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TOP SECRET

The United States Senate

Report of Proceedings

INVENTORIED:
MAR 15 1977

BY *[Signature]*

Hearing held before

Senate Select Committee to Study Governmental
Operations With Respect to Intelligence Activities

Friday, May 9, 1975

Washington, D. C.

(Stenotype Tape and Waste turned over
to the Committee for destruction)

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TOP SECRET

COMMITTEE BUSINESS

Friday, May 9, 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 10:35 o'clock p.m., in Room 457, the Russell Office Building, Senator Frank Church (Chairman) presiding.

Present: Senators Church (presiding), Huddleston, Morgan, Hart of Colorado, Tower, Goldwater and Schweiker.

Also present: William Miller, Staff Director, F.A.O. Schwarz, III, Chief Counsel; Curtis R. Smothers, Minority Counsel; Charles Kirbow, Charles Lombard, and Patrick Shea, Professional Staff Members.

Chairman Church. Ver well, the Committee will come to order.

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Chairman Church. The first item on the agenda today relates to the question of subpoenas.

First of all, I would like to call the Committee's attention to Rule 5 dealing with subpoenas.

"As much as for attendance of witnesses or the production of memoranda and documents, records or any other material may be issued by the Chairman or any other member designated by him after consultation with the Vice Chairman. It may be served by any person designated by the Chairman or member."

At the first meeting of this Committee our records show that we did discuss the subpoena question and I indicated then that any time that it became necessary to consider the use of subpoenas I would indicate generally to the Committee the field of inquiry for which the subpoenas might be required before issuing them, though the Rule gives me the authority to do so after consultation with the Ranging Member. Now we have reached that point where it may be necessary for subpoenas to be issued in connection with the following investigations that are now underway.

First off the Huston Plan where we will commence taking depositions requiring testimony under oath, detailed questioning in this connection. I believe the plan is to start with Huston himself and others. It is very likely in order to get a full disclosure from these witnesses, some of whom may be hostile, subpoenas may be required.

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1 Senator Tower. Do you plan first to ask them to come to
2 testify under oath, then if they refuse only then subpoena
3 them?

4 Chairman Church. That is correct.

5 Senator Tower. I think that is the best way.

6 Chairman Church. I do, too. We will not use subpoenas
7 unless it becomes necessary, but I wanted the Committee to know
8 that we are now at that point and if it becomes necessary I
9 will issue subpoenas in connection with the Huston Plan.

10 In connection with the Post Office mail opening, here
11 again we have a situation where some of the Post Office
12 employees, I understand, may have violated criminal laws and
13 may be subject to possible prosecution. For that reason, in
14 order to get the facts concerning this case, it may be neces-
15 sary to use subpoenas to bring them in and testify.

16 In the Martin Luther King case, we have a similar circum-
17 stance. Would you care to --

18 Mr. Schwarz. Martin Luther King is an illustration of
19 where a man who we have already interviewed, from whom we now
20 need sworn testimony, has indicated that he would like to have
21 a subpoena to bring him in. That is going to be another
22 typical situation, people who are willing to come but would
23 prefer to have a subpoena.

24 Senator Goldwater. Let me ask a question of the Martin
25 Luther King incident.

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What does that involve?

Mr. Schwarz. It was the subject of a good deal of questioning of Mr. Katzenbach on Wednesday. It involves initially a tap on his phone, then a bug, allegedly, in certain hotels and residences in which he was staying. Then a bug at the Atlantic City Democratic Convention in 1964, which may involve problems of not only his conversations with people involved in that convention but private conversations.

And finally, Senator, it involves the dissemination of the material that was obtained, much of which dealt with his personal life. And the allegation has been made that it was shown to reporters and other people.

Those four areas.

Senator Goldwater. Could I say something off the record?

(Discussion off the record.)

Senator Morgan. I say this for the record.

