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C O N T E N T

STATEMENT OF:

PAGE

STATEMENT OF THE HONORABLE EDWARD H. LEVI, ATTORNEY
GENERAL OF THE UNITED STATES Page 2527

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62-116395-1241

ENCLOSURE

1 INTELLIGENCE INVESTIGATION

2 - - -
3 Thursday, December 11, 1975
4 - - -

5 United States Senate,
6 Select Committee to Study Governmental
7 Operations with Respect to
8 Intelligence Activities,
9 Washington, D. C.

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

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

15 Also present: William Miller, Staff Director; Frederick
16 A.O. Schwarz, Jr., Chief Counsel; Curtis Smothers, Minority
17 Counsel.
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P R O C E E D I N G S

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

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

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

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

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.

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.

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

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

foreign intelligence. If the work were separated out into different agencies, I do not know if the decision about when an investigation should pass from one agency to another always could be made easily. Moreover, even so, information presumably would pass from one agency to the other. I know that one consideration has been that it might be decided that information collected by some permitted means in intelligence investigations under some circumstances should not be used in criminal prosecutions. But if there is an exchange of information, this must always be a consideration, whether there are separate agencies or not, and the basic question then is one of use and not organization. The more active concern, I believe, is that there is a risk that conduct proper for one area may be improper for another, and that the combination can work a contamination. My view on this is that in any case we must decide what conduct is appropriate and is inappropriate for each of the areas, and we must take steps to make sure that proper conduct is lived up to. My hope is that the fact that the FBI has criminal investigative responsibilities, which must be conducted within the confines of constitutional protections strictly enforced by the courts, gives the organization an awareness of the interests of individual liberties that might be missing in an agency devoted solely to intelligence work. I know the argument can be run the other way. I believe the dangers are greater if there is separation.

Fourth, there is a question as to the proper role of the FBI in crime prevention and whether or not it should be considered authorized to take steps under some circumstances to reduce the likelihood that crimes will be committed or that serious injury to persons or property will occur.

Preventive action has raised serious questions and these must be dealt with. I suppose an initial question is whether it should be allowed at all. Yet I believe under special circumstances and with proper controls most would believe this to be a proper function.

Fifth, the problem of proper controls, supervision and accountability is all-embracing. By statute the Federal Bureau of Investigation is in the Department of Justice, and also by statute the Attorney General is the head of the Department of Justice. The history is mixed, of course, and we all have a tendency to over-simplify, but it is a fair statement that there have been times in the past when the supervision by Attorneys General, granted that the Bureau must have considerable autonomy, has been sporadic, practically nonexistent, or ineffective.

I hope that is not the case now. The responsibility is a heavy one. But in any event the problem of proper controls, supervision and accountability goes beyond the Director of the Bureau and the Attorney General. I have already mentioned that in my view the statutory base for the operations of the

1 Bureau cannot be said to be fully satisfactory. I think that
2 better controls and performance can be achieved through
3 statutory means, executive orders, guidelines, and reporting
4 to appropriate congressional committees.

5 Sixth, before I come to a resume of some of the steps
6 which have been taken, let me say I know we all realize that
7 in the past there have been grave abuses. I am uncomfortable
8 with a kind of writing of history, however, which sees it only
9 in terms of the abuses and not in terms of past and present
10 strength. It is very difficult to be fair to the past in
11 which many institutions of government carried a share of
12 responsibility. But more than unfairness is involved, if we
13 are not careful, we will turn to solutions of the moment which
14 a better reading of history might indicate are not the best
15 solutions.

16 I know we must seize the moment, if I may use such a
17 phrase in this setting. I know also that this committee
18 realizes that a very important agency with dedicated, highly
19 professional, greatly disciplined government servants is
20 involved. The importance is to the security and domestic
21 tranquility of the United States. Stone's warning was given
22 in an act of creation. He was proud of his creation. In spite
23 of the abuses, there is a proper place for pride. I take it
24 our mutual work should be to nurture that pride and the condi-
25 tions which justify it.

1 I turn now to a review of some of the steps which have
2 been taken or are in progress. We have tried most diligently,
3 under safeguards to protect the privacy of individuals and
4 with an awareness of the unfairness of instant history to give
5 a great deal of information to congressional committees.

