

**File #:**

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RE:

Date 12/30/75

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

- For information     Retention optional     For appropriate 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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Vol. 20

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**The United States Senate**

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**Report of Proceedings**

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**Hearing held before**

**Select Committee to Study Governmental Operations**

**With Respect to Intelligence Activities**

**INTELLIGENCE INVESTIGATION**

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**Wednesday, December 10, 1975**

**Washington, D. C.**

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

(202) 544-6000

ENCLOSURE

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C O N T E N T

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

Director Kelley, we are pleased to welcome you, and if you would have a prepared statement you would like to lead off 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

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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



