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65994 Date: 11-01-2021

66-IP-3370

Serial Scope:

FBI

Transmit in _____ Via AIRTEL
(Type in plaintext or code)

(Precedence)

To: SAC, Albany

10/19/76

(Date)

From: *Curt* Director, FBI

PERSONAL ATTENTION

DOMESTIC SECURITY INVESTIGATIONS

For your information, in connection with Congressional oversight, FBIHQ has been receiving requests from the Senate Select Committee on Intelligence relating to our handling of domestic security matters including the question as to the number of organizations and individuals currently under investigation.

In order to insure prompt response to all such requests, you are reminded that upon initiation of a domestic security investigation of an individual or organization, FBIHQ should be promptly notified, as set forth in Sections 87 and 122, Manual of Instructions. In addition, FBIHQ should also be promptly advised of the closing of any such investigations.

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2 - All Offices (PERSONAL ATTENTION)

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*cc 105-00
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SERIALIZED _____ FILED _____

10 20 1976

FBI-INDIANAPOLIS

Teller FBI/DOJ

UNITED STATES GOVERNMENT

Memorandum

TO : SECURITY AGENTS

DATE: 10/27/76

FROM : SUPV. WILLIAM T. TILLER, JR. (100-00)
(66-3370)

SUBJECT: DOMESTIC SECURITY INVESTIGATIONS

Re Bureau airtel to Albany dated 10/19/76.

Referenced communication advised as follows:

For your information, in connection with Congressional oversight, FBIHQ has been receiving requests from the Senate Select Committee on Intelligence relating to our handling of domestic security matters including the question as to the number of organizations and individuals currently under investigation.

In order to insure prompt response to all such requests, you are reminded that upon initiation of a domestic security investigation of an individual or organization, FBIHQ should be promptly notified, as set forth in Sections 87 and 122, Manual of Instructions. In addition, FBIHQ should also be promptly advised of the closing of any such investigations.

2 - IP
lcc - Each of the following:

- | | |
|---------------|--------------|
| SA BINNEY | SA MC DONALD |
| SA CERO | SA MULLEN |
| SA CHABALKO | SA PERKINS |
| SA EGGER | SA PAYNTER |
| SA GLAVIN | SA PIPER |
| SA GOODWIN | SA ROSENBAUM |
| SA HAGAN | SA MITCHELL |
| SA HARDY | SA SEAMAN |
| SA HEMPEN | SA STEVENSON |
| SA O. JOHNSON | SA TRAEGER |
| SA ARMSTRONG | SA YARA |
| SA NEAVES | SUPV. TILLER |
| SA YOUNGINER | |

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RE:

Date 12/30/75

DIRECTORS APPEARANCE BEFORE SENATE SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES, DECEMBER 10, 1975

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

Remarks:

ReButel to all SACs and Legats, 12/10/75.

Enclosed for each Office and Legat is one copy of the transcript of questions which were asked Mr. Kelley during captioned appearance, along with Mr. Kelley's answers to those questions.

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- Bufile
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Kelley

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Vol. 20

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The United States Senate

Report of Proceedings

Hearing held before

Select Committee to Study Governmental Operations

With Respect to Intelligence Activities

INTELLIGENCE INVESTIGATION

Wednesday, December 10, 1975

Washington, D. C.

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

(202) 544-6000

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STATEMENT OF:

PAGE

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

2451

Phone (Area 202) 544-6000

INTELLIGENCE INVESTIGATION

Wednesday, December 10, 1975

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

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

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

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

The Chairman. The Committee's witness this morning is

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

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

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

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

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

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

1 Kelley took charge.

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

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

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

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

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

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

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

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

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

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

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

1 I believe we have lived up to those promises.

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

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

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

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

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

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

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

25 A Justice Department Committee which was formed last year

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 I have instituted a program of open, frank discussion

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

4 Participatory management has become a fact in the FBI.

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

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

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

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

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

1 the appearances of impropriety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The FBI urgently needs a clear and workable determination

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

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

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

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

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

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

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

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

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

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

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

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

16 That is the substance of my prepared statement.

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

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

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

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

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

6 Thank you very much.

7 The Chairman. Thank you, Director Kelley.

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

end t. 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Thank you, Mr. Chairman.

6 The Chairman. Thank you, Senator Hart.

7 (Senator Hart leaves the hearing room.)

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

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

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

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

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

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

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

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

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

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

22 I would appreciate any comments on that.

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

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

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

8 How would you suggest then that you improve the quality
9 of service of your agency? How would you propose that you
10 increase the opportunity for oversight of the Congress of the
11 United States? What other suggestions do you have for improving
12 the level of law enforcement in the essential activity that
13 is required?

14 Mr. Kelley. I would possibly be repetitious in answering
15 this Senator, but I get a great deal of pleasure from telling
16 what I think is necessary and what I hope that I have followed,
17 one which is beyond my control, but which I think is very
18 important is that the position of Director, the one to which
19 great attention should be paid in choosing the man who will
20 properly acquit himself.

21 I feel that the Judiciary Committee, at least in going
22 over me, did a pretty good job. I feel that it is most
23 necessary that care be taken that his philosophy, his means
24 of management, his facility to adapt to change, his tendency
25 toward consulting with other members of the official family,

1 that he be willing to, for example, go through oversight with
2 no reticence, and that I think that he should be chosen very
3 carefully.

4 I think further that he should be responsible for those
5 matters which indicate impropriety or illegality.

6 Senator Baker. Could you stop for just a second? Who
7 does he work for? Does the Director, in your view, work for
8 the President of the United States, for the Attorney General,
9 for the Justice Department, for the Executive Branch?

10 Who does the executive of the FBI, the Director of the
11 FBI, be responsible to, who should he be responsible to?

12 Mr. Kelley. Jurisdictionally, to the Attorney General,
13 but I think this is such an important field of influence that
14 it is not at all unlikely that we can expand it to the
15 judiciary, the legislative, and of course, we are under the
16 Attorney General.

17 Senator Baker. Do you have any problems with the idea
18 of the President of the United States calling the Director of
19 the FBI and asking for performance of a particular task?

20 Does that give you any difficulty? Or do you think that
21 the relationship between the FBI Director and the President
22 is such that that is desirable, or should it be conduited
23 through the Attorney General?

24 Mr. Kelley. I think it should be in the great majority
25 of the cases conduited through the Attorney General. There

1 has been traditionally some acceptance of the fact that if
2 the President wants to see and talk with the Director, he
3 may do so, call him directly.

4 It has been my practice in such an event to thereafter
5 report to the Attorney General, whoever it might be, that I
6 have been called over and I discussed and was told. And this
7 was revealed in full to them.

8 Senator Baker. I suppose we could pass a statute that
9 says the President has to go through the Attorney General,
10 although I rather suspect it would be a little presumptuous.

11 But to go the next step, do you think it is necessary
12 for the pursuit of effective oversight on the part of the
13 Congress, to have some sort of document written, or at least
14 some sort of account of a Presidential order or an order of
15 the Attorney General given to a Director of the FBI?

16 Do you think that these things need to be handled in
17 a more formal way?

18 Mr. Kelley. Personally, it would be my practice in
19 the event I receive such an order, to request that it be
20 documented. This is a protection as well as a clarification
21 as to whether or not it should be placed as part of legislation.
22 I frankly would like to reserve that for some more considera-
23 tion.

24 I don't know whether it would be, but I think that it
25 can be worked very easily.

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Senator Baker. Mr. Kelley, Attorney General Levi, I believe, has already established some sort of agency or function within the Department that is serving as the equivalent, I suppose, of an Inspector General of the Justice Department, including the FBI.

Are you familiar with the steps that Mr. Levi has taken in that respect? I think he calls it the Office of Professional Responsibility.

Mr. Kelley. Yes, sir, I'm familiar with it.

Senator Baker. Do you have any comment on that? Will you give us any observations as to whether you think that will be useful, helpful, or whether it will not be useful or helpful, how it affects the FBI, how you visualize your relationship to it in the future?