6 Attorney General Saxbe made public and Deputy Attorney
7 General Silberman and Director Kelley testified about the so-
8 called COINTELPRO. When the FBI discovered evidence of
9 several more COINTELPRO projects after I became Attorney
10 General, these were revealed. One of my first acts as Attorney
11 General, my third week in office, was to testify before a
12 congressional committee about possible incidents of political
13 misuse of the FBI by the White House in the past and about the
14 nature of FBI file-keeping systems, particularly the files kept
15 by Director Hoover in his office suite.

16 Director Kelley has spoken publicly and before congress-
17 sional committees about incidents in the past in which FBI
18 agents engaged in break-ins to gather or photograph physical
19 evidence in intelligence investigations. On a number of occa-
20 sions, most recently in testimony before this committee, I
21 have described the history of the use of electronic surveil-
22 lance by the FBI. We have welcomed such opportunities.

23 On February 26, 1975, I instructed Director Kelley to
24 report to me any requests made of the Bureau or practices
25 within the Bureau which he deems improper or which present the

1 appearance of impropriety. On February 28, 1975, Director
2 Kelley ordered FBI personnel to report such requests or
3 practices to him. In July 1975, I reaffirmed my February
4 directive and also asked for a report of all sensitive investi-
5 gative practices.

6 The Director promptly complied. Director Kelley has
7 regularly provided information on conduct by Bureau agents and
8 programs underway within the Bureau that could raise questions.
9 These matters have been reviewed and discussed with the
10 Department so that a consistent and appropriate policy can be
11 achieved.

12 This is a continuing process. I do not assert that we are
13 aware of everything about the Bureau. Nor do I suggest that
14 we ought to know everything. Appropriate communication,
15 consultation and supervision at this level have to be selective.
16 I make this point, which I think may sound disconcerting, not
17 in any way to minimize the responsibility of the Bureau to keep
18 the Department informed nor to minimize the Department's duty
19 to find out. Rather I want to be realistic about a learning
20 and organization problem which requires realism if it is to be
21 understood and perfected.

22 With respect to possible legislation, the Department has
23 in preparation various drafts of possible bills which may be
24 of assistance in the area of what is now warrantless electronic
25 surveillance. Although obtaining a judicial warrant does not

1 automatically eradicate the possibility of abuse, it is
2 perceived to be an important safeguard of individual privacy
3 interests, and we are exploring, as we said we would do,
4 various possibilities and alternatives.

1 Finally, a committee within the Department of Justice,
2 chaired by Mary Lawton, Deputy Assistant Attorney General in the
3 Office of Legal Counsel, and composed of representatives of
4 my office, the Criminal and Civil Rights Divisions, the Office
5 of Policy and Planning, and the FBI, has been working for
6 eight months reviewing FBI procedures in many areas and drafting
7 guidelines to govern those procedures in the future. The Com-
8 mittee has produced draft guidelines covering White House
9 inquiries, congressional and judicial staff appointment investi-
10 gations, unsolicited mail, and domestic security investigations.
11 It is currently at work on guidelines covering counterespionage
12 investigations and will later consider the use of informants,
13 the employee loyalty program, organized crime intelligence
14 investigations, criminal investigations, and other aspects of
15 FBI practice. The Committee's work has been extensive and time-
16 consuming. It has involved not only questions of proper safeguard
17 but also of efficiency in the proper functioning of the Bureau.
18 It has been an effort to translate into words the complicated
19 and important mechanisms for controlling the FBI. I hope the
20 Committee's efforts at articulation will be of use to this Commit-
21 tee and others as it considers drafting legislation.

22 You have received copies of the latest drafts of the
23 guidelines that have been substantially completed by the
24 Committee. These guidelines do not yet represent Department
25 policy. There is disagreement within the Department on some

1 aspects of these guidelines. I have disagreed with the Committee
2 recommendations from time to time, and the FBI has raised
3 substantial questions about other recommendations, particularly
4 with respect to the treatment of unsolicited mail. Some of the
5 proposals in the guidelines could be promulgated as departmental
6 regulations. Congress may feel some ought to be enacted into
7 statutory law. Other provisions would require implementation by
8 executive order.

9 I would be glad to discuss these draft guidelines with you
10 in detail in response to your questions, but a brief discussion
11 of the guidelines on domestic security may be useful at the
12 outset.

