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Serial Scope: 1. Term 8, 11

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TRANSMIT VIA: AIRTEL
CLASSIFICATION: UNCLAS

FROM: DIRECTOR, FBI (62A-HQ-1036360)

TO: SAC, HOUSTON (62A-HQ-1036360)

SENATE SELECT COMMITTEE ON POW/MIA AFFAIRS

Re: HQ Airports to Director, FBI dated 9/22/92, captioned
MUSHTAQ AHMED DIWAN: POW/MIA FRAUD MATTERS, and 10/8/92,
captioned as above. File number 66-2170 has been changed into
62A-HQ-1036360.

Enclosed for the Houston Field Office (HO) are the
original files: 185A-121 and 265-MM-50339.

HO files were reviewed by the Civil Discovery Review
Unit (CDRU), Legal Counsel Division (LCD), for documents
responsive to the above-captioned Congressional Request. CDRU
determined that the files contained no relevant material.

Any questions regarding this matter should be directed
to Paralegal Specialist JAMES B. STROUD, CDRU, LCD, on extension
3595.

Enclosure
TRANSMIT VIA: AIRTEL
CLASSIFICATION: UNCLAS
DATE: 5/13/93

FROM: DIRECTOR, FBI (62A-HQ-1036360)
TO: SAC, HOUSTON (62A-HQ-1036360)

SENATE SELECT COMMITTEE ON POW/MIA AFFAIRS

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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

**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.

UNEDITED TRANSCRIPT

Enc. (1)

File

Unfile

NW 65994 Docld:32389520 Page 4
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

Tuesday, December 2, 1975

Washington, D.C.

WARD & PAUL
410 FIRST STREET, S. E.
WASHINGTON, D. C. 20003

(202) 544-6000
Senator Tower: The next witnesses to appear before the Committee are Mr. James Adams, Assistant to the Director-Deputy Associate Director, Investigation, responsible for all investigative operations; Mr. W. Raymond Wannall, Assistant Director, Intelligence Division, responsible for internal security and foreign counterintelligence investigations; Mr. John A. Mintz, Assistant Director, Legal Counsel Division; Joseph G. Deegan, Section Chief, extremist investigations; Mr. Robert L. Schackelford, Section Chief, subversive investigations; Mr. Homer A. Newman, Jr., Assistant to Section Chief, supervises extremist informants; Mr. Edward P. Grigal, Unit Chief, supervises subversive informants; Joseph G. Kelly, Assistant Section Chief, Civil Rights Section, General Investigative Division.

Gentlemen, will you all rise and be sworn.
Do you solemnly swear the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Adams. I do.
Mr. Wannall. I do.
Mr. Mintz. I do.
Mr. Deegan. I do.
Mr. Schackelford. I do.
Mr. Newman. I do.
Mr. Grigalus. I do.
Mr. Kelley. I do.

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

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

(A brief recess was taken.)

Senator Tower. The Committee will come to order.

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

Now, will you provide the Committee with some information on the criteria for the selection of informants?
TESTIMONY OF W. RAYMOND WANNALL, ASSISTANT DIRECTOR, INTELLIGENCE DIVISION, FEDERAL BUREAU OF INVESTIGATION
ACCOMPANIED BY: JAMES B. ADAMS, ASSISTANT TO THE DIRECTOR-DEPUTY ASSOCIATE DIRECTOR (INVESTIGATION); JOHN A. MINTZ, ASSISTANT DIRECTOR, LEGAL COUNSEL DIVISION; JOSEPH G. DEEGAN, SECTION CHIEF; ROBERT L. SCHACKELFORD, SECTION CHIEF; HOMER A. NEWMAN, JR., ASSISTANT TO SECTION CHIEF; EDWARD P. GRIGALUS, UNIT CHIEF; AND JOSEPH G. KELLEY, ASSISTANT SECTION CHIEF, CIVIL RIGHTS SECTION, GENERAL INVESTIGATIVE DIVISION

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

Senator Tower. That is GAO.