Mr. Kelley. I don't object to this, which is to some extent an oversight within the Department of Justice under the Attorney General.

Frankly, it just came out. I have not considered it completely, but to the general concept, yes, I very definitely subscribe.

Senator Baker. How would you feel about extending that concept of government-wide operation, a national Inspector General who is involved with an oversight of all of the agencies of government as they interface with the Constitutionally protected rights of the individual citizen? Would you care

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1 to comment on that, or would you rather save that for a while?

2 Mr. Kelley. I would like to reserve that one.

3 Senator Baker. I'm not surprised. Would you think about
4 it and let us know what you think about it?

5 Mr. Kelley. I will..

6 Senator Baker. All right. Mr. Chairman, thank you very
7 much.

8 The Chairman. Senator Huddleston.

9 Senator Huddleston. Thank you, Mr. Chairman.

10 Mr. Kelley, you describe on page 4 the conditions that
11 existed when much of the abuse that we have talked about during
12 this inquiry occurred, indicating that the people within the
13 Bureau felt like they were doing what was expected of them
14 by the President, by the Attorney General, the Congress and
15 the people of the United States.

16 Does not this suggest that there has been a reaction
17 there to prevailing attitudes that might have existed in the
18 country because of certain circumstances rather than any
19 clear and specific direct instructions that might have been
20 received from proper authorities? And if that is the case,
21 is it possible in developing this charter, this guideline,
22 to provide for that kind of specific instruction?

23 Mr. Kelley. I think so, yes. I think that they can
24 logically be incorporated and that --

25 Senator Huddleston. You can see there would be a continuing

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1 danger if any agency is left to simply react to whatever the
2 attitudes may be at a specific time in this country because --

3 Mr. Kelley. Senator, I don't contemplate it might be
4 a continuing danger, but it certainly would be a very acceptable
5 guidepost whereby we can, in the event such a need seems
6 to arise, know what we can do.

7 Senator Huddleston. Well, in pursuing the area which
8 Senator Hart was discussing, that is whether or not we can
9 provide sufficient guidelines would replace a decision by the
10 court in determining what action might be proper and specific -
11 ally in protecting individual's rights, can't we also
12 provide the restrictions and guidelines and the various
13 techniques that might be used?

14 For instance, supposing we do establish the fact, as
15 has already been done, that informants are necessary and
16 desirable. How do we keep that informant operating within the
17 proper limits so that he in fact is not violating individual
18 rights?

19 Mr. Kelley. Well, of course, much of the reliance must
20 be placed on the agent and the supervision of the FBI to assure
21 that there is no infringement of rights.

22 Senator Huddleston. But this is an aware we've gotten
23 into some difficulty in the past. We have assumed that the
24 particular action was necessary, that there was a present
25 threat that some intelligence programs should be initiated, but

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1 in many cases it has gone beyond what would appear to have been
2 necessary to have addressed the original threat.

3 How do we keep within the proper balance there?

4 Mr. Kelley. Well, actually, it's just about like any
5 other offense. It is an invasion of the other individual's
6 right and it is by an officer and an FBI agent is an officer.
7 There's the possibility of criminal prosecution against him.

8 This is one which I think might flow if he counsels
9 the informant.

10 Now insofar as his inability to control the informant,
11 I don't suppose that would warrant prosecution, but there is
12 still supervisory control over that agent and over that
13 informant by insisting that control is exercised on a continuing
14 basis.

15 Senator Huddleston. It brings up an interesting point
16 as to whether or not a law enforcement agency ought to be
17 very alert to any law violations of its own members or anyone
18 else.

19 If a White House official asks the FBI or someone to do
20 something unlawful, the question seems to me to occur as to
21 whether or not that is not a violation that should be reported
22 by the FBI.

23 Mr. Kelley. I think that any violation which comes to
24 our attention should either be handled by us or the proper
25 authority.

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1 Senator Huddleston. But that hasn't been the case in the
2 past.

3 Mr. Kelley. Well, I don't know what you're referring
4 to but I would think your statement is proper.

5 Senator Huddleston. Well, we certainly have evidence
6 of unlawful activity taking place in various projects that
7 have been undertaken, which certainly were not brought to
8 light willingly by the FBI or by other law enforcement agencies.

9 The question that I'm really concerned about is as
10 we attempt to draw a guideline and charters that would give
11 the Agency the best flexibility that they may need, a wide
12 range of threats, how do we control what happens within each
13 of those actions to keep them from going beyond what
14 was intended to begin with?

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1 Mr. Kelley. You're still speaking of informants.

2 Senator Huddleston. Not only informants but the agents
3 themselves as they go into surveillance, wiretaps, or whatever
4 intelligence gathering techniques.

5 The original thrust of my question was, even though we
6 may be able to provide guidelines of a broad nature, how do
7 we control the techniques that might be used, that in themselves
8 might be used, that in themselves might be a serious violation
9 of the rights.

10 Mr. Kelley. Well, first, I don't know whether it's
11 germane to your question but I do feel that it should be pointed
12 out that the association to, the relationship between the
13 informant and his agent handler is a very confidential one,
14 and I doubt very seriously whether we could have any guide-
15 lines, where there might be an extension of any monitors here
16 because thereby you do have a destruction of that relationship.
17 Insofar as the activities of agents, informants or others
18 which may be illegal, we have on many occasions learned of
19 violations of the law on the part of informants, and either
20 prosecuted ourselves, through the reporting of it to the
21 United States Attorney, or turned it over to the local authority.
22 We have done this on many a time, many occasions. Insofar
23 as our own personnel, we have an internal organization, the
24 Inspection Division, which reviews this type of activity, and
25 if there be any violation, yes, no question about it, we would

1 pursue it to the point of prosecution.

2 Senator Huddleston. But it could be helped by periodic
3 review.

4 Mr. Kelley. We do, on an annual basis, review the
5 activities of our 59 offices through that same Inspection
6 Division, and they have a clear charge to go over this as well
7 as other matters.

8 Senator Huddleston. Mr. Kelley, you pointed out the
9 difference in the approaches when gathering intelligence, in
10 gathering evidence after a crime has been committed.

11 Would there be any advantage, or would it be feasible to
12 attempt to separate these functions within the Agency, in the
13 departments, for instance, with not having a mixing of
14 gathering intelligence and gathering evidence? Are the techniques
15 definable and different?

16 Mr. Kelley. Senator, I think they are compatible. I
17 see no objection to the way that they are now being handled
18 on a management basis. I think, as a matter of fact, it is
19 a very fine association whereby the intelligence, stemming as
20 it does from a substantive violation, is a natural complement.

21 Senator Huddleston. Now, another area, the FBI furnishes
22 information to numerous government agencies.

23 Is this properly restricted and controlled at the present
24 time in your judgment as to just who can ask the FBI for
25 information, what kind of information they can ask for, and

1 who might also be inclined to call the Director and ask him
2 to do specific things?

3 Could there be some clearcut understanding as to whether
4 or not the Director would be obligated to undertake any such
5 project, that just anybody at the White House might suggest?

6 Mr. Kelley. It's very clear to me that any request must
7 come from Mr. Buchen's office, and that it be, in any case,
8 wherein it is a request for action, that it be followed with
9 a letter so requesting.

10 This has come up before during the Watergate hearings, as
11 I think it has been placed very vividly in our minds, in
12 take care that you just don't follow the request of some
13 underling who does not truly reflect the desire of the President.

14 Senator Huddleston. Just one more question about
15 techniques, aside from the guidelines of authority on broad
16 projects undertaken.

17 Would it be feasible from time to time in a Congressional
18 oversight committee, would be able to discuss with the Department,
19 with the Bureau various techniques so that they could have
20 some input as to whether or not these actions are consistent
21 with the overall guidelines, to start with, and consistent
22 with the very protections?