13 The guidelines begin by attempting to impose some order
14 and definiteness to the domestic security field. To begin with,
15 these guidelines do not deal with FBI efforts to counteract
16 the work of foreign intelligence services operating within the
17 United States. Standards for determining when there is foreign
18 involvement sufficient to place a subject in the category of
19 foreign counterintelligence investigation are now being
20 debated within the guidelines committee. The domestic security
21 guidelines also are not meant to cover security or background
22 investigations of federal appointees or investigations of
23 ordinary crimes. Under the draft guidelines, domestic
24 security investigations are only to be authorized when there
25 is a likelihood that the activities of individuals or groups

1 involve or will involve the use of force or violence in violation
2 of Federal law. Domestic security investigations are to be
3 limited to activities of individuals or groups intended to
4 accomplish one of five purposes: overthrowing the government
5 of the United States or of a State; interfering with the
6 activities within the United States of foreign governments or
7 their representatives; influencing government policies by
8 interfering by force or violence with government functions
9 or interstate commerce; depriving individuals of their civil
10 rights; and creating domestic violence or rioting when such
11 violence or rioting would necessitate as a countermeasure the
12 use of Federal armed forces. There is also a provision for
13 limited investigation when there is a clear and immediate
14 threat of domestic violence which is likely to result in a
15 request by a state for Federal armed assistance.

16 Currently there is no procedure requiring the review
17 outside the FBI of all domestic intelligence investigations
18 conducted by the FBI, though the FBI has a long-standing
19 policy of reporting its investigative findings to the
20 Criminal Division. Under the draft guidelines there would be
21 a comprehensive program of reporting to the Attorney General or
22 his designee of all preliminary and full domestic intelligence
23 investigations. The Attorney General would be required
24 under the draft guidelines to put a stop to any full investiga-
25 tion whose justification did not meet an established standard.

1 The standard would be that there must be specific and articulable
2 facts giving reason to believe that the individual or group
3 under investigation is engaged in the activities I have just
4 listed.

5 Another feature of the draft guidelines is to place strict
6 controls upon the use of any technique by the FBI which goes
7 beyond the gathering of information. COINTELPRO was the name
8 given the use of some such techniques. As I have said
9 before, some of the activities in COINTELPRO were outrageous and
10 the others were foolish. Nonetheless, there may be circum-
11 stances involving an immediate risk to human life or to
12 extraordinarily important government functions that could only be
13 countered by some sort of preventive action. The guidelines
14 require that any such preventive action proposal be submitted
15 to the Attorney General. He could authorize the preventive
16 action only when there is probable cause to believe that the
17 violence is imminent and when such measures are necessary to
18 minimize the danger to life or property. The preventive action
19 would in all cases have to be nonviolent. The Attorney General
20 would be required to report to Congress periodically and no
21 less often than once a year on the use of preventive action by
22 the FBI.

23 I make no claim that during this rather difficult but
24 interesting and, I must trust, promising period, we have
25 achieved all that might have been possible. In many ways the

1 work has been disappointingly slow. But I do think we have
2 made advances in nurturing and helping to improve a structure
3 which will be supportive of the best efforts of the men and women
4 in the Department of Justice and in the Federal Bureau of Inves-
5 tigation. No procedures are fail-safe against abuse. The best
6 protection remains the quality and professionalism of the
7 members of the Bureau and of the Department.

8 The Chairman. Thank you very much, Mr. Attorney General.
9 It's a very helpful statement, and does summarize the efforts
10 that you are making to give greater, put greater order into
11 the work of the FBI.

12 One thing that leaves me somewhat baffled is the
13 difference between domestic security action, for which you have
14 set forth the proposed guidelines, which seem to me to be
15 good ones, and what you call preventive action. You state
16 in your statement at page 12 and the top of page 13, after you
17 criticize the COINTELPRO program, which this Committee has
18 explored in some detail, you say "Nonetheless, there may be
19 circumstances involving an immediate risk to human life or
20 to extraordinarily important government functions that could
21 only be countered by some sort of preventive action."

22 In that case, why can't the preventive action take the
23 form of an arrest if there are circumstances involving immediate
24 risk to human life or to extraordinarily important government
25 functions?

1 Attorney General Levi. If it can, then that would have
2 to be done because the guidelines specifically require that
3 the preventive action is necessary and it can't otherwise be
4 handled.

5 Now, one can think of incidents --

6 The Chairman. Can you give us some incidents?

7 Attorney General Levi. If there is the likelihood of a
8 violent confrontation between two marching groups on a state
9 capitol, it is conceivable that blocking off some streets, or
10 directing signs to some other direction in an emergency
11 situation of that kind might be useful, and I take it that
12 is a preventive action, and I would not think unusual, by the
13 way, for people who are properly trained in work of that kind.

