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C O N T E N T

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62-116395-1241

ENCLOSURE

INTELLIGENCE INVESTIGATION

Thursday, December 11, 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, Senator
Frank Church (Chairman) presiding.

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

Also present: William Miller, Staff Director; Frederick
A.O. Schwarz, Jr., Chief Counsel; Curtis Smothers, Minority
Counsel.

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P R O C E E D I N G S

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2 The Chairman. Our witness this morning is the Honorable
3 Edward H. Levi, Attorney General of the United States. Mr.
4 Levi has appeared before this Committee on previous occasions
5 and this Committee was most happy to welcome him back again
6 this morning.

7 He has been asked to testify today about the future of
8 the Federal Bureau of Investigation, and especially its
9 domestic intelligence operations.

10 This morning's hearing marks both an end and a beginning
11 for the Select Committee. It is the end of a series of hearings
12 on domestic intelligence which began in September with an
13 examination of the so-called "Huston Plan." Those original
14 hearings explored the relationship of the White House to the
15 FBI and other intelligence agencies in the development of a
16 specific plan for using illegal techniques against domestic
17 groups.

18 At that time the Committee learned the details of FBI
19 black bag jobs against domestic targets which continued at least
20 until 1963. We learned of a "do not file" procedure in the
21 FBI for destroying the records of these operations and the Com-
22 mittee was told that the FBI expanded its intelligence
23 investigations along the lines of the Huston Plan, even after
24 the President withdrew his approval.

25 Our next hearings in this area dealt with improper

1 activities that overlapped foreign and domestic intelligence
2 operations. The Director of the National Security Agency,
3 testified that the sophisticated surveillance operations of
4 that agency had been targeted against the international
5 communications of American citizens for domestic intelligence
6 purposes. This was done in direct cooperation with the FBI,
7 which supplied names of citizens for the NSA watchlist.
8 Present and former FBI officials also testified that until
9 1966 the Bureau undertook programs for illegally opening the
10 mail of innocent citizens in the search for espionage agents
11 and foreign intelligence. The FBI used the CIA's mail
12 opening program after 1966 for domestic intelligence purposes,
13 again sending over lists of names of American citizens who
14 were to be watched.

15 The Committee's recent hearings on the FBI itself have
16 raised some of the most fundamental questions that any democracy
17 must face. We have placed on the record deeply disturbing
18 information about the FBI's COINTELPRO activities over a period
19 of fifteen years; the attempts to discredit Dr. Martin Luther
20 King, Jr., the broad surveillance of law-abiding citizens
21 and lawful activities, the practices of infiltration and dis-
22 ruption by informants, and the political use of FBI resources
23 by Presidents of both parties.

24 The Committee's work in this area has been aided sub-
25 stantially by the cooperation of the Justice Department. I

1 would like to take this opportunity, Mr. Attorney General, to
2 express the appreciation of the entire Committee and the
3 staff for your assistance in making available the materials
4 needed for this investigation. Our experience has demonstrated
5 that the Constitutional principle of Separation of Powers has
6 enough flexibility to allow close cooperation between the
7 Congress and the Executive in a matter of the greatest public
8 concern.

9 While our investigation is coming to an end, the task
10 of making constructive recommendations is beginning. We
11 have heard this week from former officials and from Director
12 Kelley. We are exploring a wide range of proposals, including
13 those being developed by the Justice Department. And we
14 look forward to working closely with you on these issues.

15 One of the best statements of the problems we confront
16 was made last summer by Philip Kurland, Professor of
17 Constitutional Law at the University of Chicago. Professor
18 Kurland spoke of the threats to an open, democratic society
19 from what he called the perversion of our intelligence agencies
20 into political police forces. He rejected the proposition
21 that we should be satisfied that these agencies will exercise
22 self-restraint. Professor Kurland did not deny the importance
23 of the individual qualities of the officeholder. But he
24 stressed the greater importance of confining our intelligence
25 and counter-intelligence agencies to the limited functions they

1 were created to deal with.

2 The crucial responsibility lies with the Congress. "If
 3 oversight by Congress is not to be the answer," Professor
 4 Kurland declared, "it is hard to conceive of an answer." The
 5 essential requirement for Congressional oversight is information
 6 about intelligence operations, and the greatest barrier is
 7 Executive secrecy. Consequently, Professor Kurland and others
 8 have urged that we establish procedures which require the
 9 Executive to provide this information to the Congress. This
 10 may be the only way to insure the responsibility of the
 11 Executive Branch to the people through the Congress.

12 Therefore, we especially hope that you, Mr. Attorney
 13 General, can help this Committee and the Congress develop
 14 not only standards for the FBI, but also procedures for
 15 effective Congressional oversight to assure regular account-
 16 ability.