23 Mr. Kelley. Senator, I have already said to the
24 oversight committee of the Senate that so far as I can now
25 see, the only thing that would be withheld is the identity of

1 probably even more importantly, what restrictions can be put
2 on the use of that information once it has been supplied by
3 the FBI?

4 Mr. Kelley. I think so, Senator.

5 Senator Huddleston. You think there are proper restrictions
6 now?

7 Mr. Kelley. I don't know that we can ourselves judge
8 in all cases whether or not there is good and sufficient reason
9 for an Agency to inquiry. I think that there should be a
10 very close delineation by the agencies as to what they're
11 going to ask for, but I think that we do have sufficient rules
12 that at least to us we are satisfied.

13 Senator Huddleston. You're confident that the information
14 your agency supplies is not being misused, to the detriment
15 of the rights of any individuals.

16 Mr. Kelley. Senator, I'm only confident in what I
17 do myself. I would say that I am satisfied.

18 Senator Huddleston. I was wondering whether some
19 inclusion ought to be made in whatever charter is made as to
20 who specifically can request, what limits ought to be placed
21 on what the request, and what they can do with it after they
22 get it.

23 Mr. Kelley. Yes.

24 Senator Huddleston. I have some concern about the fact
25 that in intelligence gathering, you gather, you are just

1 bound to gather a great deal of information about some
2 individual that is useless as far as the intent of the intelli-
3 gence gathering is concerned, but might be in some way embarrass-
4 ing or harmful to the individual, whether or not there's any
5 effort to separate this kind of information out of a person's
6 file that is really initiated for a purpose, for a specific
7 purpose unrelated to this information.

8 Is there any effort, or could any direction be given to
9 doing that?

10 Mr. Kelley. We would be very happy to work under the
11 guidelines or rules or anything else to purge material which
12 is extraneous, irrelevant, or for any other reason objection-
13 able.

14 Senator Huddleston. And how about the length of time
15 that these files are kept in the agency?

16 Mr. Kelley. We are willing to work within that framework,
17 too.

18 Senator Huddleston. I think that might be done.

19 Now, I think in developing the chain of command, so to
20 speak, it certainly would be very difficult to prevent the
21 President of the United States from calling up the head of
22 the FBI or anyone else and discussing any law enforcement
23 problem he might so desire, and perhaps even give direction
24 to the agency.

25 But how about that? What about White House personnel

1 informants. We'll discuss techniques, we'll discuss our
2 present activities. I think this is the only way that we can
3 exchange our opinions and get accomplished what you want to
4 accomplish and what I want to accomplish.

5 Senator Huddleston. I feel that is an important aspect
6 of it because even though you have a charter which gives broad
7 direction for all the guidelines and to the types of projects
8 that enter into it, if we don't get down to specifics, such
9 things as how intelligence is to be collected, how evidence
10 is to be collected, what is done after it is collected, this
11 type of thing, it seems to me we are leaving a wide gap
12 again for the Bureau to assume that it has total instruction
13 and total permission to move in a certain direction and go
14 beyond what is intended or what was authorized.

15 Thank you, Mr. Chairman, and Mr. Director.

16 The Chairman. Senator Goldwater?

17 Senator Goldwater. Mr. Kelley, as part of the FBI
18 electronic surveillance of Dr. King, several tapes of
19 specific conversations, and later a composite King tape were
20 produced.

21 Are these tapes still in the possession of the FBI?

22 Mr. Kelley. Yes, sir.

23 Senator Goldwater. Have they been reviewed by you?

24 Mr. Kelley. No, sir.

25 Senator Goldwater. Have they been reviewed by any of your

1 staff, to your knowledge?

2 Mr. Kelley. Senator, I think that they have been reviewed.
3 I know that at least some have reviewed it within the area of
4 this particular section. There has been no review of them
5 since I came to the FBI, I can tell you that.

6 Senator Goldwater. Would these tapes be available to
7 the Committee if the Committee felt they would like to hear
8 them?

9 Mr. Kelley. This, Senator Goldwater, is a matter which is
10 of, as I said before, some delicacy, and there would have to
11 be a discussion of this in an executive session.

12 The Chairman. I might say in that connection that the
13 Committee staff gave some consideration to this matter and
14 decided that it would compound the original error for the
15 staff to review the tapes, because that would be a still
16 further invasion of privacy, and so the staff refrained from
17 insisting on obtaining the tapes, believing that it was
18 unnecessary, and quite possibly improper, in order to get at
19 what we needed to know about the King case.

20 So the staff did refrain, and for that reason the issue
21 never came to a head. I just wanted to lay that information
22 before the Senator.

23 Senator Goldwater. I realize that's a prerogative of
24 the staff, but it's also the prerogative of the Committee if,
25 and I'm not advocating it, if we wanted to hear them to

1 ourselves whether Mr. Hoover was off on a wild goose chase
2 or whether there was, in effect, some reason. Again, I am
3 not advocating it, I am merely asking a question. They would
4 be available if the Committee took a vote to hear them and
5 decided on it.

6 Mr. Kelley. I don't think it would be within my juris-
7 diction to respond to this, Senator. It would have to be the
8 Attorney General.

9 Senator Goldwater. I see.

10 Now, are these tapes and other products of surveillance
11 routinely retained even after an individual ceased to be a
12 target of inquiry?

13 Mr. Kelley. They are retained usually for ten years.

14 Senator Goldwater. Ten years.

15 Mr. Kelley. Yes, sir.

16 Senator Goldwater. What is the future value, if any,
17 to the Bureau of retaining such information?

18 Mr. Kelley. If there be guidelines that set out a
19 destruction or erasure, we will abide by it. We will, on those
20 occasions where we think that matters might come up within
21 that period of time which may need the retention of them, we
22 will express our opinion at that time, but other than that
23 we would be guided by guidelines.

24 Senator Goldwater. Is it your view that legitimate
25 law enforcement needs should outweigh privacy considerations

1 with respect to retention of such information, or do we need
 2 the clear guidelines on the destruction of these materials
 3 when the investigation purposes for which they were collected
 4 have been served?

5 Mr. Kelley. We feel that there should be a good close
 6 look at the retention of material, and we would of course like
 7 to have an input. But we welcome consideration of this.

8 Senator Goldwater. That is all I have, Mr. Chairman. Thank
 9 you very much.

10 The Chairman. Thank you, Senator.

11 Senator Mondale?

12 Senator Mondale. Mr. Director, it seems to me that the
 13 most crucial question before the Congress is to accept the
 14 invitation of the FBI to draw Congressionally imposed lines,
 15 limits of authority so the FBI will know clearly what you can
 16 and cannot do, so you will not be subject to later judgments,
 17 and the question is, where should that line be drawn?

18 As you know, in 1924 when the FBI was created, and
 19 Mr. Stone later became the Chief Justice, he drew the line at
 20 criminal law enforcement. He said that never again will we
 21 go beyond the authority imposed upon us to get into political
 22 ideas. We will stay in the area of law enforcement.

23 Would you not think it makes a good deal of sense to
 24 draw the guidelines in a way that your activities are
 25 restricted to the enforcement of the law, investigations of

1 crime, investigations of conspiracies to commit crime rather
2 than to leave this very difficult to define and control area
3 of political ideas?

4 Mr. Kelley. I don't know whether I understand your last
5 statement of involving the area of political ideas. I say that
6 I feel that certainly we should be vested and should continue
7 in the field of criminal investigations as an investigatory
8 objective. These are conclusions, of course, which are based
9 on statutes in the so-called security field, national or
10 foreign.

11 These are criminal violations. I feel that they should
12 be in tandem. I feel, having worked many years in this
13 atmosphere, that you have more ears and eyes and you have
14 more personnel working together, covering the same fields.
15 I do not think there should be a separation of the intelligence
16 matters, because it is a concomitant. It naturally flows
17 from the investigation of the security matters and the
18 criminal.

