

# File #:

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1992 (44 USC 2107 Note). Case#:NW  
65994 Date: 11-02-2021

62-HQ-116395

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# Serial Scope:

1011-1015, 1017, 1018, 1019-1<sup>st</sup> NR 1028, 1030,  
1032-1038, 1039-1043, 2<sup>nd</sup> NR 1043, 1045-1054x,  
1056-1064

The Attorney General

- 1 - Mr. J. B. Adams
- 1 - Mr. J. A. Mintz
- 1 - Mr. W. R. Wannall
- 1 - Mr. W. O. Gregory, 1975
- 1 - Mr. S. F. Phillips

Director, FBI

**U. S. SENATE SELECT COMMITTEE  
ON INTELLIGENCE ACTIVITIES (SSC)**

Enclosed is the original of a memorandum, with attachment, which reports the results of an interview of former FBI Assistant Director Dwight J. Dalbey by SSG Staff Member John T. Elliff. A copy of the memorandum, with attachment, is also being furnished for forwarding to Mr. James A. Wilderotter, Associate Counsel to the President.

Enclosures (4)

62-116395

- 1 - The Deputy Attorney General  
Attention: Michael E. Shaheen, Jr.  
Special Counsel for  
Intelligence Coordination

1 - 67- (Personnel File Former AD Dwight J. Dalbey)

SFP:1hb 1hb  
(10)

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1-4-01 BY SP2/MLP

MDR-16

EX-115

REC-45

62-116395-1064

5-WOC/8

15 NOV 21 1975

- Assoc. Dir. \_\_\_\_\_
- Dep. AD Adm. \_\_\_\_\_
- Dep. AD Inv. \_\_\_\_\_
- Asst. Dir.:
- Admin. \_\_\_\_\_
- Comp. Syst. \_\_\_\_\_
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- Legal Coun. \_\_\_\_\_
- Telephone Rm. \_\_\_\_\_

Director Sec'y MAIL ROOM  TELETYPE UNIT

DELIVERED TO FILE IN 10-26-75 PUP/14D

*mfs*

*2- ENCLOSURE*

*mpl  
Gunn  
[Signature]*

*10/11/75  
[Signature]*

- 1 - Mr. J. B. Adams
- 1 - Mr. J. A. Mintz
- 1 - Mr. W. R. Wannall
- 1 - Mr. W. O. Cregar
- 1 - Mr. S. F. Phillips

62-116395

October 29, 1975

**U. S. SENATE SELECT COMMITTEE TO  
STUDY GOVERNMENTAL OPERATIONS WITH  
RESPECT TO INTELLIGENCE ACTIVITIES (SSC)**

**RE: INTERVIEW OF FORMER FBI  
ASSISTANT DIRECTOR (AD)  
DWIGHT J. DALBEY BY SSC  
STAFF MEMBER**

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1-4-01 BY SP2AM/BJP  
*MDR-16*

The following pertains to an interview of Mr. Dalbey by SSC Staff Member John T. Elliff.

On August 22, 1975, Mr. Elliff requested of the FBI's Legal Counsel Division that Mr. Dalbey be made available for a Staff interview and that the topic of the interview would be a general historical perspective concerning the formation, duties and functions of the Legal Counsel Division. The FBI waived Dalbey's confidentiality agreement for the purpose of the interview.

Following the interview, Dalbey voluntarily furnished the results in the form of a letter to Mr. John A. Mintz, currently AD of the Legal Counsel Division. Attached herewith is a copy of that letter with certain excisions which were made for reasons of the excised data being either personal in nature or not pertinent.