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

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

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

Senator Tower. It would be a relatively high percent then?

Mr. Wannall. I would say yes. And your ques-
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?
Mr. Wannall. Well, Mr. Adams can probably best address
the use of informants on criminal matters since he is over
the operational division on that.

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

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

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

Mr. Adams. No, sir, they're not. We have strict regula-
tions against using informants as provocateurs. This gets
into that delicate area of entrapment which has been addressed
by the courts on many occasions and has been concluded by the
courts that providing an individual has a willingness to engage
in an activity, the government has the right to provide him the
opportunity. This does not mean, of course, that mistakes don't
occur in this area, but we take whatever steps we can to
avoid this. Even the law has recognized that informants can
engage in criminal activity, and the courts have held that,
especially the Supreme Court in the Newark County Case, that
the very difficulty of penetrating an ongoing operation, that
an informant himself can engage in criminal activity, but
because there is lacking this criminal intent to violate a
law, we stay away from that. Our regulations fall short of that.

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

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

Mr. Adams. We did when we had the COINTELPRO 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
in effect at the time. We heard the term States Rights used
much more then than we hear it today. We saw in the Little
Rock situation the President of the United States, in sending
in the troops, pointing out the necessity to use local law
enforcement. We must have local law enforcement, to use the
troops only as a last resort.

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

Sections 241 and 242 don't cover it because you don't have evidence of a conspiracy, and it ultimately resulted in a situation where the Department called in United States 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, and 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.

Senator Tower. 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
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
that didn't have to be a conspiracy. But this was a problem
that the whole country was grappling with: the President of
the United States, Attorney General. We were in a situation
where we had rank lawlessness taking place, as you know from
a 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.

Senator Tower. What was the Bureau's purpose in con-
tinuing or urging the continued surveillance of the Vietnam
Veterans Against the War?

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

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

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

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

Senator Tower. Mr. Hart?

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

Mr. Adams. I agree, Senator.

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

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

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

Senator Hart of Michigan. But in that vacuuming process, you are feeding into Departmental files the names of people who are, who have been engaged in basic First Amendment
exercises, and this is what hangs some of us up.

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

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

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

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

Mr. Adams. This is a problem.
Senator Hart of Michigan. This is what should require
us to rethink this whole business.

Mr. Adams. Absolutely.

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

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

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

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

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

Mr. Adams. No, sir.

Senator Hart of Michigan. 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.

But this is our closest question of trying to draw
guidelines to avoid getting into an area of infringing on the
First Amendment rights of people, 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. But we have had periods
where the demonstrations have been rather severe, and the
courts have said that the FBI has a right, and indeed a 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.

And that's a good statement if applied in a clearcut
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.
Senator Hart of Michigan. Let's assume that the rule for opening an investigation on a group is narrowly drawn. The Bureau manual states that informants investigating a subversive organization should not only report on what that group is doing but should look at and report on activities in which the group is participating.

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

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

The informants reported on the planning for the meeting, the distribution of materials to churches and schools, participation by local clergy, plans to seek resolution on ABM from nearby town councils. There was also informa
plans for a subsequent town meeting in Washington with the
names of local political leaders who would attend.

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

How do we get into all of that?

Mr. Adams. Well --

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

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

Now the problem we get into is if we take a quick look
and get out, fine. We've had cases, though, where we have
stayed in too long. When you're dealing with security
Soviet espionage where they can put one person in this country
and they supported him with total resources of the Soviet
Union, false identification, all the money he needs, communica-
tions networks, satellite assistance, and everything, and
you're working with a paucity of information.

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

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

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

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

Mr. Adams. That's right.

Senator Hart of Michigan. Some of the sponsors were
umbrella organizations involving about 50 diverse groups around
the country. FBI informants provided advance information.
plans for the meeting and apparently attended and reported on
the conference. The Bureau's own reports described the
participants as having represented diverse perspectives on
the issue of amnesty, including civil liberties and human
rights groups, G.I. rights spokesmen, parents of men killed
in Vietnam, wives of ex-patriates in Canada, experts on draft
counselling, religious groups interested in peace issues,
delegates from student organizations, and aides of House and
Senate members, drafting legislation on amnesty.

