  
19 with the Bureau various techniques so that they could have  
20 some input as to whether or not these actions are consistent  
21 with the overall guidelines, to start with, and consistent  
22 with the very protections?

23         Mr. Kelley. Senator, I have already said to the  
24 oversight committee of the Senate that so far as I can now  
25 see, the only thing that would be withheld is the identity of

1 probably even more importantly, what restrictions can be put  
2 on the use of that information once it has been supplied by  
3 the FBI?

4 Mr. Kelley. I think so, Senator.

5 Senator Huddleston. You think there are proper restrictions  
6 now?

7 Mr. Kelley. I don't know that we can ourselves judge  
8 in all cases whether or not there is good and sufficient reason  
9 for an Agency to inquiry. I think that there should be a  
10 very close delineation by the agencies as to what they're  
11 going to ask for, but I think that we do have sufficient rules  
12 that at least to us we are satisfied.

13 Senator Huddleston. You're confident that the information  
14 your agency supplies is not being misused, to the detriment  
15 of the rights of any individuals.

16 Mr. Kelley. Senator, I'm only confident in what I  
17 do myself. I would say that I am satisfied.

18 Senator Huddleston. I was wondering whether some  
19 inclusion ought to be made in whatever charter is made as to  
20 who specifically can request, what limits ought to be placed  
21 on what the request, and what they can do with it after they  
22 get it.

23 Mr. Kelley. Yes.

24 Senator Huddleston. I have some concern about the fact  
25 that in intelligence gathering, you gather, you are just

1 bound to gather a great deal of information about some  
2 individual that is useless as far as the intent of the intelli-  
3 gence gathering is concerned, but might be in some way embarrass-  
4 ing or harmful to the individual, whether or not there's any  
5 effort to separate this kind of information out of a person's  
6 file that is really initiated for a purpose, for a specific  
7 purpose unrelated to this information.

8 Is there any effort, or could any direction be given to  
9 doing that?

10 Mr. Kelley. We would be very happy to work under the  
11 guidelines or rules or anything else to purge material which  
12 is extraneous, irrelevant, or for any other reason objection-  
13 able.

14 Senator Huddleston. And how about the length of time  
15 that these files are kept in the agency?

16 Mr. Kelley. We are willing to work within that framework,  
17 too.

18 Senator Huddleston. I think that might be done.

19 Now, I think in developing the chain of command, so to  
20 speak, it certainly would be very difficult to prevent the  
21 President of the United States from calling up the head of  
22 the FBI or anyone else and discussing any law enforcement  
23 problem he might so desire, and perhaps even give direction  
24 to the agency.

25 But how about that? What about White House personnel

1 informants. We'll discuss techniques, we'll discuss our  
2 present activities. I think this is the only way that we can  
3 exchange our opinions and get accomplished what you want to  
4 accomplish and what I want to accomplish.

5 Senator Huddleston. I feel that is an important aspect  
6 of it because even though you have a charter which gives broad  
7 direction for all the guidelines and to the types of projects  
8 that enter into it, if we don't get down to specifics, such  
9 things as how intelligence is to be collected, how evidence  
10 is to be collected, what is done after it is collected, this  
11 type of thing, it seems to me we are leaving a wide gap  
12 again for the Bureau to assume that it has total instruction  
13 and total permission to move in a certain direction and go  
14 beyond what is intended or what was authorized.

15 Thank you, Mr. Chairman, and Mr. Director.

16 The Chairman. Senator Goldwater?

17 Senator Goldwater. Mr. Kelley, as part of the FBI  
18 electronic surveillance of Dr. King, several tapes of  
19 specific conversations, and later a composite King tape were  
20 produced.

21 Are these tapes still in the possession of the FBI?

22 Mr. Kelley. Yes, sir.

23 Senator Goldwater. Have they been reviewed by you?

24 Mr. Kelley. No, sir.

25 Senator Goldwater. Have they been reviewed by any of your

1 staff, to your knowledge?

2 Mr. Kelley. Senator, I think that they have been reviewed.  
3 I know that at least some have reviewed it within the area of  
4 this particular section. There has been no review of them  
5 since I came to the FBI, I can tell you that.

6 Senator Goldwater. Would these tapes be available to  
7 the Committee if the Committee felt they would like to hear  
8 them?

9 Mr. Kelley. This, Senator Goldwater, is a matter which is  
10 of, as I said before, some delicacy, and there would have to  
11 be a discussion of this in an executive session.

12 The Chairman. I might say in that connection that the  
13 Committee staff gave some consideration to this matter and  
14 decided that it would compound the original error for the  
15 staff to review the tapes, because that would be a still  
16 further invasion of privacy, and so the staff refrained from  
17 insisting on obtaining the tapes, believing that it was  
18 unnecessary, and quite possibly improper, in order to get at  
19 what we needed to know about the King case.

20 So the staff did refrain, and for that reason the issue  
21 never came to a head. I just wanted to lay that information  
22 before the Senator.

23 Senator Goldwater. I realize that's a prerogative of  
24 the staff, but it's also the prerogative of the Committee if,  
25 and I'm not advocating it, if we wanted to hear them to

1 ourselves whether Mr. Hoover was off on a wild goose chase  
2 or whether there was, in effect, some reason. Again, I am  
3 not advocating it, I am merely asking a question. They would  
4 be available if the Committee took a vote to hear them and  
5 decided on it.

6 Mr. Kelley. I don't think it would be within my juris-  
7 diction to respond to this, Senator. It would have to be the  
8 Attorney General.

9 Senator Goldwater. I see.

10 Now, are these tapes and other products of surveillance  
11 routinely retained even after an individual ceased to be a  
12 target of inquiry?

13 Mr. Kelley. They are retained usually for ten years.

14 Senator Goldwater. Ten years.

15 Mr. Kelley. Yes, sir.

16 Senator Goldwater. What is the future value, if any,  
17 to the Bureau of retaining such information?

18 Mr. Kelley. If there be guidelines that set out a  
19 destruction or erasure, we will abide by it. We will, on those  
20 occasions where we think that matters might come up within  
21 that period of time which may need the retention of them, we  
22 will express our opinion at that time, but other than that  
23 we would be guided by guidelines.

24 Senator Goldwater. Is it your view that legitimate  
25 law enforcement needs should outweigh privacy considerations

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1 with respect to retention of such information, or do we need  
 2 the clear guidelines on the destruction of these materials  
 3 when the investigation purposes for which they were collected  
 4 have been served?

5 Mr. Kelley. We feel that there should be a good close  
 6 look at the retention of material, and we would of course like  
 7 to have an input. But we welcome consideration of this.

8 Senator Goldwater. That is all I have, Mr. Chairman. Thank  
 9 you very much.

10 The Chairman. Thank you, Senator.

11 Senator Mondale?

12 Senator Mondale. Mr. Director, it seems to me that the  
 13 most crucial question before the Congress is to accept the  
 14 invitation of the FBI to draw Congressionally imposed lines,  
 15 limits of authority so the FBI will know clearly what you can  
 16 and cannot do, so you will not be subject to later judgments,  
 17 and the question is, where should that line be drawn?

18 As you know, in 1924 when the FBI was created, and  
 19 Mr. Stone later became the Chief Justice, he drew the line at  
 20 criminal law enforcement. He said that never again will we  
 21 go beyond the authority imposed upon us to get into political  
 22 ideas. We will stay in the area of law enforcement.

23 Would you not think it makes a good deal of sense to  
 24 draw the guidelines in a way that your activities are  
 25 restricted to the enforcement of the law, investigations of

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1 crime, investigations of conspiracies to commit crime rather  
2 than to leave this very difficult to define and control area  
3 of political ideas?

4 Mr. Kelley. I don't know whether I understand your last  
5 statement of involving the area of political ideas. I say that  
6 I feel that certainly we should be vested and should continue  
7 in the field of criminal investigations as an investigatory  
8 objective. These are conclusions, of course, which are based  
9 on statutes in the so-called security field, national or  
10 foreign.

11 These are criminal violations. I feel that they should  
12 be in tandem. I feel, having worked many years in this  
13 atmosphere, that you have more ears and eyes and you have  
14 more personnel working together, covering the same fields..  
15 I do not think there should be a separation of the intelligence  
16 matters, because it is a concomitant. It naturally flows  
17 from the investigation of the security matters and the  
18 criminal.

19 Senator Mondale. Mr. Kelley, what Mr. Stone said was  
20 this, that the Bureau of investigation is not concerned  
21 with political or other opinions of individuals. It is  
22 concerned only with such conduct as is forbidden by the laws  
23 of the United States. When the police system goes beyond  
24 these limits, it is dangerous to proper administration of  
25 justice and human liberty.



1 Do you object to that definition?

2 Mr. Kelley. I think that life has become much more  
3 sophisticated and we have added to the so-called policeman's  
4 area of concern some matters which were probably not as important  
5 at that time. I think that the fact that the FBI has been in  
6 touch with the security investigations and the gathering of  
7 intelligence is something which has proved to be at times  
8 troublesome and given us great concern, but it is a viable,  
9 productive procedure.

10 I don't know what Mr. Stone was thinking of entirely  
11 of this course, but I can tell you about the procedure today.

12 Senator Mondale. You see, I think you recognize, if  
13 that further step is taken, as you're recommending here, that  
14 at that point it becomes so difficult to guarantee, and in  
15 fact, in my opinion, impossible to guarantee that we won't  
16 see a recurrence of some of the abuses that we've seen in  
17 the past, and I don't know how you establish any kind of  
18 meaningful oversight on a function as nebulous as the one  
19 you've just defined.

20 If the FBI possesses the authority to investigate  
21 ideas that they consider to be threats to this nation's  
22 security, particularly in the light of the record that we have  
23 seen how that definition can be stretched to include practi-  
24 cally everybody, including moderate civil rights leaders,  
25 war dissenters and so on, how on earth can standards be developed

1 that would provide any basis for oversight?

2 How can you, from among other things, be protected from  
3 criticism later on that you exceeded your authority or didn't  
4 do something that some politician tried to pressure you into  
5 doing?

6 Mr. Kelley. It might well be, Senator, that ten years  
7 from now a Director of the FBI will be seated here and will be  
8 criticized for doing that which today is construed as very  
9 acceptable.

10 Senator Mondale. Correct. And I have great sympathy  
11 for the predicament the FBI finds itself in.

12 Mr. Kelley. And the Director.

13 Senator Mondale. And the Director especially, and that is  
14 why I think it's in the interest of the FBI to get these lines  
15 as sharply defined as possible, so that when you are pressured  
16 to do things, or when, after the fact, people with good 20/20  
17 hindsight can criticize you or the Bureau, that you can say  
18 well, here are the standards that you gave us, and they specific-  
19 ally say this, and that is your answer. We have to live by  
20 the law. If we don't define it specifically, it seems to me  
21 that these excesses could reoccur, because I don't think it's  
22 possible to define them, and the FBI is inevitably going to  
23 be kicked back and forth, depending on personal notions of what  
24 you should have done.

