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INQUIRY # 1



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Mr. Mohrfeldt
Mr. Heha

July 20, 1973

Mr. Felt	_____
Mr. Baker	_____
Mr. Callahan	_____
Mr. Cleveland	_____
Mr. Conrad	_____
Mr. Gerhardt	_____
Mr. Jenkins	_____
Mr. Marshall	_____
Mr. Miller	E.S. _____
Mr. Searles	_____
Mr. Thompson	_____
Mr. Walters	_____
Tele. Room	_____
Mr. Boise	_____
Mr. Barnes	_____
Mr. Bowers	_____
Mr. Herington	_____
Mr. Conny	_____
Mr. Mirz	_____
Mr. Eardley	_____
Mrs. Hogan	_____

Address Reply to the
Division Indicated
and Refer to Initials and Number

MEMORANDUM FOR: Mr. Clarence M. Kelley
Director, FBI

FROM: William D. Ruckelshaus *WR*

SUBJECT: Substantive Issues Regarding
the Future of the FBI

EX-109
 JUL 20 1973
 FBI REC'D

O.F.B.I.

Pursuant to our conversation earlier this week, I hereby submit a list of issues that will undoubtedly be coming up from time to time regarding the present and future status of the FBI. This list is by no means exhaustive, but is a good starting point from which to go forward and come to grips with many of the problems that will have to be addressed in the near future in one form or another. The list, in no particular order, is as follows:

1. Wiretaps. The whole question of wiretaps should be reviewed with a view toward developing a firm Department-wide policy on the issues involved.

2. The issue of whether the function of intelligence gathering should be separated from the law enforcement function of the FBI. This issue should be studied with particular reference to those countries which have adopted this division and a clear analysis of the pros and cons developed. From this analysis again should flow a clear policy.

3. The statutory basis for the FBI's intelligence gathering functions. Is there any statutory basis? Is the whole function based on Presidential and Attorney General directives? Should a firm statutory basis be sought?

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ENCLOSURE

EX-109

REC-58

18 AUG 3 1973

XEROX

This document is prepared in response to your request and is not for dissemination outside your Committee. Its use is limited to official proceedings by your Committee and its contents may not be disclosed to unauthorized personnel without the express approval of the FBI.

AUG 16 1973

30 AUG 22 1973

Mr. Baker 7-27-73

RECORDED COPY FILED IN

4. Should the FBI Director be appointed for a term of years?
(All the issues surrounding the appointment and tenure of the Director should be explored.)

5. Should the FBI be an independent agency or continue as part of the Justice Department? The pros and cons of this recurrent question should be analyzed again with the purpose of adopting a firm policy.

6. Assuming the FBI remains a part of the Justice Department, what should be the relationship of the Director to the Attorney General? All the organizational and substantive relationships should be examined.

7. Investigative techniques. The whole question of the variety of techniques from clearly legal to clearly illegal should be examined in some detail. In addition, the question of authorization and Congressional oversight should be touched upon in this examination.

8. The whole question of files and their disclosure must be studied with a view toward understanding why files are kept, what categories of files there are, what information is contained in the files and whether the purposes for maintaining files are being met under present policy. In the issue of disclosure, when, where, and to whom must also be thoroughly examined.

9. The question of a Civilian Review Board for the intelligence gathering activities of the FBI should be examined. This is a recurrent suggestion which came up at the Princeton conference in addition to other forums.

10. What should be the relationship between the FBI and the other Departments and Agencies of the Federal Government? To what extent should the FBI keep tabs on other Departments and Agencies through the development of sources and informants in those Agencies?

11. Should the FBI have foreign officers reporting directly to the Director?

This list is not exhaustive, but should get us started toward an indepth examination of some of the problems facing the Bureau in the future.