- Assoc. Dir. \_\_\_\_\_
- Dep. AD Adm. \_\_\_\_\_
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- Training \_\_\_\_\_
- Legal Coun. \_\_\_\_\_
- Telephone Rm. \_\_\_\_\_
- Director Sec'y \_\_\_\_\_

**Enclosure**

1 - 67- (Personnel File Former AD Dwight J. Dalbey)

SFP:1hb/lhb  
(9)

**NOTE:** Elliff's contact was with Supervisor P. V. Daly of the Legal Counsel Division.

MAIL ROOM  TELETYPE UNIT

**ENCLOSURE**

Dwight J. Dalbey  
8703 Hempstead Avenue  
Bethesda, Maryland 20034

October 1, 1975

Mr. John A. Mintz  
Assistant Director  
Federal Bureau of Investigation  
Washington, D.C.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1-4-01 BY SP2AM/jaf  
MDR-16

Dear John:

It is two weeks today that I was interviewed by Mr. Elliff of the Senate Committee, in the Senate Office Building, pursuant to arrangements which you made at his request. Knowing that you and the Bureau might be interested in receiving a synopsis of that interview, I admit that I am delinquent in my reporting. ~~\_\_\_\_\_~~

The interview began at 10:00 a.m. and lasted for two and one-half hours. It was pleasant enough in all respects, conducted in good humor throughout. ~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
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Elliff's stated purpose in interviewing me was to learn the origins and functions of the Bureau's Office of Legal Counsel. So, during much of the interview I talked and he wrote furiously. Synopsized, of course, I went through the history as follows.

In the beginning-dating everything (as in Christianity) from the time that a certain noted figure took over-there was no in-house counsel. There seem to be two reasons. First, the vast majority of the Agents were law trained. I think the figure for 1940, when I entered, was 90 per cent. Thus the Agents were equipped by training to provide their own legal guidelines. Second, the criminal law was at that time very simple. Few of the FBI arrests, searches, and interrogations were challenged in the courts.

During this period the unofficial in-house counsel was Judge Holtzoff, then a prominent lawyer in the Department of Justice. When Hoover had a legal question of significance he consulted Holtzoff; the old files so show.

Somewhere in the middle 1940's (I guess at this from inadequate data) the FBI decided for some reason not known to me to set up the Legal Research Desk in the then Training and Inspection Division. I suppose that as the jurisdiction and the staff of the FBI grew swiftly so also did the number of legal questions raised, to the point where the informal Hoover-Holtzoff system proved inadequate. It was a one-man desk, occupied by, among others, Inspector MISS James Carlson, Chester Pontz (now deceased), Frank Strong, Mace Scovell, and others unknown to me. I took over in 1955.

Beginning shortly after my arrival, the volume of legal questions began to

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ENCLOSURE

Dwight J. Dalbey  
8703 Hempstead Avenue  
Bethesda, Maryland 20034

swell. This development followed on the new "activist" approach of the Supreme Court under Warren which brought the landmark decisions of Mallory, Mapp, Miranda, and so many others, all of which complicated the criminal law enormously for both FBI Agents and for the officers of other jurisdictions to whom the FBI taught criminal law in the FBI National Academy and elsewhere. More than that, these decisions came at a time when the percentage of lawyers in the Agent force had greatly declined. It thus was obvious that both the supervision of legal matters and the training given to Agents and other officers must be greatly increased. This brought you and John Hotis and others into the function, for Donelan and I could no longer carry the load.

The final step was the establishment of the Office of Legal Counsel as a separate division of the FBI. This happened without advance notice to me. It was in January or February of 1971 (memory fades) when Hoover called me to his office. He opened by naming about five Federal law enforcement agencies such as the Secret Service, the Narcotics Bureau, and others, that had their own counsel and concluded by saying that the FBI had greater need of in-house counsel than any of these. He made me Inspector in Charge, and 17 days later made me Assistant Director.

Elliff was interested in knowing why Hoover chose that moment to create the new division. I told him, and quite truthfully, that I did not know. Hoover did not say, at least not to me. Elliff pressed the matter, and I pointed out that I could only speculate. The best speculation, in my opinion, is that the move was related to the extreme embarrassment which came to Hoover because of his public statement, prior to any grand jury action, concerning the evidence against those two priests and their followers who were alleged to be planning to blow up the District sewer system. That statement, I pointed out, was never brought to my attention until after it had been made. Had I known of it in advance, I would have strongly counseled against it. Somewhere in this time area, I speculated, Hoover must have decided that he badly needed a closer legal monitoring of everything that went on in the FBI.