First of all, let me say I agree with Senator Goldwater with regard to the use of any derogatory information. But from the testimony of Mr. Katzenbach earlier this week, I frankly was disturbed at the former Attorney General of the United States admitting that he heard reports that the tapes were possessed by the Federal Bureau of Investigation and were being made for members of the press, and that he made an inquiry as to whether or not they were being made available to the press but he did not pursue it to find out why the FBI

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1 had these tapes or for what purpose or whether they did have
 2 them nor not. And so that we will not forget to pursue that
 3 matter further. I wanted to say this for the record: That
 4 I think it should be pursued. Martin Luther King was a
 5 controversial leader but there are a lot of controversial
 6 leaders in this country, and unless they had some reason to
 7 have these tapes, and I think that is the kind of thing that
 8 this Committee ought to be concerned about, and I wanted to
 9 pursue it with Mr. Katzenbach last week but I thought maybe we
 10 ought to go gently until we got all of the information we
 11 could and then come back to the more difficult parts.

12 Senator Tower. My view is I don't care to listen to a
 13 tape with derogatory information or material on Martin Luther
 14 King, on his personal life or anything else. If it involved
 15 some subversive activity or something like that it would be
 16 a different story, but I think what we need to establish is
 17 whether or not this was illegally done and why and by whom, and
 18 all this sort of thing. That is what we want, not the tapes.

19 Chairman Church. I am in agreement with what Senator
 20 Goldwater has said and what Senator Morgan has said. The idea
 21 is to find the illegalities of the procedure.

22 All right. With that in mind, then, I would like to
 23 proceed if necessary with subpoenas to get at the procedures
 24 where use in any case which is a matter of our interest.

25 The next case for which subpoenas may be necessary comes

1 by the intriguing name "Tommy Traveler." I would like our
2 Counsel, Fritz Swarz, to tell us about that.

3 Mr. Swarz. This is an issue really under the agent
4 provocateur question. Mr. Tommy Traveler, who has another
5 name I don't know, was a student at a college in the Midwest
6 who set up a lot of campus trouble in the late 1970's. It then
7 developed that he was in fact an informer for the FBI. This is
8 something which is not down there and came to our attention.

9 Chairman Church. Just added to my agenda, I am sorry.

10 Mr. Swarz. He was involved, allegedly involved in campus
11 activities. It has since been determined that he was connected
12 with the FBI. There is a story of an initial denial, then an
13 ultimate admission. He is somewhere in Pennsylvania now and
14 is a person we know will not talk to us without a subpoena,
15 and the thought here would be, Senator Tower, this would be
16 a little bit of the footnote on the point you made that we
17 would have in hand a subpoena, go to him and ask him if he
18 would talk with us, if he says no, as is the strong information,
19 then someone would be able to give him a subpoena rather than
20 having to take the money and take two trips to Pennsylvania
21 and find him.

22 Senator Hart Of Colorado. Mr. Chairman, is the suggestion
23 of the staff that that is an isolated phenomena or that Tommy
24 the Traveler represents in effect a case study of a common
25 practice?

1 Chairman Church. We are endeavoring to find that out --
2 a starting place with Tommy the Traveler. I believe that is
3 the approach.

4 Senator Hart of Colorado. If it appears on preliminary
5 investigations an isolated phenomena, is it the thought of the
6 staff we should pursue it anyway?

7 Senator Schweiker. Let me say I don't know it is an
8 isolated case. We have a case in Philadelphia where the FBI
9 informant led the draft card raids and burned the draft cards.

10 Senator Hart of Colorado. Are we pursuing this fellow
11 because he is an interesting fellow or represents a tendency
12 or practice?

13 Mr. Miller. A generalization.

14 Chairman Church. That is what we are trying to see, how
15 widespread this practice may be.

16 Senator Goldwater. We have a case out in Arizona where
17 a professor at Arizona State was dismissed and now he charges
18 that the FBI is responsible. I would like to get into that.