25 Don't you fear that?

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1 Mr. Kelley. Not too much, Senator. I think we learned a  
 2 great lesson by virtue of Watergate, the revelations that have  
 3 come up as a result of this Committee's inquiries, the fact  
 4 that I think that we have a different type of spirit today  
 5 in the Bureau, the fact that, as I said before, you came in,  
 6 that I think the Bureau is a matchless organization, and they  
 7 are eager to do that which is vital and proper, and the fact  
 8 that we are getting a number of very fine young people in the  
 9 organization, people of the other ethnic backgrounds than we  
 10 had years ago. I think there is a greater understanding in  
 11 the Bureau today of what is the proper type of conduct.

12 We may not be able to project this on all occasions,  
 13 because we must equate this with the need and with our  
 14 experience, but if the precise guidelines be the goal, you're  
 15 going to have trouble. If, on the other hand, there be a  
 16 flexibility, I think that we can work very well within those  
 17 guidelines.

18 Senator Mondale. I think, as you know, I don't think  
 19 there is a better trained or higher professionally qualified  
 20 law enforcement organization in the world than the FBI. I  
 21 think we all agree it is superb. But the problem has been,  
 22 from time to time, that when you go beyond the area of  
 23 enforcing the law into the area of political ideas, that you  
 24 are subject to and in fact you leave the criminal field, you  
 25 get into politics. And that is where, it seems to me, that the

1 great controversy exists, and where you are almost inevitably  
2 going to be subjected to fierce criticism in the future, no  
3 matter how you do it. Once you get into politics, you get  
4 into trouble.

5 Mr. Kelley. I agree to that, and I point out that in almost  
6 every branch of the government and in every part, as a matter  
7 of fact, every segment of our society, there are some who deviate  
8 from the normal course. I feel that within the Bureau there is  
9 less likelihood of this to happen, and I think that working  
10 with you we can at least make some achievements that will be  
11 significant.

12 Now, whether it be lasting, I don't think so, but I  
13 think we've made a good start.

14 Senator Mondale. In your speech in Montreal on August  
15 9th, you said we must be willing to surrender a small measure  
16 of our liberties to preserve the great bulk of them.

17 Which liberties did you have in mind?

18 Mr. Kelley. Well, of course, this speech has been mis-  
19 understood many, many times.

20 Senator Mondale. Well, I want you to have a chance to  
21 clear it up.

22 Mr. Kelley. All that was intended here was a restatement  
23 of the approach which the courts historically have used in  
24 resolving most issues of Constitutional importance, and its  
25 recognition that rights are not susceptible to absolute

1 protection. It's a matter of balance. Even in the Fourth  
2 Amendment, for example, which protects the right of privacy, it  
3 does not prohibit searches and seizures. I mention, it only  
4 refers to those that are unreasonable.

5 I came from the police field. What is more restrictive  
6 to more people than traffic regulation? But what would be  
7 more chaotic is if you did not have traffic regulation. We  
8 do have to , in order to live in the complexities and  
9 intricacies of today's life, have to give up some of our  
10 rights.

11 Some may construe this as an extravagant statement. If it  
12 is so, I wish to say that I only was pointing out that there  
13 has to be a balance.

14 Senator Mondale. So that when you say we have to give  
15 up some liberties, or as you just said, some rights, what you  
16 mean -- let me ask. Let me scratch that and ask again, you  
17 have to give up some rights. Which rights would you have us  
18 give up?

19 Mr. Kelly. Well, under the Fourth Amendment you would  
20 have the right for search and seizure.

21 Senator Mondale. You wouldn't give up the Fourth Amend-  
22 ment right.

23 Mr. Kelley. Oh, no not the right.

24 Senator Mondale. What right do you have in mind?

25 Mr. Kelley. The right to be free from search and seizure.

1 Senator Mondale. There's no such right in the Consti-  
2 tution. You can have such seizures, but they must be reasonable,  
3 under court warrant.

4 Did you mean to go beyond that?

5 Mr. Kelley. That's right.

6 Senator Mondale. That you should be able to go beyond  
7 that?

8 Mr. Kelley. No, no. I do not mean that we should ever  
9 go beyond a Constitutional right guarantee.

10 Senator Mondale. Well, would you say, Mr. Kelley, that  
11 that sentence might have been inartful in your speech?

12 Mr. Kelley. I said that if it was misunderstood, I  
13 made a mistake, because I should never make a statement which  
14 yes, it was inartful.

15 Senator Mondale. I think I know about your record in  
16 law enforcement well enough to tell you that I think you were  
17 saying something different, that it was taken to mean something  
18 different than I think you intended.

19 What you are saying is that in the exercise of your law  
20 enforcement powers, the rights of individuals is determined  
21 by the laws and the courts, but the courts, in the handling  
22 of those issues, have to balance rights and other values.

23 That's what you're essentially saying, is that correct?

24 Mr. Kelley. Senator, I ought to have you write my  
25 speeches so that I don't have any misunderstandings. I didn't

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1 understand that to be at the time anything that was unusual.  
2 I have to admit that maybe I made a mistake.

3 Senator Mondale. What you are saying in effect is that  
4 in effect, the rights of the American people can be determined  
5 not by the Director of the FBI but by the courts and by the  
6 law.

7 You meant that.

8 Mr. Kelley. Indeed, yes, sir.

9 Senator Mondale. All right.

10 Thank you.

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1           The Chairman. Senator Hart.  
2           Senator of Colorado. Mr. Kelley, in response to  
3 a question by Senaotr Mondale, one of his first questions about  
4 laying down guidelines, it seems to me what you were saying was  
5 we could work together. That is to say the Bureau and the  
6 Congress, lay down guidelines that would not unreasonably  
7 hamper you from investigations of crime control in the  
8 country.

9           But I think implicit in his question was also an area  
10 that you didn't respond to, and that is how do you, what kind  
11 of guidelines do you lay down to protect you and the Bureau  
12 from political pressure, the misuse of the Bureau by political  
13 figures, particularly in the White House?

14           And we've had indications that at least two of your  
15 predecessors, if not more, obviously were corrupted and Mr.  
16 Gray was under great pressure from the White House to use  
17 the facilities of the Bureau and their capabilities to accomplish  
18 some plititcal end.

19           Well, it seems to me you were arguing in favor of fewer  
20 restrictions so you could get on with your job, but that is  
21 not what Senator Mondale and the rest of us are interested in.

22           What kind of restrictions can we lay down to protect you  
23 from political pressures? I'd be interested in that sign of the  
24 coin, if you would.

25           Mr. Kelley. I would welcome any guidelines which would



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1 protect me or any successor from this type of thing. I think  
2 that would be splendid. I have not reviewed the guidelines  
3 as prepared to the present date by the Department. It might  
4 be that they are well defined in there. But I welcome any  
5 consideration of such directives.

6 Senator Hart of Colorado. Do you think this is a problem?

7 Mr. Kelley. No, sir, not with me.

8 Senator Hart of Colorado. Do you think that it has been  
9 a problem for the people that preceded you?

10 Mr. Kelley. I think so.

11 Senator Hart of Colorado. And that's a problem the  
12 Congress ought to address?

13 Mr. Kelley. I think so.

14 Senator Hart of Colorado. The Committee received a  
15 letter from the Department of Justice a couple of days, the  
16 Assistant Attorney General asking our cooperation in carrying  
17 out the investigation or their efforts to review the investi-  
18 gation conducted by the FBI into the death of Martin Luther  
19 King, Jr., in order to determine whether that investigation  
20 should be re-opened. They asked our cooperation, they asked  
21 for our transcripts, the testimony before the Committee, all  
22 material provided to the Committee by the FBI which relates  
23 to Dr. King and the Southern Christian Leadership Conference.

24 I guess my question is this: Why is the Justice Depart-  
25 ment asking this Committee for FBI files?

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1 Mr. Kelley. I don't think they're asking for files.  
2 I think they're asking for what testimony was given by  
3 witnesses whose testimony has not been given up. I don't know.

4 Senator Hart of Colorado. I'll quote it. "And all  
5 material provided to the Committee by the FBI which relates  
6 to Dr. King and the Southern Christian Leadership Conference."

7 I repeat the question. Why is the Justice Department  
8 asking this Committee for material provided to us by the  
9 FBI?

10 Mr. Kelley. Frankly, I don't know. Do you mind if I  
11 just ask --

12 (Pause)

13 Mr. Kelley. I am informed, and I knew this one.  
14 Everything that was sent to you was sent through them. Did  
15 they have a copy also? Yes, they had a retained copy. I  
16 don't know why.

17 Senator Hart of Colorado. So there's nothing you  
18 provided us that's not available to the Justice Department?

19 Mr. Kelley. That's right.

20 Senator Hart of Colorado. And you can't account for why  
21 an official of the Justice Department would ask this Committee  
22 for your records?

23 Mr. Kelley. No, sir.

24 Senator Hart of Colorado. You released a statement on  
25 November the 18th of '74 regarding the FBI's counter-intelligence

1 program and you said you made a detailed study of COINTELPRO  
2 activities and reached the following conclusions, and I quote:

3 "The purpose of these counter-intelligence programs was  
4 to prevent dangerously and potentially deadly acts against  
5 individuals, organizations and institutions both public  
6 and private across the United States."

7 Now we had an FBI informant in the other day before this  
8 Committee and he stated he told the FBI on a number of  
9 occasions he planned violent acts against black people in  
10 groups. And yet, he said few, if any, instances in which the  
11 FBI actually prevented violence from taking place.

12 How does his testimony square with your statement that  
13 I have quoted?

14 Mr. Kelley. It doesn't, and I don't know if any of  
15 his statements contrary to what we have said is the truth.  
16 We don't subscribe to what he said. We have checked into it  
17 and we know of no instances where, for example, 15 minutes  
18 and that type of thing has been substantiated.

19 Senator Hart of Colorado. You're saying the testimony  
20 he gave us under oath was not accurate?

21 Mr. Kelley. Right.

22 Senator Hart of Colorado. You also said in that statement,  
23 and I quote: "I want to assure you that Director Hoover did  
24 not conceal from superior authorities the fact that the FBI  
25 was engaged in neutralizing and disruptive tactics against

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1 revolutionary and violence-prone groups.

2 Now the Committee has received testimony that the New  
3 Left COINTELPRO programs was not in fact told to higher  
4 authorities, the Attorney General and Congress.

5 Do you have any information in this regard?

6 I know in that statement you cite onw or two instances,  
7 but in terms of the bulk of COINTEL programs, the record  
8 seems to date at least to be clear that there was not systematic  
9 information flowing upward through the chain of command to  
10 Director Hoover's superiors?

11 Mr. Kelley: May I ask that I be given the opportunity  
12 to substantiate that with documentation?

13 Senator Hart of Colorado. Sure.

14 Mr. Kelley: Or respond to it.

15 Senator Hart of Colorado. Dorector Kelley, just in  
16 passing, do you agree with the statement made by President  
17 Ford that those responsible for harassing and trying to destroy  
18 Dr. King should be brought to justice.