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

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

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

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

Is this what we want?

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

He is particular knowledgeable as to this operation.

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

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

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

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

Mr. Wannall. Well, of course, we did not rely entirely on the Buffalo informant, but even there we did...
from that informant information which I considered to be significant.

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

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

Senator Hart of Michigan. But does it give you the right or does it create the need to go to a conference, even if it is a conference that might be taken over by the VVAW when the subject matter is how and by what means shall we seek to achieve unconditional amnesty? What threat?
Mr. Wannall. Our interest, of course, was the VVAN influence on a particular meeting, if you ever happened to be holding a meeting, or whatever subject it was.

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

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

Senator Hart of Michigan. Would the same logic follow?

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

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

And as soon as we got the report of the outcome of the meeting and the fact that in the period of some
discontinued any further interest.

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

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

Senator Mondale, pursue that question.

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

Now that's a concern for First Amendment rights that ought to hearten all the civil libertarians.
But why would that vary, why would a warrant requirement raise a serious constitutional question?

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

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

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

It's just the mixture somewhat of trying to mix in a criminal procedure with an intelligence gathering function, and we can't find any practical way of doing it. We have a particular organization. We may have an informant that not only belongs to the Communist Party, but belongs to several other organizations and as part of his function he may be sent out by the Communist Party to try to infiltrate one of these clean organizations.
We don't have probable cause for him to target against that organization, but yet we should be able to receive information from him that he as a Communist Party member, even though in an informant status, is going to that organization and don't worry about it. We're making no headway on it. It's just from our standpoint the possibility of informants, the Supreme Court has held that informants per se do not violate the First, Fourth, or Fifth Amendments. They have recognized the necessity that the government has to have individuals who will assist them in carrying out their governmental duties.

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

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

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

But with respect to the fact that you couldn't show probable cause, and therefore, you couldn't get a warrant, therefore you oppose the proposal to require you to get a
warrant. It seems to beg the question.

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

This is an option available to Congress.

Senator Tower. Senator Schweiker.

Senator Schweiker. Thank you very much.

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

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

A potential security informant is someone who is under consideration before he is approved by headquarters for use as an informant. He is someone who is under current consideration.
On some occasions that person will have been developed to a point where he is in fact furnishing information and we are engaged in checking upon his reliability.

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

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

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

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

I know we asked you several times but 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. If you have no objection, I'll ask him to answer that.

Senator Schweiker. All right.

Mr. Adams. The problem we had at the time, and it's the
problem today, we are an investigative agency. We do not have police powers like the United States marshalls do. About 1795, I guess, or some period like that, marshalls have had the authority that almost borders 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 to furnish 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 United States marshalls 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 itself 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 there was a conspiracy available. We can 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 United States marshalls should make them, not the FBI, even though we developed the violations.
And 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.

Senator Schweiker. What would be wrong, just following up your point there, Mr. Adams, with setting up a program since it's obvious to me that a lot of informers are going to have pre-knowledge of violence of using U.S. marshalls on some kind of a 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 marshalls are in Boston, they are in Louisville, I believe at the same time, and this is the approach, that the Federal government finally recognized was the solution to the problem where you had to have added Federal import.

Senator Schweiker. But instead of waiting until it gets to a Boston state, which is obviously a pretty advanced confrontation, shouldn't we have somewhere a coordinated program that when you go up the ladder of co- and in the FBI, that on an immediate and fairly contemporary basis, that kind of
help can be sought instantly as opposed to waiting until it gets to a Boston state?

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

Mr. Adams. Well, fortunately, we're at a time where conditions have subsided in the country, even from the '60s and the '70s and periods -- or '50s and '60s. 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've learned a lot from the days back in the early '60s. But the government had no mechanics which protected people at that time.