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1 STATEMENT OF THE HONORABLE EDWARD H. LEVI, ATTORNEY
2 GENERAL OF THE UNITED STATES

3 Attorney General Levi. Thank you, Mr. Chairman.

4 Before I begin, let me say that I don't suppose that your
5 statement is meant to indicate that I am committed to agree
6 with my friend, Professor Kurland, who may not be wrong as
7 often as many people are but occasionally is not correct.

8 The Chairman. No, it was only meant that I agree with
9 him.

10 Attorney General Levi. Then I hope the matter can be
11 explored more in depth.

12 Senator Mathias. Mr. Chairman, I think that's one of the
13 most graceful declarations of independence I have ever heard.

14 Attorney General Levi. Mr. Chairman, the Committee has
15 asked me to talk with you today about the future of the
16 Federal Bureau of Investigation. I thought it might be helpful
17 if I outline quite briefly some of the points I would like
18 to make, some of the problems I think ought to be considered,
19 and some of the steps we have taken.

20 The first point is that the statutory base for the
21 operations of the Bureau cannot be said to be fully satisfactory.
22 The basic statutory provision is 28 USC 533 which provides
23 that the Attorney General may appoint officials "(1) to detect
24 and prosecute crimes against the United States; (2) to assist
25 in the protection of the President; and (3) to conduct such

1 investigations regarding official matters under the control
2 of the Department of Justice and the Department of State
3 as may be directed by the Attorney General." There are other
4 statutes, such as the Congressional Assassination, Kidnapping
5 and Assault Act, which vest in the Bureau special responsibilities
6 to investigate criminal violations. In addition, there are
7 Executive orders and Presidential statements or directives
8 which place investigatory responsibilities upon the Bureau.

9 A number of questions are often asked about this statutory
10 base. It has the virtue of simplicity, but the Executive orders
11 which deal with government employee investigations are compli-
12 cated and confusing, and Presidential memoranda, or, perhaps,
13 oral instructions from a President may be difficult to collate.
14 I think it is important, in any case, to separate out the kinds
15 of questions which are asked about the Bureau's authority base.
16 Some questions are constitutional in nature, relating to the
17 inherent power of the President; others go to the interpretation
18 of the statutes and the relationship between the statutes and
19 Presidential directives; others go to the failure of
20 the statutes to define sufficiently the areas of the Bureau's
21 jurisdiction or to spell out sufficiently -- and this is
22 partly constitutional -- the means and methods which the
23 Bureau is permitted to use in carrying out its assigned tasks.

24 The second point, related to the first, is a continuing
25 discussion of the role of the Bureau in intelligence investigations.

1 or domestic security investigations. The argument is sometimes
2 made that the Bureau's proper role, at least in purely
3 domestic matters, should be limited to investigations of
4 committed crimes. The basic statute for the Bureau is broader
5 than this, as have been Executive orders and Presidential
6 mandates to the Bureau. The basic statute is broader since it
7 refers to investigations regarding official matters under the
8 control of the Department of Justice and the Department of
9 State as may be directed by the Attorney General. A disparity
10 is sometimes seen among the different roles of the Bureau
11 in crime detection, in on-going domestic security matters,
12 and in foreign intelligence or foreign counter-intelligence
13 matters. In recent days a statement by then Attorney General
14 Harlan Fiske Stone, who reorganized the Bureau and chose J.
15 Edgar Hoover as its director, has been quoted as a relevant
16 warning.

17 Stone warned, "there is always the possibility that a
18 secret police may become a menace to free government and free
19 institutions, because it carries with it the possibility
20 of abuses of power which are not always quickly apprehended
21 or understood. It is important that its activities be
22 strictly limited to the performance of those functions for
23 which it was created and that its agents themselves be not
24 above the law or beyond its reach. The Bureau of Investigation
25 is not concerned with political or other opinions of individuals.

1 It is concerned only with their conduct and then only with such
2 conduct as is forbidden by the laws of the United States.

3 When a police system passes beyond these limits, it is dangerous
4 to the proper administration of justice and to human liberty,
5 which it should be our first concern to cherish."

6 I should like to suggest that Stone's warning always
7 must be considered relevant to the proper conduct of the
8 Bureau's duties, but it does not necessarily follow that
9 domestic security investigations are, therefore, outside the
10 Bureau's proper functions. The detection of crime in some
11 areas requires preparation and at least some knowledge of what
12 is likely to be going on. What is at issue, I think, is the
13 proper scope, the means and methods used, the attention paid
14 to conduct and not views, and the closeness of the relationship
15 of the conduct and that which is forbidden by the laws of
16 the United States.

17 Third; I realize that some proposals, since I was
18 asked about this when I last appeared before this Committee,
19 might separate out in some fashion domestic and foreign
20 intelligence functions from the FBI or from one another within
21 the FBI. This is, of course, an issue to be looked at. I
22 assume it is recognized that there may be some relationship
23 between that intelligence which is involved in foreign counter-
24 intelligence work. One may lead to the other. And there may
25 be a relationship between foreign counter-intelligence and