19 Senator Schweiker. I would like to have the Philadelphia
20 case in there too. I would like to know who led the raid.

21 Chairman Church. I wish the Senators would often speak
22 up this way so that the staff could move in the right direction.
23 I think these are cases that should be investigated to determine
24 how widespread this practice has become.

25 Senator Schweiker. It incidentally was Camden, across from

1 the City of Philadelphia.

2 Chairman Church. Yes.

3 Senator Schweiker. The same thing.

4 Chairman Church. The final item on this agenda today of
5 subpoenas has to do with an organization that was apparently
6 set up by the FBI under the guise of being a subversive
7 organization called "Red Flag". What its purposes were are
8 not entirely clear, though apparently it was like fly paper,
9 to attract possible subversives. It would be an exercise or
10 possible exercise in entrapment. We don't know but the staff
11 thinks it needs to be looked into more carefully. What is
12 known is that the person who was engaged, allegedly engaged by
13 the FBI to set up this device, now has a post office box in
14 Texas. The staff has tracked down the post office box but in
15 order to find out where the person himself lives it is
16 necessary to serve a subpoena on the local post office and then
17 we can secure that information.

18 So this is just a technical method of proceeding to find
19 the person himself.

20 Senator Tower. Where is this in Texas?

21 Chairman Church. Stafford, Texas.

22 Mr. Schwarz. Our shot on this subpoena, perhaps we could
23 get through the back door from the post office, but we ought
24 to be very vigorous using proper procedures ourselves to avoid
25 doing the things that some other have done.

1 Senator Tower. Let's don't let us do something illegal.

2 Chairman Church. That is right. And you must also be
3 mindful of that -- we always move within the proper procedures.

4 May I have a motion then. I don't need a motion really
5 under the rules, I have advised the Committee. If there is no
6 objection on the part of any member of the Committee we will
7 proceed to issue subpoenas where necessary in connection with
8 these investigations.

9 Senator Tower. Huston was before the Armed Services
10 Committee last year in connection with the Huston Plan.

11 Chairman Church. I think we should report to the
12 Committee that we did have a meeting with the Vice President
13 and it was a very pleasant meeting and we were very skillfully
14 finessed. The Vice President said that he understood why we
15 would be interested in the raw material, the transcripts and
16 other information. He concurred that it would expedite our
17 procedures, he believed with us that the national interest would
18 be served if we could stay on schedule. He would relay our
19 request to the Commission, but that since the Commission was a
20 creature of the President the request would then have to be
21 relayed to the White House. So we are back on square one.

22 Senator Goldwater. I think he will let us have them.
23 They are trying to get that report out by June 11th.

24 Senator Tower. June 6th.

25 Senator Goldwater. I think some of the things he has

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1 should stay in his own until they are published, because I think
2 it is an area we don't want to get into.

3 Chairman Church. What the Commission does with its
4 information is up to the Commission, but the raw data should
5 then be made available to us. It would greatly expedite our
6 own inquiry.

7 All right, the second item on the agenda is a proposed
8 resolution concerning information from the Internal Revenue
9 Service.

10 Now, this resolution has been suggested to the Committee
11 staff by the Internal Revenue Service. It is in order to
12 expedite their compliance with our requests. There is a pro-
13 vision in the law, one or two provisions in the law, that
14 inhibit the Internal Revenue Service from furnishing some of
15 the information that we have requested, and they believe that
16 if this were waived for purposes of this inquiry, the Senate
17 inquiry, it would then be helpful to them.

18 Senator Goldwater. What is the nature of the material?

19 Mr. Schwarz. We don't want tax returns, Senator. We are
20 going to be looking into certain allegations of wiretapping by
21 the Internal Revenue Service, break-ins by the Internal Revenue
22 Service. I don't think in fact that that sort of stuff ought
23 to be covered by a statute that says tax-related material, but
24 it may be, and they have suggested that it would expedite their
25 giving us the material if we get a resolution like this. It is

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1 the same resolution in substance that the Watergate Committee
2 and I think the House Judiciary Committee in the past, I know
3 the Watergate Committee did, and it was suggested to us by the
4 Commission we don't want to return.