19 Senator Mondale. Mr. Kelley, what Mr. Stone said was
20 this, that the Bureau of investigation is not concerned
21 with political or other opinions of individuals. It is
22 concerned only with such conduct as is forbidden by the laws
23 of the United States. When the police system goes beyond
24 these limits, it is dangerous to proper administration of
25 justice and human liberty.

1 Do you object to that definition?

2 Mr. Kelley. I think that life has become much more
3 sophisticated and we have added to the so-called policeman's
4 area of concern some matters which were probably not as important
5 at that time. I think that the fact that the FBI has been in
6 touch with the security investigations and the gathering of
7 intelligence is something which has proved to be at times
8 troublesome and given us great concern, but it is a viable,
9 productive procedure.

10 I don't know what Mr. Stone was thinking of entirely
11 of this course, but I can tell you about the procedure today.

12 Senator Mondale. You see, I think you recognize, if
13 that further step is taken, as you're recommending here, that
14 at that point it becomes so difficult to guarantee, and in
15 fact, in my opinion, impossible to guarantee that we won't
16 see a recurrence of some of the abuses that we've seen in
17 the past, and I don't know how you establish any kind of
18 meaningful oversight on a function as nebulous as the one
19 you've just defined.

20 If the FBI possesses the authority to investigate
21 ideas that they consider to be threats to this nation's
22 security, particularly in the light of the record that we have
23 seen how that definition can be stretched to include practi-
24 cally everybody, including moderate civil rights leaders,
25 war dissenters and so on, how on earth can standards be developed

1 that would provide any basis for oversight?

2 How can you, from among other things, be protected from
3 criticism later on that you exceeded your authority or didn't
4 do something that some politician tried to pressure you into
5 doing?

6 Mr. Kelley. It might well be, Senator, that ten years
7 from now a Director of the FBI will be seated here and will be
8 criticized for doing that which today is construed as very
9 acceptable.

10 Senator Mondale. Correct. And I have great sympathy
11 for the predicament the FBI finds itself in.

12 Mr. Kelley. And the Director.

13 Senator Mondale. And the Director especially, and that is
14 why I think it's in the interest of the FBI to get these lines
15 as sharply defined as possible, so that when you are pressured
16 to do things, or when, after the fact, people with good 20/20
17 hindsight can criticize you or the Bureau, that you can say
18 well, here are the standards that you gave us, and they specific-
19 ally say this, and that is your answer. We have to live by
20 the law. If we don't define it specifically, it seems to me
21 that these excesses could reoccur, because I don't think it's
22 possible to define them, and the FBI is inevitably going to
23 be kicked back and forth, depending on personal notions of what
24 you should have done.

25 Don't you fear that?

1 Mr. Kelley. Not too much, Senator. I think we learned a
2 great lesson by virtue of Watergate, the revelations that have
3 come up as a result of this Committee's inquiries, the fact
4 that I think that we have a different type of spirit today
5 in the Bureau, the fact that, as I said before, you came in,
6 that I think the Bureau is a matchless organization, and they
7 are eager to do that which is vital and proper, and the fact
8 that we are getting a number of very fine young people in the
9 organization, people of the other ethnic backgrounds than we
10 had years ago. I think there is a greater understanding in
11 the Bureau today of what is the proper type of conduct.

12 We may not be able to project this on all occasions,
13 because we must equate this with the need and with our
14 experience, but if the precise guidelines be the goal, you're
15 going to have trouble. If, on the other hand, there be a
16 flexibility, I think that we can work very well within those
17 guidelines.

18 Senator Mondale. I think, as you know, I don't think
19 there is a better trained or higher professionally qualified
20 law enforcement organization in the world than the FBI. I
21 think we all agree it is superb. But the problem has been,
22 from time to time, that when you go beyond the area of
23 enforcing the law into the area of political ideas, that you
24 are subject to and in fact you leave the criminal field, you
25 get into politics. And that is where, it seems to me, that the

1 great controversy exists, and where you are almost inevitably
2 going to be subjected to fierce criticism in the future, no
3 matter how you do it. Once you get into politics, you get
4 into trouble.

5 Mr. Kelley. I agree to that, and I point out that in almost
6 every branch of the government and in every part, as a matter
7 of fact, every segment of our society, there are some who deviate
8 from the normal course. I feel that within the Bureau there is
9 less likelihood of this to happen, and I think that working
10 with you we can at least make some achievements that will be
11 significant.

12 Now, whether it be lasting, I don't think so, but I
13 think we've made a good start.

14 Senator Mondale. In your speech in Montreal on August
15 9th, you said we must be willing to surrender a small measure
16 of our liberties to preserve the great bulk of them.

17 Which liberties did you have in mind?

18 Mr. Kelley. Well, of course, this speech has been mis-
19 understood many, many times.

20 Senator Mondale. Well, I want you to have a chance to
21 clear it up.

22 Mr. Kelley. All that was intended here was a restatement
23 of the approach which the courts historically have used in
24 resolving most issues of Constitutional importance, and its
25 recognition that rights are not susceptible to absolute

1 protection. It's a matter of balance. Even in the Fourth
2 Amendment, for example, which protects the right of privacy, it
3 does not prohibit searches and seizures. I mention, it only
4 refers to those that are unreasonable.

5 I came from the police field. What is more restrictive
6 to more people than traffic regulation? But what would be
7 more chaotic is if you did not have traffic regulation. We
8 do have to , in order to live in the complexities and
9 intricacies of today's life, have to give up some of our
10 rights.

11 Some may construe this as an extravagant statement. If it
12 is so, I wish to say that I only was pointing out that there
13 has to be a balance.

14 Senator Mondale. So that when you say we have to give
15 up some liberties, or as you just said, some rights, what you
16 mean -- let me ask. Let me scratch that and ask again, you
17 have to give up some rights. Which rights would you have us
18 give up?

19 Mr. Kelly. Well, under the Fourth Amendment you would
20 have the right for search and seizure.

21 Senator Mondale. You wouldn't give up the Fourth Amend-
22 ment right.

23 Mr. Kelley. Oh, no not the right.

24 Senator Mondale. What right do you have in mind?

25 Mr. Kelley. The right to be free from search and seizure.

1 Senator Mondale. There's no such right in the Consti-
2 tution. You can have such seizures, but they must be reasonable,
3 under court warrant.

4 Did you mean to go beyond that?

5 Mr. Kelley. That's right.

6 Senator Mondale. That you should be able to go beyond
7 that?

8 Mr. Kelley. No, no. I do not mean that we should ever
9 go beyond a Constitutional right guarantee.

10 Senator Mondale. Well, would you say, Mr. Kelley, that
11 that sentence might have been inartful in your speech?

12 Mr. Kelley. I said that if it was misunderstood, I
13 made a mistake, because I should never make a statement which
14 yes, it was inartful.

15 Senator Mondale. I think I know about your record in
16 law enforcement well enough to tell you that I think you were
17 saying something different, that it was taken to mean something
18 different than I think you intended.

19 What you are saying is that in the exercise of your law
20 enforcement powers, the rights of individuals is determined
21 by the laws and the courts, but the courts, in the handling
22 of those issues, have to balance rights and other values.

23 That's what you're essentially saying, is that correct?

24 Mr. Kelley. Senator, I ought to have you write my
25 speeches so that I don't have any misunderstandings. I didn't

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understand that to be at the time anything that was unusual.

I have to admit that maybe I made a mistake.

Senator Mondale. What you are saying in effect is that in effect, the rights of the American people can be determined not by the Director of the FBI but by the courts and by the law.

You meant that.

Mr. Kelley. Indeed, yes, sir.

Senator Mondale. All right.

Thank you.

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1 The Chairman. Senator Hart.
2 Senator of Colorado. Mr. Kelley, in response to
3 a question by Senaotr Mondale, one of his first questions about
4 laying down guidelines, it seems to me what you were saying was
5 we could work together. That is to say the Bureau and the
6 Congress, lay down guidelines that would not unreasonably
7 hamper you from investigations of crime control in the
8 country.