WDR:fhm

INQUIRY # 2

Mr. William D. Ruckelshaus
The Deputy Attorney General - Designate

August 24, 1973

Director, FBI

Security Jurisdiction
**SCOPE OF FBI JURISDICTION
AND AUTHORITY IN DOMESTIC
INTELLIGENCE INVESTIGATIONS**

- 1 - Mr. Mintz
- 1 - Mr. E. S. Miller
- 1 - Mr. T. J. Smith

Reference is made to my memorandum to the Attorney General August 7, 1973, captioned as above, which among other things proposed that an Executive order be issued which would define FBI responsibilities concerning Federal statutes relating to the national security.

My memorandum made reference to new guidelines recently issued in manual form and to a study which was prepared in August, 1972, at the request of Acting Director L. Patrick Gray, III.

On August 15, 1973, Mr. Jack Goldklang, Office of Legal Counsel, Department of Justice, called Mr. Nicholas P. Callahan's office and referred to the guidelines and study mentioned above. He said that these documents are likely to be pertinent to his analysis of the proposal set forth in my memorandum, and he asked that the two documents be made available to him.

For your information, the guidelines referred to are the recently revised Section 87 of our Manual of Instructions concerning Investigations of Subversive Organizations and Individuals. As you know, our Manual of Instructions has not heretofore been disseminated outside the FBI, although this particular Section (87) was loaned to the Department for study recently in connection with a request made of the Department by Senator Edward M. Kennedy.

The study made in August, 1972, for Mr. Gray was written and intended purely for in-house use and deliberations and was not prepared for purposes of dissemination or use by any agency outside the FBI.

TJS:bjr (6)

SEE NOTE PAGE TWO

- Assoc. Dir. _____
- Asst. Dir.:
- Admin. _____
- Comp. Syst. _____
- Files & Com. _____
- Gen. Inv. _____
- Ident. _____
- Inspection _____
- Intell. _____
- Laboratory _____
- Plan. & Eval. _____
- Spec. Inv. _____
- Training _____
- Legal Coun. _____
- Cong. Serv. _____
- Corr. & Crm. _____
- Research _____
- Press Off. _____
- Telephone Rm. _____

MAILED 3
AUG 27 1973

REC-77 62-6471-1018
7 AUG 28 1973

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Mr. William D. Ruckelshaus
The Deputy Attorney General - Designate

However, we recognize that these two documents may assist the Department in analyzing our proposal concerning the issuance of an Executive order and therefore I am enclosing a copy of the two documents requested by Mr. Goldklang. We request that these documents not be disseminated outside the Department of Justice; that the documents not be duplicated or photographed; and that, if possible, they be returned to the FBI after they have served their purpose.

If you, or members of your staff, feel that additional information would clarify our proposal, it is suggested that consideration be given to arranging conferences between members of your staff and the FBI officials in the Intelligence Division and our Legal Counsel's Office who have conducted considerable research into the matter.

Enclosures - 2

NOTE:

See memo T. J. Smith to Mr. E. S. Miller dated 8/23/73, captioned as above, prepared by TJS:bjr.

ISSUE: Should the Intelligence Gathering-Function of the FBI Be Separated From the Law Enforcement Function of the FBI?

Note that the issue, as originally raised, referred to law enforcement and intelligence functions. What was meant by intelligence was the missions of internal security and counterintelligence. Criminal intelligence, e.g., against organized crime, was intended to fall within the law enforcement mission. However, the functions of the FBI do not neatly fall within "intelligence" and "law enforcement" categories. Internal security cases are both intelligence and law enforcement operations, and counterintelligence sometimes involves arrests and prosecutions, i.e., law enforcement. To most accurately reflect the diverse missions of the FBI the terms law enforcement, internal security, and counterintelligence will be used throughout this paper.

Preface

1. The Problem: revolves around the question whether the three missions can be accommodated by one agency. That is, are they so distinct in nature that an organizational structure set up to perform one of the missions absolutely cannot perform the others; or can all three missions be accommodated but only to the detriment of the others; or can all the missions be adequately performed by one agency?