14 The Chairman. That is a good kind of preventive action.

15 Suppose that there were two caravans instead of two
16 marching groups, and that you had reason to believe that they
17 were headed toward one another and there would be a violent
18 confrontation once they met. Would permissible preventive
19 action in those circumstances permit putting sand in the
20 gas tanks of the automobiles so that neither caravan could
21 move?

22 I have to ask that kind of a question after what we found
23 out that the FBI was up to in the COINTELPRO program.

24 Attorney General Levi. The answer is no. Certainly
25 there's no intention, the guidelines do not spell out, and we

1 have had discussions about that, what kind of precise
2 preventive action might be possible or might not be possible
3 under special circumstances.

4 The Chairman. This is all very vague, and suppose you
5 had reason to believe that a prominent figure of some kind in
6 a movement was about to or of a mind to incite his followers
7 to violence. Then in that case could you undertake to give
8 him a drug that would prevent him from speaking for three
9 weeks?

10 Attorney General Levi. No, of course not, but I have to
11 add that what the guidelines do say is that the Attorney
12 General has to give permission, not only does he have to give
13 permission, but he will have to report to the Congress, and
14 since quite naturally this Committee believes that reports
15 to the Congress are the most important thing that any agency
16 can do, then it seems to me you must also agree that that is
17 some safeguard.

18 The Chairman. Well, that depends upon your view as to the
19 kind of Committee that can do the job of surveillance.

20 Attorney General Levi. Well, I don't think -- this really
21 was my suggestion before. It takes a combination of control,
22 and what we have attempted to do here is to have a guideline
23 which strictly limits -- maybe it should limit more, preventive
24 action, but admits that there is an area for it. Now, maybe
25 we should not admit.

1 The Chairman. Why couldn't you do it this way, Mr.
2 Secretary? Why couldn't you say that when preventive action is
3 necessary, it must be open and public kind of action.

4 Attorney General Levi. I don't think that telling people

5 The Chairman. Now, understand what I mean. You gave an
6 open, public way of preventing two groups from meeting and
7 clashing. Well, when that is the case, the means used are
8 likely to be reasonable ones. But when there are secret methods
9 of preventive action undertaken, that's when you get into
10 potential problems, real troubles that we have seen.

11 Attorney General Levi. Well, we have to take that through.
12 It may very well be that no secret ones at least beyond the
13 immediate moment of doing would be required. It may be that
14 one can put it that way, but I think one of the virtues of
15 guidelines should be that they are sufficiently realistic so
16 that they don't have to be violated under emergency
17 circumstances.

18 There is a question, then, of how detailed one can make
19 them, but it may be that the line about secrecy beyond a
20 certain point would be good.

21 I should also say that the Privacy Act would itself
22 prohibit dissemination of lies and deception, I think, to a
23 considerable extent, if one goes back to the old COINTELPRO.
24 So I think we are in somewhat of a different statutory situation
25 for the moment anyway. But we have tried, in the guidelines,

1 in any event, to very much limit the field.

2 Now, whether we have limited it enough, I'm not sure.

3 The Chairman. Did you say that with respect to the domestic
4 security activities of the FBI, that before such a project is
5 undertaken, the Attorney General must give his consent or
6 that he might be informed of prospective ongoing projects
7 in order that he can call a given project that he doesn't find
8 fully justified to a halt?

9 I didn't quite understand your question.

10 Attorney General Levi. Well, he has to give, he has to
11 be informed of, I think, all of the investigations. He can
12 terminate them all. The problem is whether he -- he doesn't
13 have to authorize the full investigation, but he has to be
14 informed about it and he can terminate it.

15 The Chairman. Now, well, you have to authorize wiretaps
16 and electronic devices in such cases. Why shouldn't -- why
17 wouldn't it be well for the Attorney General to authorize the
18 initiation of programs in this particular field, new investi-
19 gatory programs?

20 Attorney General Levi. Well, I'm trying to protect, if
21 not myself, at least my successors. I'm not sure that it makes
22 much difference. It makes some difference. If the Attorney
23 General has to authorize all full investigations, he will have
24 quite a lot of work to do. If he has to authorize all of
25 the preliminary investigations, his desk is going to be covered

1 with a great many things which he doesn't know a great deal
2 about.