19 Mr. Kelley. Those who directly responsible and upon whcse orders  
20 the activities were taken responsible. I don't know if he intended to say  
21 that, but if he did not, I would say that it would be more proper. Insofar  
22 as my own opinion is concerned, that it be centered on those who said  
23 to do it and those who are responsible.

24 I took the responsibility for any such program and I  
25 don't expect that those under me would be not acting in

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1 accordance with what they think is proper and may even have  
2 some reservation, but they do it on my orders. I accept that  
3 responsibility.

4 I think that it should rest on those who instructed that  
5 that be done.

6 Senator Hart of Colorado. But you agree that the people  
7 who give the orders should be brought to justice.

8 Mr. Kelley. I do.

9 The Chairman. Aren't they all dead?

10 Mr. Kelley. No.

11 The Chairman. Not quite?

12 Mr. Kelley. Not quite.

13 Senator Hart of Colorado. That's all, Mr. Chairman.

14 The Chairman. Thank you, Senator.

15 Director Kelley, in the Committee's review of the  
16 COINTELPRO program and other political involvements of the  
17 FBI, it seems to me that we have encountered two or three  
18 basic questions.

19 Since the investigation is over insofar as the Committee  
20 is concerned, we're now turning our attention to remedies for  
21 the future, what I would think would be our constructive  
22 legislative work, it is very important that we focus on what  
23 we learned in that investigation.

24 And one thing that we have learned is that Presidents of  
25 the United States have from time to time ordered the FBI to

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1 obtain for them certain kinds of information by exercising the  
2 necessary surveillance to obtain .and to have a purely  
3 political character, that they simply wanted to have for their  
4 own personal purposes.

5 I think that you would agree that that is not a proper  
6 function of the FBI, and you agree.

7 Yet it's awfully difficult for anyone in the FBI,  
8 including the Director, to turn down a President of the United  
9 States if he receives a direct order from the President. It  
10 is always possible, of course, to say no, and if you insist,  
11 I will resign. But that puts a very hard burden on any man  
12 serving in your position, particularly if the President puts  
13 a good face on the request and makes it sound plausible or  
14 even invents some excuse. It is always easy for him to say,  
15 you know, I am considering Senator White for an important  
16 position in my administration, and I need to know more about  
17 his activities, particularly of late. I've had some cause  
18 for concern and I want to be certain that there is nothing in  
19 his record that would later embarrass me, and I just want you  
20 to keep careful track of him and report to me on what he's  
21 been doing lately.

22 It's difficult for you to say back to the President, Mr.  
23 President, that's a very questionable activity for the FBI,  
24 and I frankly don't believe that you've given me the real  
25 reason why you want this man followed. I think his opposition

1 to your current policy is politically embarrassing to you and  
2 you want to get something on him.

3 I mean, you know, the Director can hardly talk back that  
4 way, and I'm wondering what we could do in the way of protecting  
5 your office and the FBI from political exploitation in this  
6 basic charter that we write.

7 Now, I want your suggestions, but let's begin with one  
8 or two of mine. I would like your response.

9 If we were to write into the law that any order given you  
10 either by the President or by the Attorney General should be  
11 transmitted in writing and should clearly state the objective  
12 and purpose of the request and that the FBI would maintain  
13 those written orders and that furthermore they would be  
14 available to any oversight committee of the Congress. If the  
15 joint committee on intelligence is established, that committee  
16 would have access to such a file.

17 So that the committee itself would be satisfied that  
18 orders were not being given to the FBI that were improper or  
19 unlawful.

20 What would you think of writing a provision of that kind  
21 into a charter for the FBI?

22 Mr. Kelley. I would say writing into the law any order  
23 issued by the President that is a request for action by the  
24 Attorney General should be in writing, is certainly, in my  
25 opinion, is a very plausible solution. I'm sure that in

1 contemplation of this there would be some that will say yes  
2 or some that will say no, but I think we could define an  
3 area where you are trying to cure the abuses and we could  
4 do that.

5 Now as to the availability to any oversight committee  
6 of Congress, I would say generally that I certainly would have  
7 no objection to this, but I again, there may be some request  
8 for something of high confidentiality that the President might  
9 put in writing such as some national or foreign security  
10 matter.

11 I would like to have such a consideration be given a  
12 great deal of thought and that the oversight committee review  
13 be conditioned with that possibility. I don't think it would  
14 present a problem.

15 I have said previously that I feel I can discuss every-  
16 thing except the identity of the informants to the oversight  
17 committee. I welcome that.

18 The Chairman. Well, that has been of course the way we  
19 proceeded with this Committee. It has worked pretty well,  
20 I think.

21 Now Senator Goldwater brought up a question on the  
22 Martin Luther King tapes. I would like to pursue that question.

23 If these tapes do not contain any evidence that needs  
24 to be preserved for ongoing criminal investigations, and since  
25 Dr. King has long since been violently removed from the scene,



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1 why are they preserved? Why aren't they simply destroyed?  
2 Is there a problem that we can help through new law to enable  
3 the FBI to remove from its files so much of this information  
4 that it has collected that it is no longer needed or may never  
5 have connected the person with any criminal activity? And  
6 yet, all of that information just stays there in the files  
7 year after year.

8 What can we do? How can a law be changed? If that's  
9 not the problem, then what is? Why are these tapes still down  
10 there at the FBI?

11 Mr. Kelley. Well, of course, we do have the rule that  
12 they are maintained ten years. Now why the rule is your  
13 question and why right now are they maintained? Since we  
14 do maintain everything since the inquiry has started and until  
15 that's lifted, we can't destroy anything.

16 I would say that this is a proper area for guidelines  
17 or legislation and again, as I have said, there should be  
18 some flexibility and I know that's a broad statement but there  
19 might be some areas wherein that the subject of the investigation  
20 himself may want them retained because it shows his innocence.

21 I think you have to deliberate this very carefully, but  
22 it can be done and we are willing to be guided by those  
23 rules.

24 The Chairman. Let me ask you this. The FBI is conducting  
25 thousands of investigations every year on possible appointees

1 to Federal positions. As a matter of fact, the only time I  
2 ever see an FBI agent is when he comes around and flashes his  
3 badge and asks me a question or two about what I know of Mr.  
4 so and so, who's being considered for an executive office.  
5 And we have a very brief conversation in which I tell him that  
6 as far as I know, he's a loyal and patriotic citizen, and that  
7 is about the extent of it.

8 Then when this file is completed and the person involved  
9 is either appointed or not appointed, what happens to that  
10 file? I know it's full of all kinds of gossip because it is  
11 in the nature of the investigation to go out to his old  
12 neighborhoods and talk to everybody who might have known him.

13 What happens to the file? Is that just retained forever?

14 Mr. Kelley. We have some capability of destroying some  
15 files and they are rather lengthy insofar as retention. We  
16 have some archival rules which govern the retention of material  
17 and is developed in cases involving certain members of the  
18 Executive Branch of the government.

19 I see no reason why this would not be a proper area  
20 for consideration of legislation.

21 The Chairman. Can you give me any idea of how much --  
22 do you have records that would tell us how much time and money  
23 is being spent by the FBI just in conducting these thousands  
24 of routine investigations on possible Presidential appointments  
25 to Federal offices?

1 Mr. Kelley. I feel confident we can get it. I do not  
2 have it now, but if you would like to have the annual cost  
3 for the investigation of Federal appointees --

4 The Chairman. Yes. Plus, you know, plus any other  
5 information that would indicate to us what proportion of the  
6 time and effort of the FBI was absorbed in this kind of  
7 activity.

8 Mr. Kelley. I can tell you it is relatively small, but  
9 I can get you, I think, the exact amount of time and the  
10 approximate expense.

11 The Chairman. I wish you would do that because this is  
12 a matter we need more information about. And when you supply  
13 that data to the Committee, would you also supply the number  
14 of such investigations each year?

15 You know, I don't expect you to go back 20 or 25 years,  
16 but give us a good idea of the last few years. For example,  
17 enough to give us an idea of how much time and how broad the  
18 reach of these investigations may be.

19 Mr. Kelley. Through '70?

20 The Chairman. That would be sufficient, I would think.

21 The other matter that is connected to this same subject  
22 that I would like your best judgment on is whether these  
23 investigations could not be limited to offices of sensitivity.  
24 That is to say where legitimate national security interest might  
25 be involved so that there is a reason to make a close check on

1 past associations, attitudes and expressions of belief.

2 I have often wondered whether we couldn't eliminate  
3 routine Federal offices that are not particularly sensitive  
4 in the national security sense from the reach of these FBI  
5 checks.

6 And so when you respond to the series of questions, I  
7 wish you would include the offices that are now covered by  
8 such checks and give us an idea of how far down into the  
9 Federal bureaucracy this extends.

10 Could you do that?

11 Mr. Kelley. Yes, sir.

12 The Chairman. Fine.

13 Now there is a vote. The vote always comes just at  
14 the wrong time, but Mr. Schwarz wants to ask you some additional  
15 questions for the record, and there may be other questions,  
16 too that would be posed by the staff, after which I will ask  
17 Mr. Schwarz to adjourn the hearings. It looks like we're going  
18 to be tied up on the floor with votes.

19 But before I leave I want to thank you for your testimony,  
20 Mr. Kelley, and to express my appreciation to you for the  
21 way you have cooperated with the Committee in the course of  
22 its investigation during the past months.

23 Mr. Kelley. Thank you.

24 The Chairman. And I hope, as you do, that as a result  
25 of the work of the Committee we can write a generic law for

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the FBI that will help to remedy many of the problems we'll  
encounter in the future.

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Thank you.

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End Tape 4

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1 Mr. Schwarz. Mr. Kelley, I'll try to be very brief.

2 On page 5 of your statement --

3 Mr. Kelley. What?

4 Mr. Schwarz. On page 5 of your statement, the third  
5 full paragraph, you said the following, and I would like then  
6 to question about what you said. "We must recognize that  
7 situations have occurred in the past and will arise in the  
8 future where the Government may well be expected to depart from  
9 its traditional role, in the FBI's case, as an investigative  
10 and intelligence-gathering agency, and take affirmative steps  
11 which are needed to meet an imminent threat to human life or  
12 property."

13 Now, by that you mean to take what kind of steps in what  
14 kind of situation?

15 And can you give some concrete examples under your general  
16 principles statement?

17 Mr. Kelley. I think that Mr. Adams addressed himself to  
18 that the other day, where you have an extremist who is an  
19 employee at the waterworks, and he makes a statement that he's  
20 going to do something which is devastating to the city, and you  
21 have no way to attack this under the ordinary procedures, and  
22 so therefore you must take some steps to meet that imminent  
23 threat to human life or property.

24 Mr. Schwarz. So let us take that case as a test of the  
25 principle. You are saying the extremist has said he is going

1 to do something to the waterworks, poison it or something, and  
2 he is on the way down there with the poison in his car.

3 Is that the presumption?

4 Mr. Kelley. We hadn't gone that far, but all right, you  
5 can extent it.

6 Mr. Schwarz. All right, now, in that case you have the  
7 traditional law enforcement tool, which is the power of arrest.