2. The Present Policy: is that all three missions are performed by the FBI. The FBI organizational structure is primarily a unitary one, i.e., there is one organization with a multiplicity of responsibilities, which can be broken down into three general missions, law enforcement, internal security (domestic) and counterintelligence (foreign). The organization's personnel are hired and catalogued into one of three general functional categories, agent, steno, and to a lesser degree, clerks, without further differentiation based on mission, i.e., no employees, with rare exceptions, are criminal or counterintelligence specialists, all are generalists and are regularly interchanged among the three general missions. The administration of cases at headquarters and, to a lesser extent, the conduct of investigations in the field follow the same format in all three general areas of responsibility.

The underlying rationale for, and history behind, these concepts is:

Personnel - the generalist allows for a highly flexible, mobile force which can be deployed, generally solely on the basis of manpower needs, i.e., any agent can do any job in the FBI. There are some exceptions; some employees have unique abilities which tend to make them less mobile in the eyes of administrators, e.g., language or technical factors in the case of agent deployment and promotion; they are more determinative in cases of clerks: special employees, translators, etc.

Administration of cases and conduct of investigation these were originally geared to accommodate a relatively few criminal and civil investigative matters, and as the responsibilities of the organization grew they were modified and adapted, within the unitary structure, to accommodate the various missions. Thus they are quite similar in all three missions.

3. The Issues Raised:

- a. Are the missions of law enforcement, internal security, and counterintelligence separable?
- b. If so, is complete separation possible, practical or politically feasible or desirable?
- c. Can the three missions be accommodated in one organization?
- d. By doing so, do any of the missions suffer?
- e. If all three missions can be accommodated in one agency, is the FBI currently doing it the best way possible?
- f. If not, is it practically or politically feasible or desirable to change the FBI's way of performing the mission?
- g. Why are other Western intelligence services separate from law enforcement agencies?

4. Options for Future Policy:

The missions of law enforcement, internal security, and counterintelligence are separate, distinct and distinguishable functions, even though each partakes a little of each other. Law enforcement is investigation after a crime has been committed to identify suspects and build a case for prosecution; counterintelligence is the identification, penetration and neutralization of foreign intelligence activity in the U. S.; and internal security is identification and thwarting of home-grown plots to subvert the government and activities within the U. S. in illegal support of foreign causes, whether by U. S. citizens or foreigners.

The missions overlap to some degree. For example, law enforcement requires some intelligence collection, and is intimately concerned with internal security criminal acts, e.g., foreign related terrorist bombings, skyjackings, gunning, and subversive groups' kidnappings, bank robberies, bombings, etc. Counterintelligence sometimes results in criminal prosecution, and some internal security groups are funded by, and act on behalf of, foreign intelligence services. Internal security is a hybrid; the basis for its investigation is that acts, politically motivated, are being committed in violation of the U. S. criminal law. Yet, the investigation may be a continuing effort, based on continuing acts threatening the internal security without actually violating the criminal law, and thus the investigation is more like a counterintelligence investigation, than like the typical law enforcement closed cycle of crime, investigation and prosecution.

While counterintelligence could adequately, and with more success in some cases, be handled by an organization totally separate from one with law enforcement powers, internal security work, in many cases, is directly related to criminal prosecution. There has been little effort, and less success, in most English speaking Western democracies in prosecuting domestic "subversives," even those with foreign ties; however, prosecution is often a principal, if not primary, objective in cases involving emigre bombing and harassment of foreign diplomatic establishments, fund and arms procurement for foreign political groups, politically motivated terrorist acts, e.g., skyjacking, etc.

An examination of the services of the democracies mentioned above, viz., Britian, Australia and Canada, reveal that all do distinguish between the pure law enforcement function and the counterintelligence/internal security function; however, there is not a total separation of the functions. For example, the British Security Service (MI-5) handles counterintelligence exclusively with MI-5 case officers, but places it's internal security investigations in the hands of the Special Branches of the local constabularies (comparable to the intelligence divisions of local U. S. police departments). The Australian Security Intelligence Organization (ASIO), modeled after MI-5, and of recent vintage (post W.W.II), handles all counterintelligence and internal security investigation with its own officers; however, it is rivalled to some extent in the internal security field by the Intelligence Bureau of the national Commonwealth Police. The Royal Canadian Mounted Police, a truly national police force, with extensive local and Federal jurisdiction, has branched off its intelligence division into a new, near autonomous Security Service, with operational procedures more akin to MI-5 and ASIO than to traditional law enforcement.