5 Senator Goldwater. In our resolution which created this
6 group, what if we wanted to get into the operation of the IRS
7 harassment not against certain individuals but constant harass-
8 ments. I know if you once get on the computer list you never
9 get off that list, and I would like to know why.

10 Senator Tower. What Alexander suggested here is that he
11 is willing to give us the information but he wants to have his
12 skirts legally cleared by a Senate resolution.

13 Mr. Miller. Other Committee jurisdiction.

14 Senator Goldwater. Could you get into the matter. To
15 me it is like wiretapping a lot, where they put you on the
16 computer and I want to know why and why it is that once a man
17 gets on that computer he never gets off, even though he is
18 never found guilty of anything. It is harassment, harassment,
19 harassment.

20 Chairman Church. I think that does come within our purview.
21 What we are really concerned about in connection with all of
22 this information is big brother Government developing in every
23 quarter?

24 Senator Schweiker. Abuse of authority.

25 Chairman Church. And utilization of all kinds of

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1 surveillance techniques developing and institutional practices
2 in this country.

3 Senator Goldwater. I am with you.

4 Chairman Church. All right. Now, I have two questions to
5 ask about this resolution.

6 First of all, Bill, does this resolution have to go to
7 another Committee in the Senate before it goes to the floor?

8 Mr. Miller. That would be the usual.

9 Senator Tower. Post Office and Civil Service?

10 Mr. Miller. If you cleared it with the Chairman you could
11 go right to the floor with it.

12 Chairman Church. Is it Finance or Post Office and Civil
13 Service?

14 Mr. Miller. Post Office.

15 Senator Tower. This is IRS. This is Finance.

16 Chairman Church Internal Revenue Service is Finance.

17 Mr. Miller. I think you have to check with both Chairmen.
18 But go directly to the floor.

19 Senator Tower. What you could do is, I guess we don't
20 have a jurisdiction to report it out of our Committee. I think
21 you would have to introduce it, Frank; what you could do
22 is have it called up for immediate consideration and let some-
23 body object and have it go on the calendar.

24 Chairman Church. Yes, I think we should clear that with
25 the two Committee Chairmen first. They might prefer to handle

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it that way.

All right, we will work that out, but I would like to have a motion by the Committee authorizing us, me, to proceed in this matter.

Senator Tower. I so move.

Senator Huddleston. I second it.

Chairman Church. Very well, without objection that is approved.

Item 3 on the agenda today is a discussion of the general pattern of staff work and Committee involvement between now and the commencement of full hearings.

I would like to hear from our staff but we are now at the point where the serious investigation begins. By that I mean we are going to be taking a lot of sworn testimony. We are going to begin to take an increasing number of depositions.

Under the Rules of the Committee, when sworn testimony is taken, depositions are taken, at least one Senator should be present to administer the oath, and I'm soliciting the cooperation of the Committee members so that this work can move smoothly along. In every case, let it be understood in every case, whenever a request is made, any member of the Committee can sit in on any one of these depositions, anyone that relates to a subject of particular interest to the member.

Furthermore, it would be preferable, whenever possible, to have a Majority member and a Minority member present, if

1 that can be arranged, but we will need a lot of involvement now
2 by members as we move into this serious aspect of the investi-
3 gation.

4 Senator Goldwater. Could I make a request? I know it is
5 not entirely practical, but if we can have some idea of the
6 dates that you want us it would be a great help to us. We
7 are planning on August off. I can be here whenever you need
8 me but I would like to know far enough in advance.

9 Senator Tower. I think we should set up a schedule and
10 say one of us will be responsible for being here that particular
11 day, anybody else can be there that wants to be. Let everybody
12 know when his duty day is.