9 But I think implicit in his question was also an area
10 that you didn't respond to, and that is how do you, what kind
11 of guidelines do you lay down to protect you and the Bureau
12 from political pressure, the misuse of the Bureau by political
13 figures, particularly in the White House?

14 And we've had indications that at least two of your
15 predecessors, if not more, obviously were corrupted and Mr.
16 Gray was under great pressure from the White House to use
17 the facilities of the Bureau and their capabilities to accomplish
18 some plititcal end.

19 Well, it seems to me you were arguing in favor of fewer
20 restrictions so you could get on with your job, but that is
21 not what Senator Mondale and the rest of us are interested in.

22 What kind of restrictions can we lay down to protect you
23 from political pressures? I'd be interested in that sign of the
24 coin, if you would.

25 Mr. Kelley. I would welcome any guidelines which would

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1 protect me or any successor from this type of thing. I think
2 that would be splendid. I have not reviewed the guidelines
3 as prepared to the present date by the Department. It might
4 be that they are well defined in there. But I welcome any
5 consideration of such directives.

6 Senator Hart of Colorado. Do you think this is a problem?
7 Mr. Kelley. No, sir, not with me.

8 Senator Hart of Colorado. Do you think that it has been
9 a problem for the people that preceded you?

10 Mr. Kelley. I think so.

11 Senator Hart of Colorado. And that's a problem the
12 Congress ought to address?

13 Mr. Kelley. I think so.

14 Senator Hart of Colorado. The Committee received a
15 letter from the Department of Justice a couple of days, the
16 Assistant Attorney General asking our cooperation in carrying
17 out the investigation or their efforts to review the investi-
18 gation conducted by the FBI into the death of Martin Luther
19 King, Jr., in order to determine whether that investigation
20 should be re-opened. They asked our cooperation, they asked
21 for our transcripts, the testimony before the Committee, all
22 material provided to the Committee by the FBI which relates
23 to Dr. King and the Southern Christian Leadership Conference.

24 I guess my question is this: Why is the Justice Depart-
25 ment asking this Committee for FBI files?

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1 Mr. Kelley. I don't think they're asking for files.
2 I think they're asking for what testimony was given by
3 witnesses whose testimony has not been given up. I don't know.

4 Senator Hart of Colorado. I'll quote it. "And all
5 material provided to the Committee by the FBI which relates
6 to Dr. King and the Southern Christian Leadership Conference."

7 I repeat the question. Why is the Justice Department
8 asking this Committee for material provided to us by the
9 FBI?

10 Mr. Kelley. Frankly, I don't know. Do you mind if I
11 just ask --

12 (Pause)

13 Mr. Kelley. I am informed, and I knew this one.
14 Everything that was sent to you was sent through them. Did
15 they have a copy also? Yes, they had a retained copy. I
16 don't know why.

17 Senator Hart of Colorado. So there's nothing you
18 provided us that's not available to the Justice Department?

19 Mr. Kelley. That's right.

20 Senator Hart of Colorado. And you can't account for why
21 an official of the Justice Department would ask this Committee
22 for your records?

23 Mr. Kelley. No, sir.

24 Senator Hart of Colorado. You released a statement on
25 November the 18th of '74 regarding the FBI's counter-intelligence

1 program and you said you made a detailed study of COINTELPRO
2 activities and reached the following conclusions, and I quote:

3 "The purpose of these counter-intelligence programs was
4 to prevent dangerously and potentially deadly acts against
5 individuals, organizations and institutions both public
6 and private across the United States."

7 Now we had an FBI informant in the other day before this
8 Committee and he stated he told the FBI on a number of
9 occasions he planned violent acts against black people in
10 groups. And yet, he said few, if any, instances in which the
11 FBI actually prevented violence from taking place.

12 How does his testimony square with your statement that
13 I have quoted?

14 Mr. Kelley. It doesn't, and I don't know if any of
15 his statements contrary to what we have said is the truth.
16 We don't subscribe to what he said. We have checked into it
17 and we know of no instances where, for example, 15 minutes
18 and that type of thing has been substantiated.

19 Senator Hart of Colorado. You're saying the testimony
20 he gave us under oath was not accurate?

21 Mr. Kelley. Right.

22 Senator Hart of Colorado. You also said in that statement,
23 and I quote: "I want to assure you that Director Hoover did
24 not conceal from superior authorities the fact that the FBI
25 was engaged in neutralizing and disruptive tactics against

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1 revolutionary and violence-prone groups.

2 Now the Committee has received testimony that the New
3 Left COINTELPRO programs was not in fact told to higher
4 authorities, the Attorney General and Congress.

5 Do you have any information in this regard?

6 I know in that statement you cite onw or two instances,
7 but in terms of the bulk of COINTEL programs, the record
8 seems to date at least to be clear that there was not systematic
9 information flowing upward through the chain of command to
10 Director Hoover's superiors?

11 Mr. Kelley: May I ask that I be given the opportunity
12 to substantiate that with documentation?

13 Senator Hart of Colorado. Sure.

14 Mr. Kelley: Or respond to it.

15 Senator Hart of Colorado. Dorector Kelley, just in
16 passing, do you agree with the statement made by President
17 Ford that those responsible for harassing and trying to destroy
18 Dr. King should be brought to justice.

19 Mr. Kelley. Those who directly responsible and upon whcse orders
20 the activities were taken responsible. I don't know if he intended to say
21 that, but if he did not, I would say that it would be more proper. Insofar
22 as my own opinion is concerned, that it be centered on those who said
23 to do it and those who are responsible.

24 I took the responsibility for any such program and I
25 don't expect that those under me would be not acting in

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1 accordance with what they think is proper and may even have
2 some reservation, but they do it on my orders. I accept that
3 responsibility.

4 I think that it should rest on those who instructed that
5 that be done.

6 Senator Hart of Colorado. But you agree that the people
7 who give the orders should be brought to justice.

8 Mr. Kelley. I do.

9 The Chairman. Aren't they all dead?

10 Mr. Kelley. No.

11 The Chairman. Not quite?

12 Mr. Kelley. Not quite.

13 Senator Hart of Colorado. That's all, Mr. Chairman.

14 The Chairman. Thank you, Senator.

15 Director Kelley, in the Committee's review of the
16 COINTELPRO program and other political involvements of the
17 FBI, it seems to me that we have encountered two or three
18 basic questions.

19 Since the investigation is over insofar as the Committee
20 is concerned, we're now turning our attention to remedies for
21 the future, what I would think would be our constructive
22 legislative work, it is very important that we focus on what
23 we learned in that investigation.

24 And one thing that we have learned is that Presidents of
25 the United States have from time to time ordered the FBI to

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1 obtain for them certain kinds of information by exercising the
2 necessary surveillance to obtain and to have a purely
3 political character, that they simply wanted to have for their
4 own personal purposes.

5 I think that you would agree that that is not a proper
6 function of the FBI, and you agree.

7 Yet it's awfully difficult for anyone in the FBI,
8 including the Director, to turn down a President of the United
9 States if he receives a direct order from the President. It
10 is always possible, of course, to say no, and if you insist,
11 I will resign. But that puts a very hard burden on any man
12 serving in your position, particularly if the President puts
13 a good face on the request and makes it sound plausible or
14 even invents some excuse. It is always easy for him to say,
15 you know, I am considering Senator White for an important
16 position in my administration, and I need to know more about
17 his activities, particularly of late. I've had some cause
18 for concern and I want to be certain that there is nothing in
19 his record that would later embarrass me, and I just want you
20 to keep careful track of him and report to me on what he's
21 been doing lately.

22 It's difficult for you to say back to the President, Mr.
23 President, that's a very questionable activity for the FBI,
24 and I frankly don't believe that you've given me the real
25 reason why you want this man followed. I think his opposition

1 to your current policy is politically embarrassing to you and
2 you want to get something on him.

3 I mean, you know, the Director can hardly talk back that
4 way, and I'm wondering what we could do in the way of protecting
5 your office and the FBI from political exploitation in this
6 basic charter that we write.