3 The Chairman. Don't you think there should be some outside
4 check in this area, particularly where we are not dealing with
5 criminal law enforcement as such, but we are dealing with
6 potential violence and you referred to as surveillance of
7 citizens and groups of citizens for purposes of domestic
8 security. That's a pretty fuzzy field, and we have seen how
9 great the abuses were for a long period of time, and don't you
10 think there should be some outside check, perhaps not with
11 every case, the Attorney General himself, but some outside
12 check on the agency in this general field to be sure that they
13 are following these guidelines?

14 Attorney General Levi. But I've already said that I
15 think that there ought to be reports to Congress. I don't
16 want to word the scope of the domestic security investigations,
17 however, quite the way you have worded them, because these
18 guidelines which could be in part put into statute, strictly
19 limit them. They limit them to where there is a likelihood
20 for preliminary investigations that the activities of
21 individuals and groups involved would use force and violence
22 in violation of laws in particular areas.

23 And that is for 90 days, and then perhaps another 90 days,
24 and the kind of investigation which can be done in a
25 preliminary investigation is also restricted. When you go

1 beyond that to the full investigation, then we really have the
2 stop and frisk standard, so that we really have come, I think,
3 as close as is feasible. And maybe it is too restrictive; in
4 any event, as close as is feasible to the violation of law
5 kind of penumbra, so that it would seem to me that that was
6 some safeguard.

7 Now, whether that is sufficient, I don't suppose anything
8 is fully sufficient, but I would assume that in addition,
9 there can be reports to Congress, and there will have to be
10 reports to the Attorney General, and I would think that that
11 and the lessons of history would provide quite a lot of safe-
12 guards. If the suggestion is that one should go to a Commission
13 or to a court, I must say that I have grave doubts as to whether
14 that is the proper solution, but if that were the case, it would
15 be a statutory matter, and I would hope that my participation
16 in making that decision would not be viewed as having as
17 heavy responsibilities as those who would have to vote for it.

18 The Chairman. Don't you think, given the past history
19 you have referred to, that it might be a very good idea to
20 take these guidelines which represent to me a good faith
21 effort on your part to bring order into this general chaos,
22 take these guidelines and write them into the law?

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1 Attorney General Levi. I think that undoubtedly parts of
2 the guidelines should be made statutory. I think that the
3 problem is, and I am sorry for this, is that it has taken so
4 long to draft these guidelines, although I think it has been an
5 extraordinary effort. And the way the guidelines are written
6 one has to -- at least it is better to see them all at once
7 because they do relate to each other. But there may not be
8 time for that.

9 As I said, I know we have to seize the moment, but I do
10 not know how long the moment is. In any event, I agree that
11 part of the guidelines, at least, ought to be in statutory
12 form.

13 The Chairman. Well, at the moment, this committee is
14 until February 29th, 1976. And we would solicit from you as
15 much cooperation as I know you will give, based upon your
16 willingness in the past, to see what kind of recommendations
17 the committee can make, because clearly the FBI does need a
18 generic statute which it has lacked through the years and that
19 would be the appropriate place for guidelines at this time.

20 Senator Hart, do you have questions?

21 Senator Hart (Michigan). Mr. Attorney General, good
22 morning.

23 First, for a number of years in the Judiciary Committee,
24 we have been huffing and puffing with a whole line of Attorneys
25 General in an effort to catch them, and it is against that long

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1 period of effort that I want this morning to first of all thank
2 you for developing to the degree that you now have, exactly the
3 kind of thing we have been talking about. And even as we on
4 the committee in those days were urging guidelines and while we
5 might not have sounded we understood how incredibly difficult
6 it is to put down in black and white, chapter and verse, how
7 you respond in a whole variety of problems.

8 And for the first time, the Attorney General has come in
9 with a very solid piece of work that all of us appreciate.

10 Now in your statement, you indicate that you are working
11 on guidelines as they relate specifically to informants and
12 you relate that to the Department's general guidelines on
13 intelligence that permit the use of this. Now yesterday, as
14 you know, we discussed with the FBI Director, the possibility
15 of getting judicial approval for informants by you.

16 I think all of us understand the importance in an investi-
17 gation of informants. But we have heard some stories, some
18 hair raising stories about the way that can be abused, that
19 technique can be abused. And I, and I am sure others, suggested
20 that informants are an extremely intrusive form of eavesdropping
21 in terms of what can be reported.