Senator Schweiker. I'd like to go, if I may, to the Robert Hardy case. I know he is not a witness but he was a witness before the House. But since this affects my state, I'd like to ask Mr. Wannall. Mr. Hardy, of course, was the FBI informer who ultimately led and planned and organized a raid on the Camden draft board. And according to Mr. Hardy's testimony before our Committee, he said that in advance of the raid someone in the Department had even acknowledged the fact
that they had all the information they needed to clamp down on the conspiracy and could arrest people at that point in time, and yet no arrests were made.

Why, Mr. Wannall, was this true?

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

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

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

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

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

Mr. Adams. At this time that particular case did have a departmental attorney on the scene, because there are questions of conspiracy. Conspiracy is a tough violation to prove and sometimes a question of do you have the added value of catching
someone in the commission of the crime as further proof, rather than relying on one informant and some circumstantial evidence to prove the violation.

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

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

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

Mr. Adams. Guy Goodwin was the Department official.

Senator Schweiker. Next I'd like to ask back in 1965, during the height of the effort to destroy the Klan, 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.

I believe these are either FBI figures or estimates. That would mean that one out of every five 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 of the Klan that year were FBI informants.
Isn't this an awfully overwhelming quantity of people to put in an effort such as that? I'm not criticizing that you shouldn't have informants in the Klan and know what's going on for violence, but it seems to me that this is the tail wagging the dog.

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

Mr. Adams. Well, this number 2,000 did include all racial matters, 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.

Now the problem we had on the Klan is the Klan had a group called the Action Group. This was the group that you remember from Mr. Rowe's testimony, that he was left after the meeting. He attended the open meetings and heard all of the hurrahs and this type of thing from 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.

Their's was the violence.

In order to penetrate those, it takes, you have to direct as many informants as you possibly can against it. Bear in mind that I think the newspapers, the President and Congress and
everyone is concerned about the murder of the civil rights workers, the Linió Kent case, the Viola Liuzzo case, the bombings of the church in Birmingham. We were faced with one tremendous problem at that time.

Senator Schweiker. I acknowledge that.

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

These informants, as we told the Attorney General, and as we told the President, that we had 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 forewarn us of violence, could help us on cases that had transpired, and yet we knew and conceived that this could continue forever unless we can create enough disruption that these members will realize that if I go out and murder three civil rights workers, even though the sheriff and other law enforcement officers are in on it, if that were the case and with some of them it was the case, that I would be caught. And that's what we did and that's why violence stopped, was 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.
Senator Schweiker. My time is expired. I just have one quick question.

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

Mr. Adams. I’m not sure if that’s the year. We did have one year where we had a number like that which probably had been 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, what next?

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

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

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

Senator Mondale?

Senator Mondale. Mr. Adams, it seems to me that the record is now fairly clear that when the FBI operates in the field of crime investigating, it may be the best professional
organization of its kind in the world. And when the FBI acts
in the field of political ideas, it has bungled its job, it
has interfered with the civil liberties, and finally, in the
last month or two, through its public disclosures, heaped
shame upon itself and really led toward an undermining of
the crucial public confidence in an essential law enforcement
agency of this country.

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

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

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

It seems to be the basis of the strategy that people
can't protect themselves, that you somehow need to use the
tools of law enforcement to protect people from subversive
or dangerous ideas, which I find strange and quite profoundly
at odds with the philosophy of American government.

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

Mr. Adams. I agree with that, Senator, and I would like
to point out that when the Attorney General made his statement
Mr. Hoover subscribes to it, we followed that policy for about
ten years until the President of the United States said that
we should investigate the Nazi Party.
I for one feel that we should investigate the Nazi Party.
I feel that our investigation of the Nazi Party resulted in
the fact that in World War II, as contrasted with World War I,
there wasn't one single incident of foreign directed sabotage
which took place in the United States.