7 Now, I want your suggestions, but let's begin with one
8 or two of mine. I would like your response.

9 If we were to write into the law that any order given you
10 either by the President or by the Attorney General should be
11 transmitted in writing and should clearly state the objective
12 and purpose of the request and that the FBI would maintain
13 those written orders and that furthermore they would be
14 available to any oversight committee of the Congress. If the
15 joint committee on intelligence is established, that committee
16 would have access to such a file.

17 So that the committee itself would be satisfied that
18 orders were not being given to the FBI that were improper or
19 unlawful.

20 What would you think of writing a provision of that kind
21 into a charter for the FBI?

22 Mr. Kelley. I would say writing into the law any order
23 issued by the President that is a request for action by the
24 Attorney General should be in writing, is certainly, in my
25 opinion, is a very plausible solution. I'm sure that in

1 contemplation of this there would be some that will say yes
2 or some that will say no, but I think we could define an
3 area where you are trying to cure the abuses and we could
4 do that.

5 Now as to the availability to any oversight committee
6 of Congress, I would say generally that I certainly would have
7 no objection to this, but I again, there may be some request
8 for something of high confidentiality that the President might
9 put in writing such as some national or foreign security
10 matter.

11 I would like to have such a consideration be given a
12 great deal of thought and that the oversight committee review
13 be conditioned with that possibility. I don't think it would
14 present a problem.

15 I have said previously that I feel I can discuss every-
16 thing except the identity of the informants to the oversight
17 committee. I welcome that.

18 The Chairman. Well, that has been of course the way we
19 proceeded with this Committee. It has worked pretty well,
20 I think.

21 Now Senator Goldwater brought up a question on the
22 Martin Luther King tapes. I would like to pursue that question.

23 If these tapes do not contain any evidence that needs
24 to be preserved for ongoing criminal investigations, and since
25 Dr. King has long since been violently removed from the scene,

10 1 why are they preserved? Why aren't they simply destroyed?
2 Is there a problem that we can help through new law to enable
3 the FBI to remove from its files so much of this information
4 that it has collected that it is no longer needed or may never
5 have connected the person with any criminal activity? And
6 yet, all of that information just stays there in the files
7 year after year.

8 What can we do? How can a law be changed? If that's
9 not the problem, then what is? Why are these tapes still down
10 there at the FBI?

11 Mr. Kelley. Well, of course, we do have the rule that
12 they are maintained ten years. Now why the rule is your
13 question and why right now are they maintained? Since we
14 do maintain everything since the inquiry has started and until
15 that's lifted, we can't destroy anything.

16 I would say that this is a proper area for guidelines
17 or legislation and again, as I have said, there should be
18 some flexibility and I know that's a broad statement but there
19 might be some areas wherein that the subject of the investigation
20 himself may want them retained because it shows his innocence.

21 I think you have to deliberate this very carefully, but
22 it can be done and we are willing to be guided by those
23 rules.

24 The Chairman. Let me ask you this. The FBI is conducting
25 thousands of investigations every year on possible appointees

1 to Federal positions. As a matter of fact, the only time I
2 ever see an FBI agent is when he comes around and flashes his
3 badge and asks me a question or two about what I know of Mr.
4 so and so, who's being considered for an executive office.
5 And we have a very brief conversation in which I tell him that
6 as far as I know, he's a loyal and patriotic citizen, and that
7 is about the extent of it.

8 Then when this file is completed and the person involved
9 is either appointed or not appointed, what happens to that
10 file? I know it's full of all kinds of gossip because it is
11 in the nature of the investigation to go out to his old
12 neighborhoods and talk to everybody who might have known him.

13 What happens to the file? Is that just retained forever?

14 Mr. Kelley. We have some capability of destroying some
15 files and they are rather lengthy insofar as retention. We
16 have some archival rules which govern the retention of material
17 and is developed in cases involving certain members of the
18 Executive Branch of the government.

19 I see no reason why this would not be a proper area
20 for consideration of legislation.

21 The Chairman. Can you give me any idea of how much --
22 do you have records that would tell us how much time and money
23 is being spent by the FBI just in conducting these thousands
24 of routine investigations on possible Presidential appointments
25 to Federal offices?

1 Mr. Kelley. I feel confident we can get it. I do not
2 have it now, but if you would like to have the annual cost
3 for the investigation of Federal appointees --

4 The Chairman. Yes. Plus, you know, plus any other
5 information that would indicate to us what proportion of the
6 time and effort of the FBI was absorbed in this kind of
7 activity.

8 Mr. Kelley. I can tell you it is relatively small, but
9 I can get you, I think, the exact amount of time and the
10 approximate expense.

11 The Chairman. I wish you would do that because this is
12 a matter we need more information about. And when you supply
13 that data to the Committee, would you also supply the number
14 of such investigations each year?

15 You know, I don't expect you to go back 20 or 25 years,
16 but give us a good idea of the last few years. For example,
17 enough to give us an idea of how much time and how broad the
18 reach of these investigations may be.

19 Mr. Kelley. Through '70?

20 The Chairman. That would be sufficient, I would think.

21 The other matter that is connected to this same subject
22 that I would like your best judgment on is whether these
23 investigations could not be limited to offices of sensitivity.
24 That is to say where legitimate national security interest might
25 be involved so that there is a reason to make a close check on

13 1 past associations, attitudes and expressions of belief.

2 I have often wondered whether we couldn't eliminate
3 routine Federal offices that are not particularly sensitive
4 in the national security sense from the reach of these FBI
5 checks.

6 And so when you respond to the series of questions, I
7 wish you would include the offices that are now covered by
8 such checks and give us an idea of how far down into the
9 Federal bureaucracy this extends.

10 Could you do that?

11 Mr. Kelley. Yes, sir.

12 The Chairman. Fine.

13 Now there is a vote. The vote always comes just at
14 the wrong time, but Mr. Schwarz wants to ask you some additional
15 questions for the record, and there may be other questions,
16 too that would be posed by the staff, after which I will ask
17 Mr. Schwarz to adjourn the hearings. It looks like we're going
18 to be tied up on the floor with votes.

19 But before I leave I want to thank you for your testimony,
20 Mr. Kelley, and to express my appreciation to you for the
21 way you have cooperated with the Committee in the course of
22 its investigation during the past months.

23 Mr. Kelley. Thank you.

24 The Chairman. And I hope, as you do, that as a result
25 of the work of the Committee we can write a generic law for

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the FBI that will help to remedy many of the problems we'll encounter in the future.

Thank you.

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1 Mr. Schwarz. Mr. Kelley, I'll try to be very brief.

2 On page 5 of your statement --

3 Mr. Kelley. What?

4 Mr. Schwarz. On page 5 of your statement, the third
5 full paragraph, you said the following, and I would like then
6 to question about what you said. "We must recognize that
7 situations have occurred in the past and will arise in the
8 future where the Government may well be expected to depart from
9 its traditional role, in the FBI's case, as an investigative
10 and intelligence-gathering agency, and take affirmative steps
11 which are needed to meet an imminent threat to human life or
12 property."

13 Now, by that you mean to take what kind of steps in what
14 kind of situation?

15 And can you give some concrete examples under your general
16 principles statement?

17 Mr. Kelley. I think that Mr. Adams addressed himself to
18 that the other day, where you have an extremist who is an
19 employee at the waterworks, and he makes a statement that he's
20 going to do something which is devastating to the city, and you
21 have no way to attack this under the ordinary procedures, and
22 so therefore you must take some steps to meet that imminent
23 threat to human life or property.

24 Mr. Schwarz. So let us take that case as a test of the
25 principle. You are saying the extremist has said he is going

1 to do something to the waterworks, poison it or something, and
2 he is on the way down there with the poison in his car.

3 Is that the presumption?

4 Mr. Kelley. We hadn't gone that far, but all right, you
5 can extent it.

6 Mr. Schwarz. All right, now, in that case you have the
7 traditional law enforcement tool, which is the power of arrest.