This brought up the anomalous position so long occupied by the Legal Research Desk which had so troubled me. I was absolutely and totally responsible for answering any legal question raised to me by anyone in the FBI, but I had no authority whatsoever to inquire into legal problems not raised to me. This unworkable situation changed completely when the new division was established. Our first orders from Hoover were to "see everything" going out of the FBI that might embody or affect a legal question. We strove manfully to do so for a while, but the volume of paper coming across the desk was simply too large. So, with Hoover's permission and over his signature, I put out a notice to all headquarters personnel which made each supervisor, division, etc., initially responsible for recognizing the actual or possible existence of a legal problem and which directed them to bring all such problems to our attention. And so it went until I retired.

Elliff was interested in knowing why I was so quickly raised from Inspector-in-Charge to Assistant Director. Again, Hoover never told me, but if one must speculate I would suggest that it was because I handled to his satisfaction two serious legal matters which came up in the first few days. One was a proposal

Dwight J. Dalbey  
8703 Hempstead Avenue  
Bethesda, Maryland 20034

from the General Intelligence Division that a file be established on each Senator and U.S. Representative and that into that file be thrown all miscellaneous information concerning the person that came to our attention without investigation. The purpose was entirely innocent, and of some efficiency, viewed solely from an investigative standpoint. The FBI had lately become responsible for investigating attacks against these people, and it is sensible to believe that the more the Agent knows about the victim the better the chance he has of solving the crime. But, I countered, the fact that the FBI kept such files would filter out to public knowledge and immediately be misinterpreted to mean that the FBI was actively surveilling and monitoring the activities of the legislators. This would not do. Hoover agreed. About the same time there came from the Domestic Intelligence Division a proposal that an informant be sent to Canada to gather information there on certain U.S. citizens in whom the FBI had a legitimate interest. Canada was not to be informed. I countered that this was unwise; something of the same kind had happened a few years earlier, had been discovered, and had resulted in quite a stink being raised in the Canadian Parliament. I suggested that the FBI work ~~xx~~ this informant through the RCMP, Hoover agreed, and it was so done to the benefit of both this country and Canada and without an unfortunate incident.

Both these matters, it might be pointed out, were not strictly legal. But the effective lawyer remembers that just as no man is an island neither is a legal question. The question exists always in some political, economic, sociological, or philosophical context, and these may alter or even change what would otherwise be the narrow legal answer to a problem.

We next discussed, at Elliff's request, the functions of the Office of Legal Counsel. More pointedly, why could not these functions be performed by the U.S. Attorney and the Department of Justice? For many reasons, I said. First, and in general, it defies all common sense and the laws of human nature to believe that the Director of the FBI and his people can get adequate counsel from any lawyer over whom they have no control whatsoever, whom they do not pay, promote or demote. The FBI must necessarily be in a position to demand a quick answer from counsel. The SAC in Butte, for example, may call at 10:00 a.m., or 10:00 p.m., as the situation requires. He has located a fugitive, and sees a potential search problem. We might get a good answer from the Department if we write them a memo and wait three weeks (and again we might not, depending on who answers the question over there). But the SAC cannot freeze the situation for three weeks. Second, the SAC needs a positive answer—a "do this" and "don't do that" answer, specific, to the point, and susceptible of being translated into immediate action. None of this "on the one hand but however on the other" type of answer that bureaucrats so often give. The FBI can command such an answer of its own counsel, and of no other. Nor can the U.S. Attorney be relied upon for such answers, for several reasons. Many of the assistants are recently graduated schoolboys whose knowledge of the criminal law is "hornbook" variety. Some U.S. Attorneys are overly cautious, reluctant to take a stand, with the result that the FBI would underuse its authority, to the public detriment. Some are aggressive prosecutors out to make a name for themselves and not a bit reluctant to authorize an arrest or search on dubious grounds, secure in the knowledge that if the action fails the newspaper headlines will trumpet the fact that it was the "FBI search" or arrest that was illegal, making no mention of the "authority" on which the action was