8 Mr. Kelley. Not under probable cause where he has not  
9 gone down there. The hypothetical we gave was one where he had  
10 not taken any overt acts in perpetration of this.

11 Mr. Schwarz. Well, if he hasn't taken any overt acts,  
12 are you then in what you would call in imminent threat of  
13 human life or property?

14 Mr. Kelley. I think so.

15 Mr. Schwarz. How so? Unless he has taken an overt act  
16 to buy the poison or to get in the car with the poison, there  
17 is not by definition any threat to life or property.

18 Mr. Kelley. Mr. Schwarz, I've been around in this business  
19 a long time. I've heard a number of threats which were issued,  
20 and they thereafter materialized into actions. I don't think --  
21 take these threats as being empty ones, because so many times  
22 they have been acted upon.

23 I was criticized one time when there was a threat made to  
24 kill me, and it was said later on, it's not rhetoric, it's  
25 not rhetoric to me, because when they say they're going to

1 kill me, that just means one thing.

2 Mr. Schwarz. But I'm not disagreeing with you.

3 Mr. Kelley. But you are disagreeing with me. You're saying  
4 on the basis of experience that you cannot detect a possible  
5 threat. That's the whole area of concern that we have here, where  
6 we don't lose the capability of doing something. We don't  
7 say we should initiate ourselves. We say that we should go to  
8 the Attorney General. We do not subscribe to the idea that  
9 we should act independently because maybe we don't have the  
10 judicial review, the capability of determining, but we do  
11 think that we should report it and thereafter see what can  
12 be done.

13 Mr. Schwarz. Well, have you changed in the course of  
14 our discussion the standard on page 5.

15 On page 5 you're talking about an imminent threat.

16 Mr. Kelley. Yes.

17 Mr. Schwarz. And I hear you now as saying a possible  
18 threat.

19 Mr. Kelley. An imminent possible threat.

20 Mr. Schwarz. An imminent possible threat. All right.

21 Now, would a fair standard for either action, other than  
22 arrest, I don't know what you have in mind, but something to  
23 prevent the person from carrying out his activities, other  
24 than arrest, for instance, what is an example of what you have  
25 in mind?



1 Mr. Kelley. Removing him from his position or whatever  
2 is necessary in order to make it impossible or at least as  
3 impossible as possible to perpetuate this thing.

4 Mr. Schwarz. You mean have him lose his job or --

5 Mr. Kelley. I don't know what it would be.

6 Mr. Schwarz. Isolate him in some fashion.

7 Mr. Kelley. In some fashion perhaps.

8 Mr. Schwarz. Now, for such activity and for opening  
9 an investigation into a domestic group, could you live with  
10 a standard which said you would have to have an immediate  
11 threat that someone was likely to commit a serious federal  
12 crime involving violence?

13 Mr. Kelley. I think that this thing could be worked out  
14 so that there could be an adequate basis for an evaluation.

15 Mr. Schwarz. So those words, without trying to commit  
16 you entirely to them, do not seem to you to depart far from  
17 what you think would be an acceptable standard.

18 Mr. Kelley. Well, an imminent, immediate threat might  
19 be, by virtue of the word "immediate" that he's going to  
20 do it the next minute. In that case it may be necessary for  
21 you to, not with the presence or the possibility, not able  
22 to do anything except put him under arrest or anything.

23 Mr. Schwarz. Of course, of course.

24 And nobody would at all disagree with that kind of action.

25 Mr. Kelley. I don't think they would either.

1 Mr. Schwarz. But on the question, let's take the opening  
2 of an investigation into a domestic group.

3 Is it basically consistent with practicality to make the  
4 test immediate threat of a serious Federal crime involving  
5 violence?

6 Mr. Kelley. To open a domestic security case.

7 Mr. Schwarz. Yes.

8 Mr. Kelley. It appears to me that this is a terrorist  
9 activity, in effect. We certainly have terrorist activities  
10 under our jurisdiction as a threat against the United States.

11 Mr. Schwarz. Now, are there other circumstances where  
12 it is justifiable to open an investigation of the domestic  
13 group where you do not have an immediate threat of serious  
14 federal crime involving violence?

15 Mr. Kelley. Oh, I think there are other criteria, and  
16 they have been well defined as to what is the possible  
17 opening, the basis for a possible opening. We haven't been  
18 discussing that, we have been discussing particular instances,  
19 but there are other criteria that are used, yes.

20 Mr. Schwarz. What would the other criteria be?

21 Mr. Kelley. Well, the possible statutory violations  
22 over which we have jurisdiction are, generally speaking, the  
23 most used of the basis, and then you have, of course, some  
24 intelligence investigations which should, of course, be of  
25 short duration. If there is no showing of this into action

1 or a viable intent.

2 Mr. Schwarz. So that's what you're looking for in the  
3 intelligence investigation?

4 Mr. Kelley. By intelligence investigation, yes, you  
5 are looking to prevent.

6 Mr. Schwarz. And what you are looking to prevent, and  
7 what you're looking to find is a likelihood of action combined  
8 with an intent to take an issue?

9 Mr. Kelley. And the capability.

10 Mr. Schwarz. And the capability.

11 All right. I just have two other lines, Mr. Kelley, and  
12 I appreciate very much your time.

13 Mr. Kelley. That's all right.

14 Mr. Schwarz. Assuming a legitimate investigation has  
15 been started into a domestic intelligence matter, is it legiti-  
16 mate for the FBI, in addition to obtaining information that  
17 relates to what we've just been talking about, the likelihood  
18 of violent action, is it also legitimate for the FBI to  
19 collect, A, retain, B, disseminate, C, information concerning  
20 let's say the sex life of a person on the one hand, and the  
21 political views of a person on the other?

22 Mr. Kelley. I think, Mr. Schwarz, that this is just what  
23 many of our problems and perhaps the guidelines can define  
24 this type of thing. I think probably you will agree that  
25 within the determination of the deviations possibly of sex

1 lives, there might be something that is relevant. I would say  
2 ordinarily it's not. And so far as political views, yes, I  
3 think that this could be, if he is espousing some cause or  
4 some view that advocates violence or the overthrow of the  
5 government.

6 Mr. Schwarz. Would those be the two limits on political  
7 views?

8 Mr. Kelley. What?

9 Mr. Schwarz. Would those be the only limits on political  
10 views that you think are okay to collect, advocants of violence  
11 or advocants of overthrow?

12 Mr. Kelley. Well, I don't think because he's a Democrat  
13 or a Republican it would be anything that would be damaging,  
14 but it might on the other hand counter the report that he's  
15 a member of some other organization.

16 Mr. Schwarz. Is the standard you used on collection of  
17 sex life information, might be relevant? I suppose anything  
18 might be relevant, but don't you think that as a function of  
19 balance, it has to have a high degree of relevance before it's  
20 justifiable to collect that kind of information on American  
21 citizens who are not suspected of having committed crimes?

22 Mr. Kelley. Insofar as doing it presently, it has been  
23 included in some reports as a result of the requirement that  
24 that is what is required by our rules, that when a person  
25 reports something to us, we do a report of the complaint. Insofar

1 as a determination by guidelines that might be prepared later,  
2 I think that we can certainly deliberate on this to see whether  
3 or not this is something we should retain, and we would not  
4 object to anything reasonable in that regard.

5 Mr. Schwarz. I just have one final question.

6 Taking the current manual and trying to understand its  
7 applicability laid against the facts in the Martin Luther King  
8 case, under Section 87 there is a -- permission is granted to  
9 open investigations of the infiltration of non-subversive  
10 groups, and the first sentence reads: "When information is  
11 received indicating that a subversive group is seeking to  
12 systematically infiltrate and control a non-subversive group  
13 or organization, an investigation can be opened."

14 Now, I take it that is the same standard that was used  
15 in opening the investigation of the Southern Christian Leadership  
16 Conference in the 1960s, so that investigation could still be  
17 open today under the FBI manual, the current FBI manual.

18 Mr. Kelley. We are interested in the infiltration of  
19 clearly subversive groups into non-subversive groups inasmuch  
20 as this is a ploy that is used many times, and having infil-  
21 trated, they then get control, and they have a self-laundered  
22 organization which they can use, and not, certainly, to the  
23 benefit of the country.

24 Mr. Schwarz. But is the answer to my question yes, that  
25 under that standard, the SCLC investigation could still be

1 opened today?

2 Mr. Kelley. I think so.

3 Mr. Schwarz. All right, then, just one final question.

4 Do you agree that special care needs to be taken not only  
5 of the standards for initially opening an investigation of a  
6 group, but perhaps extra care needs to be taken when the investi-  
7 gation goes beyond the initial target group to individuals  
8 or people who come into contact with it?

9 Mr. Kelley. I don't know if I agree with that entirely. If  
10 you mean that we go into the non-subversive group, that we  
11 then investigate people in that non-subversive group, not the  
12 infiltrators, but the non, that we conduct a lengthy investigation  
13 of them without any basis for doing so other than that they  
14 are in an infiltrated group, I would likely have said -- but  
15 off the top of my head I would say probably that's not necessary.

16 Mr. Schwarz. Thank you very much.

17 Mr. Smothers. Just a couple of very brief lines of  
18 inquiry, Mr. Kelley.

19 I think that the questions of the Chief Counsel was  
20 raising is one that goes further into your statement, when you  
21 talk about the difficulty of setting out the line between  
22 intelligence gathering and law enforcement kinds of functions.  
23 Nevertheless, though, I think that you have made an effort,  
24 indeed, the Bureau's organizational scheme reflects an effort  
25 to distinguish some of this has been made.

1 Putting aside for one moment the counterespionage  
2 effort, and looking strictly at what we have been calling the  
3 Domestic Intelligence, is it your view that the retention of  
4 this function in the Bureau is critical to the Bureau's  
5 law enforcement position?

6 Mr. Kelley. My personal opinion is that the Bureau does  
7 a splendid job in this area. I feel further that the background  
8 of criminal investigatory activities and experiences which  
9 all counterintelligence people have is very helpful. It is help-  
10 ful not only in gathering knowledge and experience, it also  
11 enters into this field, a person with a broad understanding  
12 of the rights and privileges, and you don't have so much that  
13 spy type, that cloak and dagger, that very, very secret type  
14 of an operation.

15 I subscribe to the present system heartily.

16 Mr. Smothers. Would it be of assistance to your mission  
17 if within the Bureau guidelines were established that  
18 effectively limited access or controlled dissemination of  
19 the intelligence product? In other words, if we had a  
20 situation where the intelligence product is critical to assist  
21 the law enforcement effort, I don't think there's any question  
22 that there should be access to it.

23 Isn't our problem one of controlling the use of that  
24 intelligence product and preventing the kind of murky crossing  
25 of lines there with the information legitimately needed for

1 law enforcement?

2 Mr. Kelley. There is always a problem when there is wide  
3 dissemination, because that just numerically increases the  
4 possibility of misuse, abuse or slander, libel, or anything  
5 of that matter, and I think that it would be well worthwhile  
6 to review the dissemination rules to make them subject to  
7 close guidance in the guidelines that we're speaking of.