13 Chairman Church. Yes. Or we could publish the schedule
14 and ask the staff to secure a member.

15 Senator Goldwater. Can you set up a schedule?

16 Mr. Miller. Yes sir.

17 Chairman Church. Yes, for these depositions.

18 Senator Goldwater. That is all we want. We can take our
19 share. That is no problem.

20 Chairman Church. But it will be going everyday.

21 Senator Schweiker. Where will they be done?

22 Chairman Church. In different places. Some over in our
23 own staff --

24 Mr. Miller. Being an orphan Committee we may have as many
25 as four at the same time.

1 Chairman Church. I just think as a practical matter we
2 will probably find that we will end up oftentimes with just one
3 Senator present. We can't get the job done any other way.

4 All right. Now, what else do we have to say on this
5 subject?

6 Mr. Schwarz. Just discuss it.

7 Chairman Church. Anything else?

8 Mr. Smothers. No; I think that will work find for us. I
9 think it ought to be clear what we will try to do is fet as
10 much information in that particular hearing. By and large
11 the staff will do the questioning.

12 Chairman Church. I would like to bring up this time the
13 Washington Post article because if there are any doubts about
14 this story I would like to clear the air right now.

15 There was an article in the Washington Post yesterday,
16 a good article except for one inaccuracy, a rather serious one,
17 and I would like the advice of the Committee as to how we should
18 handle it.

19 The part at issue reads as follows:

20 "One Administration official said, I hope I am not being
21 paranoid, but he said the Committee staff claimed later that
22 the apparent selectivity was unintentional. The staffers
23 finally left after checking off the ones they wanted and
24 informed later the White House as chagrined to note they had
25 asked only for reports of operations that originated in either

1 the Eisenhower or Nixon Administration."

2 This simply is not so and the staff has prepared a
3 memorandum which is in your folders which will show you the
4 pattern of the inquiry had paid no heed whatever to partisan-
5 ship in connection with this inquiry. And since we have tried
6 very hard to avoid this, it is a bit disturbing that that
7 issue is being raised at the White House when there is no
8 substance to it.

9 Mr. Miller. I can elaborate a little bit on that. I
10 understand that that story grew out of a Christian Science
11 Monitor breakfast at the White House, or a Rod Sperling break-
12 fast, which I think many Senators are familiar with. It was
13 held at the White House, and almost all of that information,
14 as far as we can determine, arose from that meeting.

15 But to elaborate a little bit more on this study question,
16 I have gone over that list, Mr. Bader has gone over the list
17 in great detail several times in order to be sure that we were
18 not asking for anything that was not directly concerned with
19 the mandate, and to be certain that the studies or reports or
20 case evaluations affected all Administrations without any bias.
21 It is an interesting collection, this 400 documents, and we
22 have limited it to matters that seemed of direct concern and
23 well within the authority of our mandate, and we have given
24 to the White House and to the CIA at their request the studies
25 in order of priority in order to assist them in the process of

1 looking them over where appropriate. Whatever initial friction
2 there may have been on that I think have been resolved. I
3 think the White House is satisfied now and I know the CIA is
4 because they made those documents available on a basis that is
5 satisfactory to us.

6 Senator Goldwater. Let me ask you, do you think that this
7 statement is a statement coming from the White House or is it
8 a statement coming from George Lardner?

9 Mr. Miller. That I can't be certain of. That I can't be
10 sure of. The only thing in looking into the story, I do know
11 that there was a breakfast and I do know that those matters
12 were discussed in detail.

13 Mr. Schwarz. And we do know it was made to it first about
14 two weeks ago and we said it wasn't true. It was made by the
15 White House. We said it wasn't true. Mr. Kirbow just this
16 week said to the White House it was not true.