In short, these countries recognize that the political, social and foreign policy considerations which must go into counterintelligence and internal security investigations make them a different animal from "routine" criminal investigation; yet, they also recognize that the agency with internal security jurisdiction must also have an intimate and close working relationship with a law enforcement agency.

SENSITIVE FOREIGN INTELLIGENCE SOURCES { Complete separation, at least of the internal security function from law enforcement, does not appear to be practically feasible. MI-5 and ASIO were originated without law enforcement powers, and MI-5 candidly admits it would like to become part of a national police force. RCMP Security Service case officers would not consider surrendering their police powers.

Separation of the counterintelligence function would be more practically feasible; however, the commingling of counterintelligence and internal security interests, and the threat of a merger of the counterintelligence function with the positive foreign intelligence collection agency, especially in the U. S., are both practical and political reasons militating against this course.

Separation of the internal security function also presents serious political considerations. Internal security or as some say, at least in reference to its "subversive" investigations, political intelligence, is the most controversial of government's intelligence collection activities. In the U. S., this function was originally given to the FBI which had established for itself a reputation for being responsible, competent, and most importantly, politically neutral, and had the confidence of most Americans. It is recognized that this reputation is not etched in stone, and that because of the diversity of peoples, political views, and activities tolerated in the U. S. no internal security agency can, using human judgement, attempt to fulfill its responsibility without offending someone, sometime, someplace.

It is to the advantage of an internal security agency, which is subjected to such political pressures, to be somewhat insulated by being part of a larger, respected organization which has a high profile as a competent and fair investigative agency in the less politically complex law enforcement and counterintelligence fields. Adding to this insulation is the tradition of FBI political independence, and the new Congressional concern with keeping the FBI politically independent. While the law enforcement and counterintelligence wings of the FBI dislike the controversies into which its internal security wings drags the FBI name, separation of internal security into a separate agency would probably subject it to more intense political pressures, both from within the administration and without, which pressures it might not be capable of withstanding. Such separation appears politically unfeasible and undesirable.

Practical considerations against divestiture of the counterintelligence and internal security functions from the FBI are that: basic criminal investigative experience equips men in many areas to be intelligence officers; a pool of trained criminal investigators is available to the intelligence missions to draw from, either on an ad hoc emergency basis, e.g., seizure of an embassy or political kidnapping or skyjacking, or as candidates for the position of intelligence officer; a divestiture might result in the loss to the counterintelligence and internal security wings of the effective use of the FBI name, reputation, and contacts and sources built-up over years using the FBI name.

The RCMP has shown that all three missions can be accommodated in one agency, although the distinctive character of each mission requires internal adjustments of policy, structure, administration, personnel considerations, and operations.

Implementation of adjustments within the FBI is being considered at this time.

Consequently, based on above considerations, the FBI recommends that all three missions of law enforcement, internal security, and counterintelligence remain with the FBI.

Former Attorney General
William D. Ruckelshaus'
memorandum, 7/23/73, to F. B. I.
Director, Clarence M. Kelley,
setting forth the 11 areas of
inquiry.

1086

etc.

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10/31/75

The Attorney General

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

Enc. lot from SSC 10/2/75, requesting, inter alia, series of studies of various aspects of FBI operations previously prepared by FBI at request of former Deputy AG Rudolph. Original of memo submitted for approval & forwarding to Committee. A copy for your records.