Senator Mondale. And under the criminal law you could
have investigated these issues of sabotage.
Isn't sabotage a crime?
Mr. Adams. Sabotage is a crime.

Senator Mondale. Could you have investigated that?
Mr. Adams. After it happened.

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

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

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

Senator Mondale. Absolutely, but that's the field of
law again. You're trying to defend apples with oranges. That's the law. You can do that.

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

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

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

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

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

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

Mr. Adams. We have expressed complete concurrence in that. We feel that we're going to get beat to death in the next 100 years, you're damned if you do, and damned if you don't if we don't have a delineation of our responsibility
in this area. But I won't agree with you, Senator, that we have bungled the intelligence operations in the United States.

I agree with you that we have made some mistakes. Mr. Kelley has set a pattern of being as forthright as any Director of the FBI in acknowledging mistakes that had been made, but I think that as you said, and I believe Senator Tower said, and Senator Church, that we have to watch these hearings because of the necessity that we must concentrate on these areas of abuse. We must not lose sight of the overall law enforcement and intelligence community, and I still feel that this is the freest country in the world.

I've travelled much, as I'm sure you have, and I know we have made some mistakes, but I feel that the people in the United States are less chilled by the mistakes we have made than they are by the fact that there are 20,000 murders a year in the United States and they can't walk out of their houses at night and feel safe.

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

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

I'm not blaming the Committee. I'm saying we made some
mistakes and in doing so this is what has hurt the FBI. But at the same time I don't feel that a balanced picture comes out, as you have said yourselves, because of the necessity of zeroing in on abuses.

I think that we have done one tremendous job. I think the accomplishments in the Klan was the finest hour of the FBI and yet, I'm sure in dealing with the Klan that we made some mistakes. But I just don't agree with bungling.
Senator Mondale. I don't want to argue over terms, but I think I sense an agreement that the FBI has gotten into trouble over it in the political idea trouble, and that that's where we need to have new legal standards.

Mr. Adams. Yes, I agree with that.

Senator Tower. Senator Huddleston.

Senator Huddleston. Thank you, Mr. Chairman.

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

Ms. Cook testified this morning that something similar to that happened with the Vietnam Veterans Against the War, that every piece of information that she supplied to the Bureau seemed to indicate that the Bureau was not correct in its assumption that this organization planned to commit violence, or that it was being manipulated, and yet you seemed to insist that this investigation go on, and thus information was used against the individuals.
Now, are there instances where the Bureau has admitted that its first assumptions were wrong and they have changed their course?

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

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

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

Mr. Adams. That memorandum was not on Dr. King. That was on another individual that I think somehow got mixed up in the discussion, one where the issue was can we make people
prove they aren't a Communist before we will agree not to investigate them.

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

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

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

Mr. Adams. It all gets back to the fact that even in the criminal law field, you have to detect crime, and you have to prevent crime, and you can't wait until something happens. The Attorney General has clearly spoken in that area, and even our statutory jurisdiction provides that we don't --
Senator Huddleston. Well, of course we've had considerable
evidence this morning where no attempt was made to prevent
crime, when you had information that it was going to occur.
But I'm sure there are instances where you have.

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

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

Mr. Adams. Not necessarily.

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

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

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

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

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

Mr. Adams. We were doing everything we could lawfully
do at the time, and finally the situation was corrected, so that
when the Department, agreeing that we had no further juris-
diction, could send the United States Marshal down to perform
certain law enforcement functions.
Senator Huddleston. Now, the Committee has received documents which indicated that in one situation the FBI assisted an informant who had been established in a white hate group to establish a rival white hate group, and that the Bureau paid his expenses in setting up this rival organization.

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

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

This is Joe Deegan.

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

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

Mr. Deegan. He continued to advise us of that organization
and other organizations. He would advise us of planned activities.

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

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

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

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

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

Senator Huddleston. I don't have the documentation on that particular case, but it brings up the point as to what kind of
control you exercised over this kind of informant in this kind
of an organization and to what extent an effort is made to
prevent these informants from engaging in the kind of thing
that you are 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 would no longer use him as an informant, in spite of the
information he had furnished in the past.