17 Senator Goldwater. The White House made the charge?

18 Mr. Kirbow. Senator, one of the counsels to the President
19 showed me a copy of an internal memo where he was trying to make
20 that case in the memorandum. He went over it with me and
21 showed me paragraphs. I then looked at it in great detail
22 against our request and indicated to him at the time he could
23 not make such a case with me and I had been very concerned
24 about this matter at the outset of our document request, as
25 the Staff Director knows, and had screened them personally

1 to be sure that we were not pointing the gun, so to speak, at
2 any given segment of our Administrations. He indicated nothing
3 at all further as to what he intended to do with the memorandum
4 but it was the next day that this came out.

5 Senator Goldwater. Have you talked to Lardner and asked
6 him his source?

7 Senator Tower. He is not going to give his source.

8 Chairman Church. He won't give it.

9 Senator Goldwater. If we stick by our rules we are going
10 to be subject to this day after day. If it is going to be a
11 White House source, we can stop that. If it is going to be a
12 newspaper, I think we may be able to do something about that.

13 Chairman Church. Let me say this about George Lardner.
14 He has interviewed me several times and based upon the stories
15 he has written they have always been accurate, and so I have
16 no personal reasons to suspect that --

17 Senator Goldwater. Do you mind if I look into this?

18 Chairman Church. Not at all.

19 Senator Tower. Let me suggest this. Let's go back to
20 the White House and say you know this isn't true, why don't you
21 clarify it, and then if they don't, we do.

22 Senator Schweiker. I think that is a good idea.

23 Chairman Church. I think it is, too.

24 Senator Hart of Colorado. I think that the following
25 statement, if they do not clarify it, a statement from the

1 ranking Minority member would be in order.

2 Senator Goldwater. That is why I would like to get this
3 thing cleared. We are going to be subjected to a lot of this.

4 Senator Tower. I am reasonably sure a member of the
5 White House staff said that to Lardner. I am not positive
6 because I know the newspaper would like to promote a big fight
7 between us and the White House. I think we ought to get the
8 White House.

9 Chairman Church. We have been trying very hard not to
10 pick a fight and we are not going to pick a fight unless we
11 have to; but it may be that at the press conference following
12 this meeting the question could come up. If it does come up,
13 I will say, and John Tower has been with me at these press
14 conferences -- it would be helpful if he would say we have
15 looked at the record of the general requests and there has been
16 no partisanship and no basis for such a charge. But it would
17 be helpful that if that subject doesn't come up if we could get
18 the White House to --

19 Senator Tower. As soon as this meeting is over I will get
20 on the phone.

21 Chairman Church. All right. All right, now, Bill Miller
22 has asked me to announce in order to accommodate Senators on
23 the Committee who need to be planning for vacation time, that
24 we should set aside, I suggest this to the Committee, the last
25 two weeks in August for a vacation period.

1 Senator Tower. Good.

2 Chairman Church. Then we can all plan on that and that
3 would take us over the Labor Day period. All right?

4 Is that satisfactory?

5 Senator Schweiker. Let me ask one other question, Mr.
6 Chairman. Do we now envision the holding of public hearings
7 for the first two weeks of August, because I think if we are
8 not in the public hearing stage we all have a little more
9 flexibility in terms of things.

10 Chairman Church. I would anticipate since we will be
11 getting into the public hearings in not later than July that
12 we probably will have some public hearings in the forepart
13 of August, and what we have tried to do here is compromise
14 the recess issue by setting aside the last two weeks for that
15 purpose. I would anticipate there would be some public hear-
16 ings in the early part of August.

17 Senator Schweiker. I make this request, and I appreciate
18 what you are trying to do here. If we have an option as to
19 time, as time gets near, as to closed or open hearings, if
20 it doesn't impede the work of the Committee we try to increase
21 this period of closed hearings, if it doesn't impede or hurt.

22 Chairman Church. We will do the best we can with that
23 without making any commitment.

24 Now, Senator Hart would like to raise a question concern-
25 ing his discussion he had with the Attorney General. It would