8 Mr. Kelley. Not under probable cause where he has not
9 gone down there. The hypothetical we gave was one where he had
10 not taken any overt acts in perpetration of this.

11 Mr. Schwarz. Well, if he hasn't taken any overt acts,
12 are you then in what you would call in imminent threat of
13 human life or property?

14 Mr. Kelley. I think so.

15 Mr. Schwarz. How so? Unless he has taken an overt act
16 to buy the poison or to get in the car with the poison, there
17 is not by definition any threat to life or property.

18 Mr. Kelley. Mr. Schwarz, I've been around in this business
19 a long time. I've heard a number of threats which were issued,
20 and they thereafter materialized into actions. I don't think --
21 take these threats as being empty ones, because so many times
22 they have been acted upon.

23 I was criticized one time when there was a threat made to
24 kill me, and it was said later on, it's not rhetoric, it's
25 not rhetoric to me, because when they say they're going to

1 kill me, that just means one thing.

2 Mr. Schwarz. But I'm not disagreeing with you.

3 Mr. Kelley. But you are disagreeing with me. You're saying
4 on the basis of experience that you cannot detect a possible
5 threat. That's the whole area of concern that we have here, where
6 we don't lose the capability of doing something. We don't
7 say we should initiate ourselves. We say that we should go to
8 the Attorney General. We do not subscribe to the idea that
9 we should act independently because maybe we don't have the
10 judicial review, the capability of determining, but we do
11 think that we should report it and thereafter see what can
12 be done.

13 Mr. Schwarz. Well, have you changed in the course of
14 our discussion the standard on page 5.

15 On page 5 you're talking about an imminent threat.

16 Mr. Kelley. Yes.

17 Mr. Schwarz. And I hear you now as saying a possible
18 threat.

19 Mr. Kelley. An imminent possible threat.

20 Mr. Schwarz. An imminent possible threat. All right.

21 Now, would a fair standard for either action, other than
22 arrest, I don't know what you have in mind, but something to
23 prevent the person from carrying out his activities, other
24 than arrest, for instance, what is an example of what you have
25 in mind?

1 Mr. Kelley. Removing him from his position or whatever
2 is necessary in order to make it impossible or at least as
3 impossible as possible to perpetuate this thing.

4 Mr. Schwarz. You mean have him lose his job or --

5 Mr. Kelley. I don't know what it would be.

6 Mr. Schwarz. Isolate him in some fashion.

7 Mr. Kelley. In some fashion perhaps.

8 Mr. Schwarz. Now, for such activity and for opening
9 an investigation into a domestic group, could you live with
10 a standard which said you would have to have an immediate
11 threat that someone was likely to commit a serious federal
12 crime involving violence?

13 Mr. Kelley. I think that this thing could be worked out
14 so that there could be an adequate basis for an evaluation.

15 Mr. Schwarz. So those words, without trying to commit
16 you entirely to them, do not seem to you to depart far from
17 what you think would be an acceptable standard.

18 Mr. Kelley. Well, an imminent, immediate threat might
19 be, by virtue of the word "immediate" that he's going to
20 do it the next minute. In that case it may be necessary for
21 you to, not with the presence or the possibility, not able
22 to do anything except put him under arrest or anything.

23 Mr. Schwarz. Of course, of course.

24 And nobody would at all disagree with that kind of action.

25 Mr. Kelley. I don't think they would either.

1 Mr. Schwarz. But on the question, let's take the opening
2 of an investigation into a domestic group.

3 Is it basically consistent with practicality to make the
4 test immediate threat of a serious Federal crime involving
5 violence?

6 Mr. Kelley. To open a domestic security case.

7 Mr. Schwarz. Yes.

8 Mr. Kelley. It appears to me that this is a terrorist
9 activity, in effect. We certainly have terrorist activities
10 under our jurisdiction as a threat against the United States.

11 Mr. Schwarz. Now, are there other circumstances where
12 it is justifiable to open an investigation of the domestic
13 group where you do not have an immediate threat of serious
14 federal crime involving violence?

15 Mr. Kelley. Oh, I think there are other criteria, and
16 they have been well defined as to what is the possible
17 opening, the basis for a possible opening. We haven't been
18 discussing that, we have been discussing particular instances,
19 but there are other criteria that are used, yes.

20 Mr. Schwarz. What would the other criteria be?

21 Mr. Kelley. Well, the possible statutory violations
22 over which we have jurisdiction are, generally speaking, the
23 most used of the basis, and then you have, of course, some
24 intelligence investigations which should, of course, be of
25 short duration. If there is no showing of this into action

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1 or a viable intent.

2 Mr. Schwarz. So that's what you're looking for in the
3 intelligence investigation?

4 Mr. Kelley. By intelligence investigation, yes, you
5 are looking to prevent.

6 Mr. Schwarz. And what you are looking to prevent, and
7 what you're looking to find is a likelihood of action combined
8 with an intent to take an issue?

9 Mr. Kelley. And the capability.

10 Mr. Schwarz. And the capability.

11 All right. I just have two other lines, Mr. Kelley, and
12 I appreciate very much your time.

13 Mr. Kelley. That's all right.

14 Mr. Schwarz. Assuming a legitimate investigation has
15 been started into a domestic intelligence matter, is it legiti-
16 mate for the FBI, in addition to obtaining information that
17 relates to what we've just been talking about, the likelihood
18 of violent action, is it also legitimate for the FBI to
19 collect, A, retain, B, disseminate, C, information concerning
20 let's say the sex life of a person on the one hand, and the
21 political views of a person on the other?

22 Mr. Kelley. I think, Mr. Schwarz, that this is just what
23 many of our problems and perhaps the guidelines can define
24 this type of thing. I think probably you will agree that
25 within the determination of the deviations possibly of sex

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1 lives, there might be something that is relevant. I would say
2 ordinarily it's not. And so far as political views, yes, I
3 think that this could be, if he is espousing some cause or
4 some view that advocates violence or the overthrow of the
5 government.

6 Mr. Schwarz. Would those be the two limits on political
7 views?

8 Mr. Kelley. What?

9 Mr. Schwarz. Would those be the only limits on political
10 views that you think are okay to collect, advocants of violence
11 or advocants of overthrow?

12 Mr. Kelley. Well, I don't think because he's a Democrat
13 or a Republican it would be anything that would be damaging,
14 but it might on the other hand counter the report that he's
15 a member of some other organization.

16 Mr. Schwarz. Is the standard you used on collection of
17 sex life information, might be relevant? I suppose anything
18 might be relevant, but don't you think that as a function of
19 balance, it has to have a high degree of relevance before it's
20 justifiable to collect that kind of information on American
21 citizens who are not suspected of having committed crimes?

22 Mr. Kelley. Insofar as doing it presently, it has been
23 included in some reports as a result of the requirement that
24 that is what is required by our rules, that when a person
25 reports something to us, we do a report of the complaint. Insofar

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1 as a determination by guidelines that might be prepared later,
2 I think that we can certainly deliberate on this to see whether
3 or not this is something we should retain, and we would not
4 object to anything reasonable in that regard.

5 Mr. Schwarz. I just have one final question.

6 Taking the current manual and trying to understand its
7 applicability laid against the facts in the Martin Luther King
8 case, under Section 87 there is a -- permission is granted to
9 open investigations of the infiltration of non-subversive
10 groups, and the first sentence reads: "When information is
11 received indicating that a subversive group is seeking to
12 systematically infiltrate and control a non-subversive group
13 or organization, an investigation can be opened."

14 Now, I take it that is the same standard that was used
15 in opening the investigation of the Southern Christian Leadership
16 Conference in the 1960s, so that investigation could still be
17 open today under the FBI manual, the current FBI manual.