We have had cases, Senator, where we have had --
Senator Huddleston. But you also told him to participate
in violent activities.

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

Senator Huddleston. That's what he said.

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

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

Mr. Adams. I don't think they made any such statement
to him along that line, and we have informants, we have
informants who have gotten involved in the violation of the law.
and we have immediately converted their status from an informant to the subject, and have prosecuted I would say, offhand, 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 told me that they found one case where their 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.

Senator Huddleston. Well, Mr. Rowe's statement is substantiated to some extent with the acknowledgement by the agent in charge that if you're going to be a Klansman and you happen to be with someone and they decide to do something, that he couldn't be an angel. These were the 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 and would have to be involved if he was going to maintain his credibility.

Mr. Adams. There's no question but 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 don't recall it exactly, but some of them were beat with chains, and I didn't hear whether he said he beat someone with a chain or not, but I rather doubt that he did because it's one thing being present, and it's another thing taking an active part in criminal actions.

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

How does the gathering of information --

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

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

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

Senator Tower. Go ahead.

Senator Huddleston. I wanted to ask how the selection 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.

Senator Huddleston. You aren't aware of any case where
these instructions were given to an agent or an informant?

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

Senator Huddleston. Thank you, Mr. Chairman.

Senator Tower. Senator Mathias.

Senator Mathias. Thank you, Mr. Chairman.

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

Mr. Adams. Well, we get there into the fact that the Supreme Court has still held that the use of informants does not invade any of these constitutionally protected areas, and
if a person wants to tell an informant something that isn't
protected by the Supreme Court.

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

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

Mr. Adams. Yes, sir.

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

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

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

Mr. Adams. That's true.

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

Mr. Adams. They can do nothing --

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

Mr. Adams. That's right, they can do nothing, and we
instruct our agents that an informant can do nothing that the
agent himself cannot do, and if the agent can work himself into
an organization in an undercover capacity, he can sit there and
glean all the information that he wants, and that is not in the
Constitution as a protected area. But we do have this problem.

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

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

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

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

Senator Mathias. Let me ask you why you feel that it is
impractical to require a warrant since, as I understand it,
headquarters must approve the use of an informant. Is that
degree of formal action required?
Mr. Adams. The main difficulty is the particularity which has to be shown in obtaining a search warrant. You have to go after particular evidence. You have to specify what you're going after, and an informant operates in an area that you just cannot specify. He doesn't know what's going to be discussed at that meeting. It may be a plot to blow up the Capitol again or it may be a plot to blow up the State Department building.

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

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

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

Mr. Adams. That's it, and there we face the problem of where the Soviet, an individual identified as a Soviet spy in a friendly country and they tell us he's been a Soviet spy there and now he's coming to the United States, and if we can't show under a probable cause warrant, if we couldn't show that he was actually engaging in espionage in the United States, we couldn't get a wiretap under the probable cause requirements which have been discussed. If the good fairy didn't drop the
evidence in our hands that this individual is here conducting espionage, we again would fall short of this, and that's why we're still groping with it.

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

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

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

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

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

Mr. Adams. I don't because I think that today there's more of an open mind between Congress and the Executive Branch
and the FBI and everyone concerning the need to get these areas resolved.

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

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

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

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

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

Mr. Adams. That could be an alternative. I think it would be a very burdensome alternative ... I think at some point after we attack the major abuses, or what are considered
major abuses of Congress and get over this hurdle, I think we're still going to have to recognize that heads of agencies have to accept the responsibility for managing that agency and we can't just keep pushing every operational problem up to the top because there just aren't enough hours in the day.

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

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

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

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

Mr. Adams. Mr. Mintz pointed out one other main distinction to me which I had overlooked from our prior discussions, which is the fact that with an informant he is more in the position of being a concentral monitor in that one of the two parties to the conversation agrees, such as like concentral monitoring of telephones and microphones and anything else versus the wiretap itself where the individual
whose telephone is being tapped is not aware and there is,
and neither of the two parties talking had agreed that their
conversation could be monitored.