8 Mr. Smothers. Let me just raise one final area with you.

9 We talked a little bit about, or a question was raised about  
10 the investigation now being conducted by the Justice Department  
11 regarding the improper actions on the COINTELPRO, and the  
12 King case in particular.

13 As we look at allegations of impropriety by your personnel,  
14 I think it would be helpful for our record here to have some  
15 insight into the procedure the Bureau would normally follow.

16 What does the Bureau do when you get an allegation that  
17 an agent or administrative official in the Bureau has behaved  
18 improperly?

19 Is an investigation conducted internally, or is it  
20 routinely referred to the Justice Department?

21 Mr. Kelley. There may be a revision in this type of  
22 procedure as a result of the establishment of the Council for  
23 Professional Responsibility. At present it would be in the  
24 great majority of the cases turned over to our Investigative  
25 Division for investigation. There might, on some unusual



1 occasion, be a designation of a special task force made up,  
2 perhaps, of division heads. That is most unlikely, but it is  
3 handled internally at present.

4 Mr. Smothers. Would these internal determinations be  
5 reviewed by Justice, or do you think that is a necessary  
6 step?

7 I guess what we are searching for here is, first of all,  
8 I think you answered that, well, to what extent does the  
9 Bureau police itself, and then secondly, is the Department of  
10 Justice involved in the police determinations?

11 For instance, what if the Attorney General disagreed with  
12 the assertion that only the higher up officials who ordered  
13 the action against King should be the subject of investigation  
14 and maybe prosecution?

15 How does the interplay work there between you and Justice?

16 Mr. Kelley. We do report to the Attorney General those  
17 activities which we construe as improper or possibly illegal.  
18 There is a possibility that the Department, having been advised  
19 of the situation, might take it on their own to do their own  
20 investigating, and this is something that we feel is a  
21 decision to be made only rather rarely, because we feel we  
22 have within our own organization sufficient capability to  
23 handle that. But we do not protest it. It is handled  
24 independently of us.

25 Mr. Smothers. Thank you.

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That is all I have.

Mr. Schwarz. Thank you.

(Whereupon, at 12:12 o'clock p.m., the Committee recessed subject to the call of the Chair.)

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RE:

Date 12/30/75

DIRECTORS APPEARANCE BEFORE SENATE SELECT  
COMMITTEE ON INTELLIGENCE ACTIVITIES,  
DECEMBER 10, 1975

- For information  Retention optional  For appropriate action  Surep, by \_\_\_\_\_
- The enclosed is for your information. If used in a future report,  conceal all sources,  paraphrase contents.
- Enclosed are corrected pages from report of SA \_\_\_\_\_ dated \_\_\_\_\_

Remarks:

ReButel to all SACs and Legats, 12/10/75.

Enclosed for each Office and Legat is one copy of the transcript of questions which were asked Mr. Kelley during captioned appearance, along with Mr. Kelley's answers to those questions.

62-2368-17A  
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**FILE**  
**STUDY**

RK

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RE: DIRECTOR'S APPEARANCE  
BEFORE SENATE SELECT COMMITTEE  
ON INTELLIGENCE ACTIVITIES  
DECEMBER 10, 1975

Date 1/5/76

*62-2368-18*

*Dead*

SEARCHED <i>BB</i>	INDEXED <i>LH</i>
SERIALIZED <i>BB</i>	FILED <i>LH</i>
JAN 7 1976	
FBI-ALBANY	

For information  Retention optional  For appropriate action

The enclosed is for your information. If used in a future report,  conceal all sources,  paraphrase contents.

Enclosed are corrected pages from report dated \_\_\_\_\_

Remarks: By routing slip dated 12/30/75 and captioned as above, all SACs and Legats were furnished a copy of the transcript of Mr. Kelley's 12/10/75 appearance before the Senate Select Committee on Intelligence Activities. Although the data contained in the transcript may be made available to news media representatives, used in answering questions received from citizens, and otherwise treated as being of a public-source nature, the transcript itself should not be reproduced for, or given to, anyone outside the FBI.  
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FBI

Transmit in \_\_\_\_\_ Via Airtel \_\_\_\_\_  
(Type in plaintext or code) (Precedence)

To: SAC, Albany

1/14/76

✓ From: Director, FBI

PERSONAL ATTENTION *RV* (Date)

COST OF RESPONDING TO INQUIRIES FROM  
OTHER AGENCIES, CONGRESSIONAL COMMITTEES  
AND REQUESTS UNDER THE FREEDOM OF INFORMATION  
AND PRIVACY ACTS (FOIPA)

As you are aware, the FBI is currently responding to inquiries from various Congressional committees and agencies such as the General Accounting Office. In addition, we are having to devote ever larger amounts of resources to the handling of requests under provisions of the FOIPA.

While much of the effort required to process these matters is expended at FBIHQ, the field offices are increasingly being called on to give responses. From time to time in the past, the cost of responding to the inquiry of a particular committee or agency has been monitored when this was deemed appropriate.

Since it appears the high volume of inquiries will continue for the foreseeable future, it is necessary to provide for an efficient, standardized mechanism of collecting cost data and reporting the time spent servicing requests from all oversight groups which will be instituted immediately. The time spent on FOIPA matters will also be reported through this centralized system. As major inquiries from new groups are received, the time spent servicing these requests should also be reported.

Under this system, each field office will submit an appropriate communication monthly reporting the time spent

2 - Each Field Office

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1cc 66-7921  
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*ORIG - 66-2577  
(FOIPA)*

*Read*

*62-2368-19*

*RTT* *AK*  
*[Handwritten signature]*

Airtel to Albany  
Re: Cost of Responding to Inquiries From . . .

responding to the requests of various groups and handling FOIPA matters. This information must be received by the fifteenth of the month following the month being reported on and should be directed to the attention of the Budget and Accounting Section.

For uniformity, the information should be reported in the following sample format:

Office: Albany  
Month: January, 1976  
General Accounting Office  
Agent Hours: 21  
Clerical Hours: 11  
Freedom of Information Act  
Agent Hours: 61  
Clerical Hours: 13  
Privacy Act  
Agent Hours: 17  
Clerical Hours: 7

PER RIS

ADD

CIVIL SUITS

AGENT.

CLERICAL

Field offices are not expected to keep detailed time records. Reliable estimates are acceptable and time should be reported to the nearest whole hour.

The groups and activities which are being monitored at the present time are as follows:

Senate Select Committee on Intelligence Activities  
House Select Committee on Intelligence Activities  
General Accounting Office  
Freedom of Information Act  
Privacy Act

Statistics should be reported on any oversight afforded to the FBI and should not be restricted to the committees and agencies described above.

For accountability purposes a report should be submitted by each field office each month, even if there is little or no time to be reported. The first report is to be submitted by February 15, 1976 for the month of January.

Airtel to Albany

Re: Cost of Responding to Inquiries From. . .

The adoption of this system will eliminate the need to send numerous reports on individual groups or projects each month. Also, the form of data collection will now be uniform. The information obtained will be of value to FBI management for planning and staffing requirements and will be useful for budget justification purposes if it becomes necessary to seek additional personnel to handle this work.

Your cooperation is appreciated.

Routing Slip  
0-7 (Rev. 7-11-75)

(Copies to Offices Checked)

**Personal Attention**

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Date 1/30/76

RE:

Airtel to all SAC's, 1/14/76, captioned "Cost of Responding to Inquiries From Other Agencies, Congressional Committees and Requests Under the Freedom of Information and Privacy Acts (FOIPA)"

- For information  Retention optional  For appropriate action  Surep, by \_\_\_\_\_
- The enclosed is for your information. If used in a future report,  conceal all sources,  paraphrase contents.
- Enclosed are corrected pages from report of SA \_\_\_\_\_ dated \_\_\_\_\_

Remarks:

Effective immediately, an additional activity is being added to those contained on page two of referenced airtel - the time spent preparing and defending lawsuits where the Bureau and/or its employees are named as defendants or are parties in interest. Insure time spent on this type activity is included in your monthly <sup>2, 6, 20</sup> reports under the captioned "Civil Suits."

*VASAC*  
*Supv 3*  
*Supv 4*  
*Supv 5*  
**CHERIGOT**  
 ADVISE  
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 OF ALL  
 PENDING  
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 1/29/76  
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*FILE TO AGENTS*  
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FEB 4 1976	
FBI-ALBANY	
<i>AMERICAN</i>	

*SEE ME RIK*

**62-2368**

*AMANN*



UNITED STATES GOVERNMENT

# Memorandum

TO : SAC, ALBANY (66-2877)

DATE: 2/4/76

FROM : SA LESTER L. AMANN

SUBJECT: COST OF RESPONDING TO INQUIRIES FROM  
OTHER AGENCIES, CONGRESSIONAL COMMITTEES  
AND REQUESTS UNDER THE FREEDOM OF INFORMATION  
AND PRIVACY ACTS (FOIPA)

RE: Bureau airtel to Albany, 1/14/76.

Referenced airtel pointed out that the FBI is increasingly being called upon to furnish information to Congressional Committees, other agencies, and also to answer requests under Freedom of Information and Privacy Acts (FOIPA). As a result of this, a monthly report must be submitted setting forth the time spent, both agent and clerical, under each of the different headings (FOIPA, Senate Select Committee on Intelligence Activities, etc).

In order to facilitate the compiling of this monthly report, a separate control file has been established 66-2921. Each supervisory desk should be aware of the necessity of channeling to this control file a break down by agent and clerical hours whenever an inquiry is responded to under any of the Congressional Committees, other agencies (GAO), or FOIPA.

1-SAC  
1-ASAC  
1-Supv. GILBERT  
1-Supv. KEEFE  
1-Supv. LONERGAN  
①-62-2368 *dead*  
1-66-2921  
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LLA:bah  
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62-2368-21

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AMANN	



5010-110

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UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

STATEMENT OF

CLARENCE M. KELLEY

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

COMMITTEE ON GOVERNMENT OPERATIONS

U. S. SENATE

WASHINGTON, D. C.

JANUARY 26, 1976

62-2368-22

SEARCHED	INDEXED
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FBI-ALBANY	

*RK*



I want to thank you for giving me the opportunity to appear before this Committee concerning a most important issue -- that of oversight.

For some months now, the FBI has undergone a most exhaustive review of its intelligence operations, as have other members of the intelligence community. This review has covered both domestic and foreign intelligence operations of the FBI.

And I am hopeful that the results of these extensive reviews will be helpful to the Congress as it considers practical recommendations for legislative oversight.

The FBI has in the past recognized and, indeed, requested a clear delineation of its intelligence responsibilities and authority to conduct investigations in this extremely sensitive area.

We realize that Congress faces a difficult task if it decides to draft oversight legislation that will be of lasting benefit to the American people. Many issues are involved, and most of them are not easily resolved.

The primary responsibility for correctness of FBI activities rests in its Director -- a responsibility I readily assume.

I would like to offer for your consideration some of the basic questions I believe must be answered:

- (1) Should Congressional responsibilities for oversight of the FBI be consolidated?
- (2) Should Congress become actively involved in the decision-making process of the administration of the FBI?
- (3) What is the proper degree -- and mode -- of Congressional access to FBI information?
- (4) What clearance procedures and controls should be established for staff members of a Congressional oversight committee?