18 Mr. Kelley. We are interested in the infiltration of
19 clearly subversive groups into non-subversive groups inasmuch
20 as this is a ploy that is used many times, and having infil-
21 trated, they then get control, and they have a self-laundered
22 organization which they can use, and not, certainly, to the
23 benefit of the country.

24 Mr. Schwarz. But is the answer to my question yes, that
25 under that standard, the SCLC investigation could still be

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1 opened today?

2 Mr. Kelley. I think so.

3 Mr. Schwarz. All right, then, just one final question.

4 Do you agree that special care needs to be taken not only
5 of the standards for initially opening an investigation of a
6 group, but perhaps extra care needs to be taken when the investi-
7 gation goes beyond the initial target group to individuals
8 or people who come into contact with it?

9 Mr. Kelley. I don't know if I agree with that entirely. If
10 you mean that we go into the non-subversive group, that we
11 then investigate people in that non-subversive group, not the
12 infiltrators, but the non, that we conduct a lengthy investigation
13 of them without any basis for doing so other than that they
14 are in an infiltrated group, I would likely have said -- but
15 off the top of my head I would say probably that's not necessary.

16 Mr. Schwarz. Thank you very much.

17 Mr. Smothers. Just a couple of very brief lines of
18 inquiry, Mr. Kelley.

19 I think that the questions of the Chief Counsel was
20 raising is one that goes further into your statement, when you
21 talk about the difficulty of setting out the line between
22 intelligence gathering and law enforcement kinds of functions.
23 Nevertheless, though, I think that you have made an effort,
24 indeed, the Bureau's organizational scheme reflects an effort
25 to distinguish some of this has been made.

1 Putting aside for one moment the counterespionage
2 effort, and looking strictly at what we have been calling the
3 Domestic Intelligence, is it your view that the retention of
4 this function in the Bureau is critical to the Bureau's
5 law enforcement position?

6 Mr. Kelley. My personal opinion is that the Bureau does
7 a splendid job in this area. I feel further that the background
8 of criminal investigatory activities and experiences which
9 all counterintelligence people have is very helpful. It is help-
10 ful not only in gathering knowledge and experience, it also
11 enters into this field, a person with a broad understanding
12 of the rights and privileges, and you don't have so much that
13 spy type, that cloak and dagger, that very, very secret type
14 of an operation.

15 I subscribe to the present system heartily.

16 Mr. Smothers. Would it be of assistance to your mission
17 if within the Bureau guidelines were established that
18 effectively limited access or controlled dissemination of
19 the intelligence product? In other words, if we had a
20 situation where the intelligence product is critical to assist
21 the law enforcement effort, I don't think there's any question
22 that there should be access to it.

23 Isn't our problem one of controlling the use of that
24 intelligence product and preventing the kind of murky crossing
25 of lines there with the information legitimately needed for

1 law enforcement?

2 Mr. Kelley. There is always a problem when there is wide
3 dissemination, because that just numerically increases the
4 possibility of misuse, abuse or slander, libel, or anything
5 of that matter, and I think that it would be well worthwhile
6 to review the dissemination rules to make them subject to
7 close guidance in the guidelines that we're speaking of.

8 Mr. Smothers. Let me just raise one final area with you.

9 We talked a little bit about, or a question was raised about
10 the investigation now being conducted by the Justice Department
11 regarding the improper actions on the COINTELPRO, and the
12 King case in particular.

13 As we look at allegations of impropriety by your personnel,
14 I think it would be helpful for our record here to have some
15 insight into the procedure the Bureau would normally follow.

16 What does the Bureau do when you get an allegation that
17 an agent or administrative official in the Bureau has behaved
18 improperly?

19 Is an investigation conducted internally, or is it
20 routinely referred to the Justice Department?

21 Mr. Kelley. There may be a revision in this type of
22 procedure as a result of the establishment of the Council for
23 Professional Responsibility. At present it would be in the
24 great majority of the cases turned over to our Investigative
25 Division for investigation. There might, on some unusual

1 occasion, be a designation of a special task force made up,
2 perhaps, of division heads. That is most unlikely, but it is
3 handled internally at present.

4 Mr. Smothers. Would these internal determinations be
5 reviewed by Justice, or do you think that is a necessary
6 step?

7 I guess what we are searching for here is, first of all,
8 I think you answered that, well, to what extent does the
9 Bureau police itself, and then secondly, is the Department of
10 Justice involved in the police determinations?

11 For instance, what if the Attorney General disagreed with
12 the assertion that only the higher up officials who ordered
13 the action against King should be the subject of investigation
14 and maybe prosecution?

15 How does the interplay work there between you and Justice?

16 Mr. Kelley. We do report to the Attorney General those
17 activities which we construe as improper or possibly illegal.
18 There is a possibility that the Department, having been advised
19 of the situation, might take it on their own to do their own
20 investigating, and this is something that we feel is a
21 decision to be made only rather rarely, because we feel we
22 have within our own organization sufficient capability to
23 handle that. But we do not protest it. It is handled
24 independently of us.

25 Mr. Smothers. Thank you.

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That is all I have.

Mr. Schwarz. Thank you.

(Whereupon, at 12:12 o'clock p.m., the Committee recessed subject to the call of the Chair.)

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RE: 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

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Remarks:

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

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

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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.

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

25 Gentlemen, will you all rise and be sworn.

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

4 Mr. Adams. I do.

5 Mr. Wannall. I do.

6 Mr. Mintz. I do.

7 Mr. Deegan. I do.

8 Mr. Schackelford. I do.

9 Mr. Newman. I do.

10 Mr. Grigalus. I do.

11 Mr. Kelley. I do.

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

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

18 (A brief recess was taken.)

19 Senator Tower. The Committee will come to order.

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

22 Now, will you provide the Committee with some information
23 on the criteria for the selection of informants?
24
25

1 TESTIMONY OF W. RAYMOND WANNALL, ASSISTANT DIRECTOR,
2 INTELLIGENCE DIVISION, FEDERAL BUREAU OF INVESTIGATION
3 ACCOMPANIED BY: JAMES B. ADAMS, ASSISTANT TO THE
4 DIRECTOR-DEPUTY ASSOCIATE DIRECTOR (INVESTIGATION);
5 JOHN A. MINTZ, ASSISTANT DIRECTOR, LEGAL COUNSEL
6 DIVISION; JOSEPH G. DEEGAN, SECTION CHIEF; ROBERT L.
7 SCHACKELFORD, SECTION CHIEF; HOMER A. NEWMAN, JR.,
8 ASSISTANT TO SECTION CHIEF; EDWARD P. GRIGALUS, UNIT
9 CHIEF; AND JOSEPH G. KELLEY, ASSISTANT SECTION CHIEF,
10 CIVIL RIGHTS SECTION, GENERAL INVESTIGATIVE DIVISION
11 Mr. Wannall. Mr. Chairman, that is not FBI data that you

12 have quoted. That was prepared by the General Accounting
13 Office.

14 Senator Tower. That is GAO.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

smn 23

1 Veterans Against the War?

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

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

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

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

22 Senator Tower. Mr. Hart?

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

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1 statute.

2 Mr. Adams. I agree, Senator.

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

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

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

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

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

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

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

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

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

25 Mr. Adams. This is a problem.

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

3 Mr. Adams. Absolutely.

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

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

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

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

1 the meeting.

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

5 Mr. Adams. No, sir.

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

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

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

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

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

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

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

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

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

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

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

10 How do we get into all of that?

11 Mr. Adams. Well --

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

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

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

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

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

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

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

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

22 Mr. Adams. That's right.

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

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

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

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

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

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

1 Bureau files.

2 Is this what we want?

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

4 He is particular knowledgeable as to this operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 discontinued any further interest.

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

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

14 Senator Mondale, pursue that question.

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

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

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

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

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

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

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

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

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

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

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

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

1 warrant. It seems to beg the question.

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

14 End Tape 6 This is an option available to Congress.

15 Begin Tape 7 Senator Tower. Senator Schweiker.

16 Senator Schweiker. Thank you very much.

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

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

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