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

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

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

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

I just have one final question, Mr. Chairman, and that
deals with whether we shouldn't impose a standard of probable cause that a crime has been committed as a means of controlling the use of informants and the kind of information that they collect.

Do you feel that this would be too restrictive?

Mr. Adams. Yes, sir, I do.

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

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

But we do need informants.

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

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

Senator Tower. Without objection, so ordered.

(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.)
TO ALL AGENTS
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 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
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
NR045 WA PLAIN
6:31PMNITEL 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 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
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
MR035 WA CODE
5:33 PM 3/4/75 NITEL AJN
TO ALL SACS
FROM DIRECTOR (62-116395)
PERSONAL ATTENTION
SENSITIVE

ABUETEL MAY 2, 1975.

PURPOSES OF INSTANT TELETYPE ARE TO (1) REITERATE THAT
FBI HAS PLACED 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
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 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.

HEREFORE, 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
ON-THE-SCENE PERSONNEL FOR CONSULTATION PURPOSES TO ASSIST EITHER CURRENT OR 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.

REC FBI HO BAJ CLR
MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE:

(A) INTERVIEWS OF FBI EMPLOYEES BY CONGRESSIONAL STAFF MEMBERS -- In accordance with a recently adopted suggestion, you are to insure that all new employees who enter on duty in your field office are fully apprised of the contents of the Memorandum to All Employees, dated May 28, 1975, dealing with captioned matter. This should be done at the time they execute the FBI Employment Agreement, FD-291, regarding the unauthorized disclosure of information.

This practice can, of course, be discontinued upon the completion of the inquiry that Congress has instituted.
NR022 WA CODE
1:05 PM NTEL 6-13-75 VLJ
TO ALL SACS
FROM DIRECTOR (62-116464)
PERSONAL ATTENTION
HOUSTUDY 75.

REBUTELS MAY 2, 20, 1975, "SENSTUDY 75."
BUFILE 62-116464 AND CODE NAME "HOUSTUDY 75" DESIGNATED.
FOR ALL MATTERS RELATING TO HOUSE SELECT COMMITTEE TO STUDY
GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES
AND BUREAU'S HANDLING OF MATTERS PERTAINING THERETO. USE
THIS FILE NUMBER AND CAPTION FOR MATTERS RELATING TO HOUSE
COMMITTEE AS SEPARATE FROM SENSTUDY 75 FOR MATTERS RELATING
TO SENATE COMMITTEE.
END
HO FBI KFM CLR
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 materials.

Enclosures (3)

Clarence M. Kelley
Director
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

[Signature]

, 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 Subpoenas 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, as revised, and its provisions renumbered, to read as follows:

Subpart B—Production or Disclosure in Response to Subpoenas 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.


Subpart B—Production or Disclosure in Response to Subpoenas 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:
§ 16.25 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.


RICHARD G. KLEINDENST,
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
NR036 WA CODE

4:38PM NITEL 5-20-75 PAW

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 1970.

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
NR074 WA CODE

9:48PM NITEL 5-2-75 MSE

TO ALL SACs

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SESTUDY 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 UNDER-TAKEN 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
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

HAVE SOME BAD NEWS FOR YOU YOUR NR 007 HAS LEAD FOR LEGAT THEREFORE IT HAS TO COME ON TAPE LINE 4287 PLEASE CHANGE ACK TO PAW FBIHQ FOR 3 12 10 AND 9 THREE TELS
NR074 WA CODE
9:48PM WTEL 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.

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

END

HAVE SOME BAD NEWS FOR YOU. YOUR NR. 907 HAS LEAD FOR LEGAL THEREFORE IT HAS TO COME ON TAPE LINE 4237.

PLEASE CHANGE ACK TO PAW FBIHQ FOR 3.12 10 AND 9 THREE TELS.