As I have previously testified before a Congressional Committee and mentioned here today, the decisions in the FBI are mine and I assume full responsibility for them. I think the point merits reiteration. Some of the mistakes in the past were occasioned by direct orders from higher authorities outside the FBI.

We have welcomed Attorney General Levi's guidance, counsel, and his continuous availability, in his own words, "as a 'lightning rod' to deflect improper requests."

Within days after taking office, Attorney General Levi instructed that I immediately report to him any requests or practices which, in my judgment, were improper or which, considering the context of the request, I believed presented the appearance of impropriety.

I can assure you, also, that in my administration of the FBI I bring to the attention of the Attorney General and the Deputy Attorney General major policy questions, including those that arise in my continuing review of our operations and practices. These are discussed openly and candidly so that the Attorney General can discharge his responsibilities with regard to the FBI.

There is no question in my mind that the basic structure of the FBI is sound; but it would be a mistake to

think that integrity can be assured only through institutional means.

Integrity is a human quality. And the integrity of the FBI therefore is dependent upon the character of the Director of the FBI and every member of the FBI under him. It will always be so.

I am sure you are aware the Attorney General created a committee of Department and FBI representatives to draft guidelines governing FBI investigations. These guidelines have been discussed with various committees of Congress and although not finalized at this time, they could prove beneficial in the administration of the FBI.

I would like to comment briefly on the matter of determining the degree and method of access to FBI files granted to a committee having oversight responsibility.

I believe such determination must carefully consider the questions raised as to the protection of the integrity of such matter aside from privacy considerations. Much of the information received by the Bureau is furnished voluntarily, not only by individuals but by cooperative foreign governments. They do so in return for an express or implied promise of confidentiality. The FBI regards such promises as binding.

The establishment of unlimited access could seriously jeopardize the flow of volunteered information which is the lifeblood of our investigative organization.

As the number of persons having access to highly sensitive materials is increased, the chance of an intentional or inadvertent disclosure also increases.

A perfectly well-intentioned person who legitimately comes into possession of sensitive information may well forget, at a later time and in another position, the circumstances under which he acquired the information.

Law enforcement in this Nation is largely dependent upon citizen cooperation. Should citizens no longer have any assurance their identities will be protected, the very foundation of cooperation upon which the Bureau is so reliant will be shaken.

Our legitimate concern in this area is borne out by the fact courts continue to recognize the special legal status accorded informants in the law enforcement community, in that their true identities are protected.

Should the identities of informants be jeopardized by the unnecessary proliferation of information, there will be a severe impact on the ability of the FBI to discharge its mandated responsibilities.

We are also concerned about the countless public-spirited citizens who come forward voluntarily with information essential for the FBI to function effectively.

Other extremely valuable sources of such information are cooperative agencies in this country and abroad. Should the FBI be required to relinquish, over our objections, information of this nature, it is quite likely we would be denied such information in the future.

The Select Committees have received unprecedented access to information from the FBI, within agreed limits; but we must ask whether the same degree of access should be allowed, or is essential to, an ongoing oversight committee. The Select Committees came into being in the Watergate atmosphere. Issues were raised that needed to be resolved. Most of them have been resolved with regard to the FBI.

I must point out that our diligent cooperation in the endeavors of the Committees stems, in part, from our own commitment to review the actions of the FBI in the past in order to better judge the proper role of the FBI in the future.

An excellent example of this commitment is the fact we have reduced the number of our domestic intelligence investigations by 64 percent since July, 1973.



As of July 31, 1973, we were handling 21,414 such investigations. By October 30, 1975, we had reduced that total to 7,686 pending domestic intelligence cases -- a decline of 13,728 cases.

I think this is solid evidence of our responsiveness even prior to the drafting of proposed guidelines for such investigations. It isn't necessary for a house to fall on us -- much less two houses.

So I feel compelled to raise this question:

Will the good of the country be better served by continuing an extraordinary degree of direct Congressional access to FBI information, or will it be better served by placing emphasis on requiring the FBI Director to be fully accountable to an oversight committee through sworn testimony?

I think the Congress and the FBI can perform their respective tasks with the most advantageous results by the latter means.

Now, also, I would strongly suggest that consideration be given to the employment of a permanent, professional staff -- to the extent necessary -- for any proposed oversight committee, with stringent clearance procedures.

This would allow the staff members to become thoroughly knowledgeable concerning the FBI's procedures and practices and, thereby, facilitate the work of the committee with proper security.

As we seek to define the proper degree of oversight, or review, of FBI operations, we must consider the administrative burdens such oversight involves.

I should point out that in responding to requests of the two Select Committees, the FBI at its headquarters alone expended 3,976 days of Agent personnel and 1,964 days of clerical personnel from April through December, 1975 -- manpower diverted from investigative duties. In dollars and cents that represents a cost of approximately \$640,500. Additionally, the cost of conducting background investigations of committee staff members had reached about \$393,699 through last month.

Now these figures do not take into account personnel utilized in responding to requests of other committees of Congress, which have substantially increased during the past year.

Many of the requests we receive from Congress are duplicative in nature. Though we diligently try to respond fully and accurately in each and every instance, it is a time-consuming and costly chore. And I feel strongly that the interests of the American people would be best served by Congress consolidating its oversight functions.

The manpower of the FBI is limited. With the increased burden placed on the Bureau by Congressional Committee

requests, and Freedom of Information Act and Privacy Act requests, we have reached the point where the Bureau's ability to perform its normal investigative functions has been impaired.

So I would urge you to consider these matters in your deliberations concerning oversight legislation. I assure you we will continue to cooperate to the best of our ability. And I can further assure you that under a Director held fully accountable and reporting at intervals to an oversight committee, the FBI can perform effectively and honorably.

Thank you.

QUESTIONS FROM SENATOR RIBICOFF

QUESTION: Mr. Kelley, Do you believe that there should be a Congressional Oversight Committee handling intelligence matters?

MR. KELLEY: I believe in oversight, Senator. I do not know whether you mean one which is separated from the criminal activities performed by the FBI or not. If it be fragmented, I do not believe that such should be done. I subscribe to an oversight of both the intelligence activities in the domestic and foreign security and the criminal.

QUESTION: I do not think it is anyone's intention in the oversight committee to take care of the day-to-day problems that the criminal oversight has domestically, but in the counterintelligence field, do you believe that there should be such an oversight committee?

MR. KELLEY: I do believe that it is necessary that we do have oversight.

QUESTION: Mr. Colby testified last week that, in his opinion, after reporting to eight committees, he feels that the sooner such an oversight committee is created, the better off the intelligence community would be. Do you believe with Mr. Colby?

MR. KELLEY: I do.

QUESTION: In your statement on page 3--I quote you--you state that "Some of the mistakes in the past were occasioned by direct orders from higher authorities outside the FBI." Could you please tell us what mistakes and which higher authorities you are referring to?

MR. KELLEY: I am referring to the requests, the orders that have come to us from members of the Department of Justice, the Attorney General, and these stem from the installation of some of our electronic surveillances and from programs that we have followed which have been with the authority of, and approval of, those in this area. There are not--I do not have a complete outline of them, but we do have instances where the FBI did not initiate these. The orders came from outside our organization and from, of course, The White House on some occasions.

QUESTION: Do you believe that such requests have been improper under the authority of the FBI?

MR. KELLEY: I do not think by any means that they come under the purview of the FBI.

QUESTION: What should a director of the FBI do if he receives an order from the President, or the Attorney General or someone in the White House staff that you believe contrary to what your responsibilities and authorities are? What should a Director do under those circumstances?

MR. KELLEY: First, I think that he should deliberate and talk with the Attorney General, if it be one not coming from the Attorney General and get his determination. If it be one where there is some doubt, he should get it in writing. If it be one that he does not under any consideration nor as a result of deliberation wherein an effort is made to convince him, but he himself does not feel that it is advisable then he should withdraw, he should resign. And as I was once told by Senator Byrd during confirmation, it is hoped that in such an instance that he would come to the oversight committee of the Congress and consult with them about what should be done under these circumstances. Of course, that is a matter which the Director himself has to arrive at, and I am already committed to, and still subscribe to, the proposition that I am not going to give way just because it comes from higher authority.

QUESTION: If the President of the United States makes a request of you that you believe to be improper, and of course, he is your boss, you would feel honor-bound under those circumstances to resign as Director of the FBI?

MR. KELLEY: If it came to the final crunch, yes.

QUESTION: Do you believe that an FBI Director should have a definite term in office?

MR. KELLEY: I have been asked this before. I am not uncomfortable under the present system where my term of office is from day to day. I do not believe that there should be any greater tenure than that. Insofar as a limitation on how long he can be Director, I feel that nine or ten years is sufficient. I do subscribe to that.

QUESTION: You say also on page 3 that when Mr. Levi became Attorney General, he instructed you to report to him any requests or practices which, in your judgment, were improper or presented the appearance of impropriety. Have you made such reports to Mr. Levi?

MR. KELLEY: Yes, sir.

QUESTION: Are they confidential, or could you describe generally the nature and frequency of such improper requests?

MR. KELLEY: Most of them have been in the area of Cointel Programs which we have discovered ourselves in some of our file reviews. I can remember another where we determined that there were certain mail openings which we did not know about until we accidentally discovered them. It was not a failure to inform us, but they thought that this was an ongoing program that had been given official approval. There was no thought that it was something that should be hidden. We did discover them in the top echelon of the FBI and, therefore, the thought is they were new to us--they were also new to Levi and we informed him about them.

QUESTION: In your testimony you stated that the Bureau has reduced a number of pending domestic intelligence investigations from 21,414 in 1973 to 7,686 by October 30, 1975. How do you explain this? Were there too many investigations being conducted two years prior?

MR. KELLEY: Senator, when I first came in, I talked with the man in charge of our Intelligence Division. That is the one where we handle the security matters, and it was our opinion, together, that there were too many investigations being conducted in the security field. I asked him to review the bases on which we conduct our investigations. Obviously it became apparent that some of our fields of attention could be under close scrutiny. I felt some undue extensions of our investigatory capabilities and this was a continuing process, and the reduction was not something that was immediate, but extended from, I would say, the latter part of '73 when we got ourselves lined up, right through to October, as it says in my statement, of '75. We looked over why

are we doing certain things, and it might well be, as is many times true in investigative circles, that you might get a little too concerned about something that on close scrutiny may not have been quite as alarming as it first seems. This is not at all unusual. It is, however, unusual that it comes from within and yes, as a result of the realignment of our goals--realignment of our procedures--our basis for investigating matters, we did bring about this reduction.

MR. CHAIRMAN: Thank you. Senator Percy?

QUESTION: Thank you, Mr. Chairman. Mr. Chairman, I would like to thank Mr. Kelley for his demonstrated desire and willingness to work with members of Congress and to help us fulfill our responsibilities.