SSC REQUEST OF 10/2/75

File Copy

- 1 - Mr. Baker
- 1 - Mr. Mintz
- 1 - Mr. E. S. Miller
- 1 - Mr. T. J. Smith

September 20, 1973

Mr. William D. Ruckelshaus
The Deputy Attorney General - Designate

Director, FBI

- 1 - Mr. J. F. Miller

**SUBSTANTIVE ISSUES REGARDING
THE FUTURE OF THE FBI**

JUNE

T. J. Smith 717

Technical Surveillance - general

Reference is made to your memorandum of August 20, 1973, detailing a format to be followed in setting forth our responses to your memorandum of July 20, 1973, captioned "Substantive Issues Regarding the Future of the FBI." Attached is an undated study of 17 pages with a five-page appendix captioned "Electronic Surveillance."

CT

This study was prepared in response to your July 20, 1973, request, prior to receipt of your format memorandum of August 20, 1973. The responses to most of the questions raised in your August 20, 1973, memorandum are contained in this study. Rather than repeat points considered in this study, it is attached and it is recommended it be read prior to the attached paper dated September 14, 1973, written according to your suggested format. This second paper considers issues raised in your August 20, 1973, memorandum not discussed in our first study, e.g., "Options for Future Policy." Attached to the September 14, 1973, paper is a copy of a petition for rehearing in U.S. v. Ivanov, and a July 11, 1973, memorandum concerning the Ivanov case to that date. These attachments pertain to a discussion of foreign national security electronic surveillance in the September 14, 1973, paper.

CAUTION: THE APPENDIX TO THE UNDATED PAPER CAPTIONED "ELECTRONIC SURVEILLANCE," AND THE JULY 11, 1973, MEMORANDUM ARE CLASSIFIED "SECRET, NO FOREIGN DISSEMINATION/NO DISSEMINATION ABROAD."

EX-105 REC-2 66-8160-3513

SENT FROM D. O.
TIME 2:42 PM
DATE 9-24-73
BY [signature]

SECRET MATERIAL ATTACHED
NATIONAL SECURITY INFORMATION
Unauthorized Disclosure
Subject to Criminal Sanctions

Enclosures 4

JFM:rlc
(8)

NOTE:
OCT 12 1973

The above memorandum and enclosures are in response to the Deputy Attorney General Ruckelshaus' memoranda of 7/20 and 8/20/73 concerning "Substantive Issues Regarding the Future of the FBI." These materials are in response to issue number one "Wiretaps."

RECORDED IN 67-24172

ELECTRONIC SURVEILLANCE

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~~SECRET MATERIAL ATTACHED~~

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I. AUTHORIZATION OF CONSENSUAL, TITLE III, AND NATIONAL
: SECURITY ELECTRONIC SURVEILLANCES

The legal foundation for each of the above types of electronic surveillance differs, and in part as a consequence of that, the administrative procedure for securing authorization to use each type differs.

A. Consensual

The current law is that as long as one party to a conversation, whether over the telephone or in person, consents to a monitoring of that conversation by another or a recording of that conversation by another or by himself, such a monitoring or recording is legal, and may be introduced into evidence in a legal proceeding.

At present, the monitoring or recording of telephone conversations by the FBI with the consent of one of the parties, e.g., via a device attached to the consenting party's telephone or a monitoring via use of an extension telephone, is authorized internally within the FBI by either a Special Agent in Charge or, if the case is "sensitive," by a Headquarters official, generally the Director. On the other hand, the present policy with regard to consensual monitoring of nontelephone conversations, e.g., body or hidden recorders or transmitters, is that the Attorney General must approve these in advance, except in an emergency, at which time the Director (or someone designated by him) can approve them and then promptly notify the Attorney General. The method of requesting Attorney General approval, or of notifying the Attorney General of the exercise of the emergency authorization, is a memorandum to the Attorney General setting forth the identity of the target, the background of the case, and the reason for the request or authorization.

B. Title III

These electronic surveillances are permitted by act of Congress for the purpose of gathering evidence of enumerated crimes. A requirement for the submission of an affidavit to a court showing probable cause that a crime is being committed and that evidence not obtainable otherwise can be obtained via the electronic surveillance is set