Dwight J. Dalbey  
8703 Hempstead Avenue  
Bethesda, Maryland 20034

taken. Thus it is that the FBI desire to keep its legal actions clean as a round's tooth may conflict with the ambition of the prosecutor. I still remember an Assistant U.S. Attorney who spent half an hour on the telephone trying to harangue, badger and bluff me into sending Agents out to arrest a Secret Service fugitive when both he and I knew that we had no jurisdiction to make such an arrest. And then some U.S. Attorneys simply went haywire in their interpretation of the law. If I remember correctly, it was the U.S. Attorneys in the Eastern District of Illinois and one the the districts of Mississippi who once took the position that a person arrested by the FBI must be brought before the then Commissioner by the arresting Agent and by no other. I had to fight them both down on that one and it took a bit of doing. So, here again the FBI needed its own counsel.

Functions of FBI in-house counsel break down into a few obvious categories, I told Elliff. Counsel must to some reasonable extent rove through current FBI work looking for problems, present and potential. Some can be solved on the spot, so to speak. Others must be taken to the Department, such as those which necessarily involve Department or Administration policy, or which are of such potential for damage that the FBI wants before acting to exhaust all expert advice available to it. It is a matter of considerable discretion to decide which questions can and should be answered in-house, in order to not be badgering the Department every other minute, and which must be raised to the Department. This can be done by an experienced FBI Agent-Lawyer, and by no other. And then there is the constant need for FBI legal instruction, which I described but on which I did not dwell, believing the need to be obvious and, in general, for the same reasons as those discussed above.

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In response to Elliff's questions I admitted that the great bulk of the work of the Office of Legal Counsel came from the criminal side of FBI jurisdiction. And quite naturally so. It was (I speak of my time only) in the criminal area that most of the Agents were employed. And it was with some historical justification that those doing intelligence work thought themselves not responsible to the criminal law, although we did all possible to knock that error out of their heads. They thought themselves only intelligence gatherers, and so they were until the case suddenly turned into the offense of espionage or some other. It was then that we got such fiascoes as that "high Sierras" case, which Hoover angrily labeled the worst search he had ever seen. The Agents took everything-everything-in the cabin, carted it hundreds of miles to San Francisco for further examination, and we lost the search in the Supreme Court. They never asked for advice of counsel. Without the effective presence of in-house counsel how great the danger today of another such fiasco when so few of the Agents are law-trained.

This discussion led to talk of the slender legal jurisdiction for the work of the Domestic Intelligence Division. I told Elliff that some in the FBI had long been dissatisfied with the matter, that I was among them, and that when Ed Miller became Assistant Director he had labored mightily for a change. Here I warned Elliff that it would be easy to so circumscribe FBI jurisdiction in this

Dwight J. Dalbey  
8703 Hempstead Avenue  
Bethesda, Maryland 20034

area as to make the FBI no threat to the liberties of anyone, and totally without power-totally emasculated-to perform the functions which the public interest demands and which the great majority of our citizens expect the FBI to perform, and well. The law must always leave, as Justice Holmes once said, "some play in the joints," some room for judgment and decision of those who are responsible for the work.

In answer to Elliff's questions, I disclaimed all responsibility of the Office of Legal Counsel and the Legal Research Desk for all "dirty tricks," burglaries, and so on. The great bulk of these occurred during my "anomalous situation" described earlier; I was never consulted or advised in advance. Nor was the legality of any such pending action raised to me after establishment of the Office of Legal Counsel. I said that I had early made it clear that I stood for legality in all matters, being of the opinion that legality, like honesty, is the best policy in the long run no matter how onerous it may seem in some individual case. My lodestar was found very early in a note that Hoover had penned to a memo from the General Investigative decision complaining of the difficulties thrown in our path by the Mallory decision. Hoover wrote, "It is the law and we will obey it." That became the philosophy of the Legal Research Desk and of the Office of Legal Counsel.

A few-very few-names came up. Elliff seemed to think that Hoover might have counseled with me on the "lockout" of W.C. Sullivan. He did not, and I made that clear. I refused to enter into any discussion of the Hoover-Sullivan relations, pointing out that I had hearsay only, except to confirm that it appeared to be the foreign liaison matter which generated the fracas.