Former Attorney General Katzenbach testified last week that he often did not know what the FBI was doing. What is your own working relationship with the present Attorney General? Do you keep him informed of all the major activities that the FBI is undertaking? Does he participate in deciding whether or not you undertake major undertakings?

MR. KELLEY: Senator, we certainly keep him informed of any major program. I would say that perhaps we may, on occasion, over-inform him. We may tell him about things that are anticipatory as far as problems are concerned. We try to keep him fully informed. For example, if there happens to be something we learn about that may cause press inquiries of him, we inform him of that. Many times they are made. I just point this out inasmuch as we are trying valiantly to keep him informed.

QUESTION: When do you anticipate new guidelines for the FBI being finalized?

MR. KELLEY: I cannot give you this response. It has been several months in preparation. I know that it has now been thrown back into the hopper for re-evaluation. I cannot tell you--perhaps Mr. Levi can give you better information in that regard.

QUESTION: As a follow-up on that first question, to be certain that I complete the record on it, can you think now in retrospect in anything in your term of office as Director of the FBI that you really should have advised the Attorney General of that you maybe subsequently did, but did not at the time?

MR. KELLEY: I cannot think of anything, Senator.

QUESTION: I asked that, because Dean Rusk said that he subsequently has now learned of certain things undertaken in foreign countries by, say, the CIA that he thought at the time he knew everything going on, he now learns he did not know, and I wanted to complete that record.

You talk about unlimited access to your files being dangerous, and I do not think anyone contemplates that whatsoever, but I do not think either that you should be left in the position where just your word is the only thing that an Oversight Committee has. What do you think is proper in this respect with respect to reference to files?

MR. KELLEY: I think that there should be a working arrangement between our people and whatever group might have oversight, and there is a strong requirement that there not be presentation of material which would first compromise a source of information, whether that be a citizen, a government, or an informant. The confidentiality of the work done by the FBI is an extremely important thing. Names are not just all that reveal the identity. It may be that certain circumstances, when revealed, may pinpoint what might be the source of information. There might be also too great a proliferation of information about some activity of the FBI.

For example, we have, of course, warrantless wiretaps. We feel that there should be confidentiality of that. These have been authorized through the approval of the President through the Attorney General's delegated authority in this regard. I would say generally that if there be a reasonable basis whereby we can explain that it should be maintained confidential that it be so maintained. On the other hand, we should extend ourselves in the spirit of



cooperation to inform and to report on measures, and if they want a review that we extend ourselves to let them make such review.

QUESTION: You have been able to reduce your domestic intelligence investigations by 64 percent since July, 1973. Can you tell us how you have done that?

MR. KELLEY: By a review that we started in mid-1973 looking over the bases for our investigatory needs and our intelligence operations, and generally to take an inventory and say which should we continue, which should we now perhaps give additional emphasis, and we culled out, in other words, those which we did not feel were strictly productive insofar as meeting our commitments.

QUESTION: Did you find that you eliminated some of those, Mr. Kelley, because they were illegal, in retrospect, as you look back and decided that the FBI should not, as a law enforcement agency, should not engage in illegal practices in investigations?

MR. KELLEY: You know, when you speak of illegality, we have great difficulty. Sometimes, in the context of the time, you may open matters which later are determined to be perhaps possible civil rights investigations, invasions of privacy, or other background objections. I do not know of any which, I would say, were actually illegal. I just do not recall any that would meet that classification.

QUESTION: Were some eliminated because they may have been borderline, and in retrospect in numerality, you decided not to go ahead?

MR. KELLEY: I would say that that is a possibility. In a strict classification or interpretation they may be termed an invasion of privacy or rights or something of that type.

QUESTION: Were most of them eliminated because you felt they were not productive, and to use a phrase, they were not really cost-effective, for the amount of energy and effort put into them? They would not have paid off?

MR. KELLEY: I would say that those would be two great and major reasons.

QUESTION: With the workload declining 64 percent, has there been any decline at all in manpower? Have you shifted manpower to other Division-- ...person power, excuse me; man or womanpower-- have you shifted it to other divisions?

MR. KELLEY: There has been some shifting; much of our so-called overload of manpower or investigative attention by this Division has been picked up by the terroristic activities investigations. Of course, we have had a great rise in that: doubled each year. And, strangely enough, during 1975, it even increased more than that. We had more terrorist-type of bombings in 1975 than we had in 1974.

QUESTION: You mentioned the burden that has been placed on the FBI by the Congress. I presume that there is not any question that the CIA could rightfully maintain that a tremendous burden has placed on it by the Congress now. I think, in retrospect and in fairness, a part of the burden is unfair, unwarranted, and not cost-effective. But a large part of the burden is placed simply because we have recognized that we failed the American people in the past, and no one has more clearly admitted this than the Majority leader of the Senate, Senator Mansfield, in his opening statements before the committee. So that we have to rectify that. We may overkill, in a sense. I hope we will not. I hope that we will go a prudent, moderate path and not overreact to the situation. But a large part of that burden is because we simply did not perform the function in the past and the American people know it, they are holding us accountable for that. I wonder if you could for the record, however, just give us a sense of your own personal burden, which worries me, both about the Director of the CIA and the Director of the FBI. How much of your personal time, since you have assumed office, do you think you have devoted to preparing for, giving testimony before Congressional Committees, and then following up on the testimony that has been given, or looking at the testimony being given by others?

MR. KELLEY: I would say that about 25 percent of my time is consumed in going over testimony, reviewing material, acquainting myself with the progress of the various committee activities, in preparing myself for testimony, and in testifying; and I think that the others in the top echelon of the Bureau who are involved in this type of thing may have even more than this devoted in their time. It has increased my work day considerably, and I find myself many times reading until the wee hours of the morning. I am not complaining about it. I assumed this. Much more time is devoted to doing my job now than ever before, again, about 25 percent of that time is in this area.

SENATOR: Mr. Chairman, my time is up. Are we going for one more round of questions?

MR. CHAIRMAN: If there are more questions.

SENATOR: I have just a few left. I would like an answer to how much time you think is appropriate for you to spend on this activity, I will wait until we come back.

QUESTIONS NOW FROM SENATOR BROCK

QUESTION: Thank you, Mr. Chairman. Would you clarify for me something you said earlier. With regard to the oversight function, I thought that you said that the oversight should include all FBI activities. If that is the case, you might be in some disagreement, with those that say we should separate the oversight of the domestic operations, primarily FBI, from the international oversight function which would more relate to CIA.

MR. KELLEY: 75 percent to 80 percent of our time is on criminal activities. There is, on the other hand, a great interrelationship between our security people and our criminal investigations. We may have a case where we need additional people in a security matter. We will call on some people in the criminal activity section. It is true, on the other hand, we will have a big bank robbery or some big fugitive case. We may call on security people and have them do it. We have difficulty in setting aside

that portion of our budget which goes solely to the so-called intelligence activities. In the area of intelligence, we have quite a bit of work in the intelligence field in the criminal work. We would suggest that it not be fragmented, and would hope that we could present all of our difficulties to one committee. I realize that there is the thought that this thrust should be just toward security matters foreign and domestic. We have problems other than this. I can see where it would be very helpful to us to have an overall oversight which would take care of both of our branches

QUESTION: The reason I asked the question, there has been at least some indication among members of the Senate, that they would like--at least some members would like--to separate the intelligence from the criminal aspect, and give the oversight committee which this committee might create, jurisdiction over all intelligence, counterintelligence, domestically and international intelligence but to leave to the Judicial Committee, the principal oversight responsibility for the FBI. I gather that you would not find that a very happy end product?

MR. KELLEY: We report to the Appropriations Committee, and they outline our programs. Under this possibility we would be reporting to an Intelligence Committee, we would be reporting to the Senate Judiciary Committee on general oversight. Right away we have three within the Senate.

QUESTION: If we did give this committee full and complete jurisdiction, would you also suggest that they have jurisdiction in terms of appropriations as well? In other words, you would limit the oversight to one committee. It would have both authorization oversight and appropriation authority.

MR. KELLEY: Senator, I am not really prepared to give you an opinion on that. I would say that probably this should be reserved to the Attorney General. Personally, of course, it would probably give us a closer definition of oversight and might be that such a committee certainly could become best acquainted with our work in ongoing programs, but I do not know that I can answer well that particular question.

QUESTION:

I am not sure that we can either. As a matter of fact, there are some of us that feel that rather than trying to define this thing too precisely, we should create an oversight committee and assign to them the responsibility of a study of the extent of the jurisdictional question. That may be the best thing that we can achieve at the moment if we are going to get any response. Let me ask you one or two more questions, again in this same area, I am reluctant to limit the right of an Oversight Committee in terms of access. I think that is almost something that we can do by experience, as we have with the Joint Committee on Atomic Energy. There the experience has proven to be good, and I think, healthy for both sides, Executive and Legislative. I am distressed by the leak of information that is ongoing now.

I think it is extremely dangerous yet I find it difficult to find a way in which we would limit an oversight committee which may need some access in order to reach this definition of responsibility. I do not know how we would do what you are suggesting, essentially depends upon the Director and his testimony before the Committee.

MR. KELLEY: Under our recommendations, we conclude that there should be investigations and clearances granted to members of staff, that their numbers, as well as others for the Committee, should be as limited as possible. We feel that matters that might compromise our sources of information are those that are most important. I think, Senator, that probably we could start off in such a relationship being a little extended insofar as our own desires, we can be a little more open, and see how it works. I would hope that it would be sort of an open-end type of thing so that we can get some history of experiences. I do not want to foreclose the right of review in this regard. I think, as a citizen, I am compelled to say that there should be a better flow of information than has been true in the past. I am willing to at least explore such a possibility.

QUESTION: That is really what I am reaching for, and I appreciate it. We are treating this as if it is going to be de novo every six months. It is not. You are going to create an expertise in this Committee and its staff a knowledge of the general problem area, and I think these matters will begin to settle up as it gains maturity and experience. I am reluctant to eliminate it now because I think we may create an adversary relationship which I do not think is helpful, where, as an alternative, if we kept it fairly open, I think a development of that experience would lead to a good relationship, as we have done with the Joint Committee on Atomic Energy earlier.

MR. KELLEY: There are misunderstandings about why we think things are confidential. Take for example, a small thing, a release of our telephone directory. It is not generally understood that, by virtue of the release of the telephone directory, you therefore list the identity of our Agents. They are listed in the telephone book. Thereafter, they get a lot of crank calls. I never did release my address, and as soon as it was listed--and it was listed of course in the Congressional Record--I am not complaining about this--I started receiving crank mail at my home and some of it was on post cards, some of it my wife read, it was not the best thing. People do not realize that we try to protect it for reasons that we could possibly explain in an atmosphere of cooperation with such a committee, and I would look forward to that opportunity. We have not communicated properly, possibly. If it is determined this is too far fetched, all right, we will drop it. We are willing to discuss it.

QUESTION: Thank you. My time has expired. I think what I am saying is that there is a clear distinction between a one-shot investigatory committee which is trying to get short-term information and a continuing oversight committee with a developed relationship on a maturing basis. Thank you, Mr. Chairman.

MR. CHAIRMAN: Senator Weicker, while it is your turn, since Senator Percy has used up his time, he has requested a few more minutes, if you would yield to him.

WEICKER: I yield.

QUESTIONS NOW FROM SENATOR PERCY

QUESTION: Regretfully, I have a witness upstairs in the Foreign Relations Committee. I was anxious to follow up, Mr. Kelley, what proportion of your time do you think is appropriate and proper that you should devote to Congressional oversight? In other words, we have the same objective to reduce the burden on your Department because of the duplicative activities of the proliferated committees. What proportion do you think is appropriate for you to spend?

MR. KELLEY: I have never really considered it, but I would say that during my ordinary, everyday operations, I should keep this in mind and should review each program with the thought prepared to discuss it with an oversight committee, maybe 5 percent, just a ballpark figure.

QUESTION: That is a goal I am not sure we will ever achieve but certainly if we can cut it in half, it will help, because your principal duty obviously is to administer a very able department and agency. The thought has been orbited--I threw it out originally--to just try to cut in half in area of intelligence because of the tremendous amount of knowledge a person has to gain to properly authorize in authorizing legislation, and yet the law--and we are not specialists in this field; we are dealing with specialists in the law enforcement field--to cut it in half to see if possibly we can consider in this one oversight committee, giving that committee both authorization and appropriations authority so the service would only have to go before one committee in the Senate and one in the House and have his job done with and thoroughly inform, say, a group of nine Senators that would rotate in that position. Would that, in your judgement, be of material assistance and help if we could work it out internally?

MR. KELLEY: If we could, Senator, in one committee, I feel this would be advantageous.

QUESTION: I have long proposed that the Attorney General be taken out of politics and not be permitted by procedure or precedent, just as the Secretary of Defense, Secretary of State, has not participated in politics as such. The Attorney General has

been a politically oriented office, many times being the campaign manager. Do you feel that the Director of the FBI is not a political position and it should never be permitted--do you think it would be a good idea for the Attorney General not to engage in party politics while he is holding that office?

MR. KELLEY: I have never had experience with it since I have come here, in any dealings with me or with the Bureau by the three Attorneys General under whom I have worked. There has been no indication of political influence.

QUESTION: Do you suggest consolidation of Congressional oversight of the FBI. Should that be done by the same committee overseeing agencies dealing with foreign intelligence in your judgment?

MR. KELLEY: In my judgment, all of the operations of the FBI would advantageously be joined in one committee.

QUESTION: One committee?

MR. KELLEY: Yes, sir.

QUESTION: Could you explain in layman's term the difference between foreign and domestic intelligence in criminal cases as managed administratively by the FBI? And I ask that with the understanding that criminal activities involving foreign powers are not necessarily handled in the FBI's foreign intelligence division. For example, if another country were to finance terrorist acts within the United States, the entire case might be handled in the Criminal Division. Therefore, it would help us in our understanding if you could differentiate between what activities are handled by each of those bureaus. If you would like to do that for the record, to make it more complete, I would certainly accept that.

MR. KELLEY: I would prefer to prepare this in a response to you and will do so.

QUESTION: Mr. Kelley, finally, FBI activities seem to be at the heart of one of the gray areas of oversight. I think we are in general agreement that Congress should create a committee that would oversee the CIA and NSA. What aspects of the FBI that should be looked at by this committee is another matter. What are your views on this?

MR. KELLEY: Could I also give you that response--may I respond to that in writing also?



SENATOR: Yes, you certainly may. I think that that winds up. I would simply like to say having known Attorney General Levi for a quarter of a century as a trustee at the University of Chicago, I think the tone and attitude that he is establishing, the relationship that he has established with you and which has been a cause of great concern between the FBI Directors of the past have not been fully satisfactory and fully cooperative.

I think that relationship that has been established has been an outstanding accomplishment, and I think your testimony to that effect here is very important indeed, and I certainly commend both you and Attorney General Levi, because a great deal has been accomplished already.

MR. CHAIRMAN: Senator Weicker?

SENATOR: Thank you, Mr. Chairman.

QUESTIONS NOW FROM SENATOR WEICKER

QUESTION: I notice in your statement you make mention of the fact that since 1975, or April through December, 1975, a great amount of time, effort, and money was expended on responding to Congressional inquiries, et cetera. I think we both might also allude to the fact that that is directly attributable to the fact that there was no Congressional inquiry for many years before that, and what in effect you have seen is an extreme reaction to an extreme situation. As a matter of fact, as I understand it, and prior to the impeachment inquiry neither the House nor the Senate Judiciary Committees held any hearings on FBI oversight. Is that correct, to your knowledge?

MR. KELLEY: I do not recall this, Senator.

QUESTION: I believe that was before your time, but that is the record.

MR. KELLEY: I am thinking only during the time that I have been here. I do not recall just when we first reported to the Oversight Committee. It was during the time that Mr. Saxbe was Attorney General. We appeared three times. Prior to that I do not know.

QUESTION:

I think it is important to point out that I am sure the American people are just as appalled about your being overburdened with Congressional inquiries as they are with no Congressional inquiries. But that is the record. There is nothing in between. I think that is important to point out as we try to devise some system, some apparatus, to bring balance to all this. We need the FBI. As I said the other day, we need a CIA. There is no reason why a choice has to be made between 0 and 100 percent insofar as it is using up your time, the CIA or any of our law enforcement agencies. My concern, believe me, Director, is not that you are going to be overburdened with oversight. As I have indicated, unless this Congress acts very shortly, the whole thing is going to be forgotten and we are going to go back to zero again. That is a far greater danger in my book than your being overburdened. I would suggest to you, it is very strange to say, that I would hope that you, along with Mr. Colby and others in the law enforcement community, would fight very hard to see this oversight legislation implemented, because on that depends the survival of your agency, on that depends a restoration of confidence as far as the American people are concerned in the law enforcement and intelligence agencies. I fear the bureaucratic footdragging is going to go on around here two years, five years from now. We will be right back at square A, except the next time that any other abuses get uncovered, that is going to be the end of your agency. There is going to be no way of coming back in the room to construct something that makes sense. That is my concern.

MR. KELLEY: I went on record during my confirmation sponsoring oversight, and I still feel that it is a very viable and proper procedure. I have no objection to it whatsoever, and I welcome it.

QUESTION: I notice you say you favor a new oversight committee. Is it your feeling that the present oversight mechanisms are not adequate?

MR. KELLEY: I hope I have not indicated that I am critical of the present oversight. I hope that we can have a centralized oversight whereby our intelligence and our criminal investigatory responsibilities are best included in this one. Under the projected possibilities, the Bureau would be fragmented, we would have an oversight of the security of the national counterintelligence field and

the criminal field maintained in the present oversight system. I would hope that it would be together. We do report to the Appropriations Committee and we do report to the Judiciary Committee on Oversight. If it were fragmented further, we would have three oversight committees.

QUESTION: Do you feel that the present system of oversight as embodied in the House and Senate Judiciary Committees should be supplanted by a new Oversight Committee, or are you satisfied with the present system?

MR. KELLEY: I would reserve the final determination to consultation as I would want to do, of course, with Mr. Levi to get together and do this. I would say, primarily, our goal is to have it centered not in any particular committee. I think that is the responsibility of Congress, actually. What we want to do is not fragment it, not proliferate it, but to have it so that we can have one group to which we can go for consideration of our problems and outline our procedures.

QUESTION: I can appreciate, Mr. Director, that you still have to work with the Senate and House Judiciary Committees and obviously we don't want to ruffle any feathers. We want to plot a future course. We are not trying to find out how we can live with the past. The difficulty is, as I perceive it, not that the mechanism was not there for oversight--it was there. The problem was that it was a secondary function of the particular committee, in this case the Judiciary Committee, something down the line. Do you feel that your agency and its activities are of sufficient importance that that should be a full-time job, rather than a secondary job, for a Congressional committee?

MR. KELLEY: I responded to a question asked by Senator Percy about how much time I thought I might be devoting to the oversight requirement. I thought about 5 percent. That is just a ballpark figure. I do not think that that would necessarily mean that one committee would be set aside for just that type of deliberation. I think that if it were to include all of our activities, criminal as well as security, that it might take a little more, but still, I do not think that things come up that frequently where it would be a real heavy task for any committee.

QUESTION:

You understand what we are contemplating here would be a committee whose intention would be directed toward the FBI, the CIA, the law enforcement intelligence community? It would not just be the FBI; it would also be the CIA. What I am saying, I think what others are trying to get across is, is this sufficiently important to this Nation, to its life and to its Constitution, that that is a full-time job and not a secondary job for some other Committee, be it the FBI which is a secondary function of Judiciary, or the CIA, which is a secondary function of Armed Services. This is a primary function. At least, I do not find it a primary function of law enforcement intelligence. That is why my question to you, whether you are satisfied with the present system, which obviously has not worked in the past, with a warning could work, or whether we are best just having one committee that would work with these law enforcement intelligence agencies and start from scratch and once again try to rebuild confidence.

It really does not make any difference what you think or what I think or what Senator Ribicoff thinks or our colleagues here think. The fact is that the American people have lost their confidence. That is the group we have to reach. Whether I am satisfied that you are a fine man with great integrity and a fine Director, it does not mean anything, and your opinion of me, that is not important. What the American people think is what is very important. That is what is jeopardizing your Agency now and, indeed, the Congress.

MR. KELLEY:

I would construe anything which is developed by Congress as something which we would certainly try to work under. We will not complain. You will not have any beefs from us. I told Senator Brock that I would certainly work as best we can with the system that is devised. I repeat that to you, too. I am not going to argue about it. I would like to work with you just as closely as we can.

QUESTION:

I appreciate it. I am not trying to lay all of this at your doorstep. I think Senators Brock and Ribicoff were talking earlier, we were talking earlier, I was talking earlier with Senator Brock, we are going to try to pry these things loose

in the Congress. They are the ones that do not want any change. That is why I am trying to get all the help we can publicly. Please understand what I think all of us here are saying. We are not against your agency. We want to see it survive, but it cannot survive unless the American people feel that they have a handle on this policy. Thank you.

MR. CHAIRMAN: Thank you very much. Senator Nunn?

SENATOR: I have no questions.

CHAIRMAN: Senator Brock, do you have any more questions?

SENATOR: No.

CHAIRMAN: Thank you very much, Mr. Kelley. It may very well be, as we proceed to mark up this legislation, that we may have occasion to talk to you and your staff. I would hope that you would be available to us in the future.

MR. KELLEY: We will be available.

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BUREAUWIDE INFORMATION PROGRAM, 76-7

TESTIMONY BEFORE THE COMMITTEE  
ON GOVERNMENT OPERATIONS  
U. S. SENATE, JANUARY 26, 1976

Enclosed for your information is one copy of the statement I delivered before the Committee on Government Operations of the U. S. Senate on January 26, 1976, as well as a transcript of the question-and-answer session that followed. The latter can be used in answering inquiries from newsmen and others but should not be furnished to any outsider.

The enclosed material may be of assistance to you in responding to inquiries you may receive from the public or the press.

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