Felt's name came up but it was inconsequential-I now forget how. I did point out that owing to directions ~~in~~ which Hoover gave to me, and in his usually certain terms, once I became head of the Office of Legal Counsel the responsibility for legal matter ran from me directly to him and that I had no other bosses on such matters. I didn't say so to Elliff but I think that some of the "power" in the Bureau had some difficulty, for a while, in grasping that fact. But so Hoover told ~~me~~ me and since I was eligible to retire anyway I acted accordingly.

Director Kelley was not mentioned at all, nor was Pat Gray so far as I can remember. Elliff mentioned you and Hotis in some way conveying the idea that you both are quite decent chaps, with which I readily agreed.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
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Regards, as always

*Dwight*



TO: Intelligence Community Staff  
ATTN: Central Index

FROM: **FBI**

SUBJECT: Abstract of Information Provided to Select Committees

1. HOW PROVIDED (check appropriate term. If a document was made available for review but not transmitted, so note.)

2. DATE PROVIDED

DOCUMENT      BRIEFING       INTERVIEW      TESTIMONY      OTHER

**10/29/75**

3. TO WHOM PROVIDED (check appropriate term; add specific names if appropriate)

SSC

**The Attorney General with a copy for forwarding to the White House**

HSC

4. IDENTIFICATION (provide descriptive data for documents; give name or identification number of briefer, interviewee, testifier and subject)

**Memorandum reporting results of an interview by SSC Staff Member of Assistant Director Dwight J. Dalbey former**

5. IN RESPONSE TO (list date and item number if in response to formal request, otherwise state verbal request of (name), initiative, subpoena, etc.)

**NA**

6. CLASSIFICATION OF INFORMATION (enter U, C, S, TS or Codeword)

**U**

7. KEY WORDS (enter the appropriate key words from the list provided separately; if key words not listed are used underline for emphasis)

**Operating procedures  
Organization and staffing**

8. SUMMARY (see reverse side before completing this item)

**Interviewed regarding the formation, duties and functions of the Legal Counsel Division.**

**62-116395**

**FMK: fmk  
(4)**

**ORIGINAL VIA LIAISON TO CENTRAL COMMUNITY INDEX IN CONNECTION WITH SENSTUDY 75**

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*MDR-16*

**TREAT AS YELLOW**

## INSTRUCTIONS

- Type or print clearly in ink.
- Indicate classification of the abstract top and bottom.
- Date the abstract and put on any internal control numbers required.
- "FROM" entry should clearly identify the organization providing the information.
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SPECIFIC ITEM NO. 8. SUMMARY - enter brief narrative statement describing substance of information and showing relationship to Intelligence Community matters if appropriate. Any feedback or evidence of investigatory interests should be noted. Commitments made to supply additional information should be noted. Additionally, certain administrative information may be entered here, e.g., restrictions on review of a document, if document was paraphrased, whether interviewee is current or former employee, etc. If actual document or transcript is provided, that fact should be noted and no summary is required. Additional pages may be attached if necessary.

TO: Intelligence Community Staff  
ATTN: Central Index

FROM: FBI

SUBJECT: Abstract of Information Provided to Select Committees

1. HOW PROVIDED (check appropriate term. If a document was made available for review but not transmitted, so note.)

2. DATE PROVIDED

DOCUMENT	BRIEFING	<input checked="" type="checkbox"/> X	INTERVIEW	TESTIMONY	OTHER
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10/28/75

3. TO WHOM PROVIDED (check appropriate term; add specific names if appropriate)

SSC

The Attorney General with a copy for forwarding to the White House

HSC

4. IDENTIFICATION (provide descriptive data for documents; give name or identification number of briefer, interviewee, testifier and subject)

Memorandum reporting results of an interview by SSC Staff Member of Special Agents William A. Branigan and James P. Lee

5. IN RESPONSE TO (list date and item number if in response to formal request, otherwise state verbal request of (name), initiative, subpoena, etc.)

NA

6. CLASSIFICATION OF INFORMATION (enter U, C, S, TS or Codeword)

S

7. KEY WORDS (enter the appropriate key words from the list provided separately; if key words not listed are used underline for emphasis)

Intelligence collection  
Information handling

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DATE 11-16-2000 BY SPAM/bjs

MDL-16

8. SUMMARY (see reverse side before completing this item)

Interviewed regarding mail openings, mail intercept programs and the Hunter Project.

62-116395

FMK: fnk

(4)

ORIGINAL VIA LIAISON TO CENTRAL COMMUNITY INDEX  
IN CONNECTION WITH SENSTUDY 75

TREAT AS YELLOW

G. WOLF

## INSTRUCTIONS

- Type or print clearly in ink.
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SPECIFIC ITEM NO. 8. SUMMARY - enter brief narrative statement describing substance of information and showing relationship to Intelligence Community matters if appropriate. Any feedback or evidence of investigatory interests should be noted. Commitments made to supply additional information should be noted. Additionally, certain administrative information may be entered here, e.g., restrictions on review of a document, if document was paraphrased, whether interviewee is current or former employee, etc. If actual document or transcript is provided, that fact should be noted and no summary is required. Additional pages may be attached if necessary.

Airtel

To: SAC, New York (105-146601)

10/23/75

From: Director, FBI (62-116395) - 1063

- 1 - Mr. Wannall
- 1 - Mr. Cregar
- 1 - Mr. Hotis
- Attn: Mr. Daly
- 1 - Mr. Mintz

SENSTUDY 1975  
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EX 103

Re Bmairtel 9/24/75.

SA James P. Kehoe should be advised that by memorandum dated October 20, 1975, the Deputy Attorney General advised:

"With reference to your memorandum of September 10, 1975, I have decided that Special Agent Kehoe will be reimbursed, from Department funds, for the \$750.00 legal fee in question."

SA Kehoe's attorney will be contacted in the near future by a representative of the Civil Division of the Department to discuss this matter.

1 - Personnel file SA James P. Kehoe

NOTE: Based on incoming memorandum from Deputy Attorney General Tyler dated 10/20/75.

JAM:mfd  
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MOR-16

- Assoc. Dir. \_\_\_\_\_
- Dep. AD Adm. \_\_\_\_\_
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- Telephone Rm. \_\_\_\_\_
- Director Sec'y \_\_\_\_\_

MAILED 9  
OCT 24 1975  
FBI

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NOV 25 1975

UNITED STATES GOVERNMENT

# Memorandum

TO : Clarence M. Kelley  
Director  
Federal Bureau of Investigation

FROM : Harold R. Tyler, Jr.  
Deputy Attorney General

SUBJECT: Reimbursement of Legal Fees to Special Agent  
James P. Kehoe

DATE: October 20 1975

Assoc. Dir.	
Dep. A.D.	
Dep. Dir.	
Asst. Dir.:	
Admin.	
Ext. Affairs	
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Legal Coun.	
Telephone Rm.	
Director Sec'y	

*oel*

*Senstudy 75*

With reference to your memorandum of September 10, 1975, I have decided that Special Agent Kehoe will be reimbursed from Department funds, for the \$750.00 legal fee in question.

As you know, we are developing guidelines for use in this and similar situations. In the meantime, requests such as this will be considered on an individual basis.

EXP. PROC. 1061-21-1075 #12

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*SAC, NY 10/23/75*  
*Jama*

EX-103

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MDR-16

LEGAL COUNSEL  
*[Signature]*



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

UNITED STATES GOVERNMENT

# Memorandum

Rex E. Lee

TO : Assistant Attorney General  
Civil Division

DATE: October 20, 1975

FROM : Togo D. West, Jr.  
Associate Deputy Attorney General

SUBJECT: Legal Expenses of FBI Agent Kehoe

Consistent with the new policy we are adopting on representation of government employees, the Deputy has decided that the Department should reimburse Special Agent Kehoe for legal expenses incurred by him in connection with his recent appearance before the Church Committee. It is our understanding that Mr. Kehoe will continue to need legal advice in connection with the Church Committee investigation. Since we would benefit from his knowledge of the case, and in the interest of continuity, the lawyer already retained by Mr. Kehoe should, if possible, now be hired by the Department.

*Togo D. West, Jr.*

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DATE 1-4-01 BY 9822CML/PL  
MDR-16