22 I know that the Supreme Court has not said that informants
23 are unconstitutional per se under the fourth and first amend-
24 ments, unless you get a court warrant, but that does not prevent
25 Congress from requiring that kind of procedure, in order

1 to fully safeguard the rights of privacy and expression. Now
2 what are your thoughts on such a requirement, the requirement
3 of a neutral, detached third party, rather than the investigating
4 branch of the government deciding when to use targeted infor-
5 mants?

6 Attorney General Levi. Well, I am sorry to say, Senator
7 Hart, that I do not think that the suggestion on balance is a
8 good one. And that does not mean that I have a better sugges-
9 tion. There is no doubt that informants or paid informants
10 can be misused, because there is an area where, if that is
11 done, the courts can step in; and one can have guidelines or
12 statutory restrictions on that if you think of, again,
13 reporting.

14 But the notion that a court would have to authorize the
15 use of each informant and how the informant was to be used,
16 to continue to pass on that, I think would make for mal-
17 administration. It would impose an enormous burden on the
18 court, and while I think we always keep looking these days for
19 a third impartial objective person, I do not really believe
20 that it can be the court.

21 Now one could think of a board or a committee. After all,
22 the Congress set up, I think, a subversive activities board,
23 did you not? So I suppose you might set up an informers per-
24 mission board. But my impression is that you would not get
25 very good people to be on that board and that it would not

1 really provide the kind of knowledgeable review that you would
2 want.

3 So I recognize the problem and I recognize why one might
4 turn to that suggested solution. I do not want to take away
5 from your time, but it is sort of interesting that special
6 devices and protections were developed for electronic surveil-
7 lance because they were said to be different from the use of
8 informants. And now we are running the argument in the other
9 direction and saying well, they are even more dangerous than
10 electronic surveillance because you have the human ear right
11 there.

12 So it is just an interesting point.

13 Senator Hart (Michigan). Well, maybe in defense of our
14 earlier attitude, we did not know about the abuse with respect
15 to the human technique, the number of occasions on which it
16 has been used.

17 Attorney General Levi. I rather think that the fourth
18 amendment knew more about that than it did about electronic
19 surveillance.

20 Senator Hart (Michigan). The fourth amendment drafters
21 did. But people around now --

22 Attorney General Levi. I feel for the objective, but I
23 do not think -- I just think it would not work.

24 Senator Hart (Michigan). We are agreed that it is a
25 difficult balance. The national security concern here and the

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individual's civil liberties here -- and to balance these claims is tough. You say you think the court is inappropriate.

Attorney General Levi. I think that would be a mistake. I think it would also be a mistake to have the court pass on the activities of the agents, of the Bureau's own agents who have ears and listen and so on. I think we have to trust someone.

Senator Hart (Michigan). But is the Director of the FBI the fellow to trust?

Attorney General Levi. He is certainly one of the persons that has to be trusted very much, and he has to be put in a position where it is known that he is being trusted and what his obligations are.

And I think if the congressional mandate and the guidelines and whatever else are clear enough, I have enough faith in human nature to think that that would be abided by. I do not think the history of the abuses shows that that kind of a thing really was abused. There was not that kind of spelling out. There was not that kind of direction. There were directions in the other way really; so that I do not think the problem -- while I do not mean to minimize the prior abuses which were terrible -- but I do not think the problem requires the solution of the interposition at every stage.

Senator Hart (Michigan). If we leave the discretion with the Director of the Bureau, you would agree that there should

1 be a -- we always use the word effective even though we cannot
2 define how you make it effective -- an effective system under
3 which somebody other than the Bureau's Director would be
4 reviewing the decisions he is making, as he affects this
5 balance.

6 Attorney General Levi. I think there have to be frequent
7 reviews and I think one has to have a situation in the
8 Department of Justice where the Attorney General or his
9 designee can be in a position to make that review and I think
10 one also would hope and require that there be adequate presen-
11 tation to congressional committees. You do not want to impose
12 so many duties on the Attorney General so that he is -- so
13 that he loses some sense of distance and objectivity on the
14 Bureau.

15 That is one reason I said one has to realize that there
16 is not full knowledge and they are different offices. But I
17 do think the Attorney General, I hope, is some protection and
18 the Department is and congressional committees would be too.

19 Senator Hart (Michigan). The earlier hearings, which
20 reviewed some of the excesses, found some citing in the FBI
21 handbook regulations which directs field offices and their
22 informants to find out and report all contacts and cooperation
23 between a group under investigation and other groups, even if
24 the other groups are not suspected of being either extremists
25 or subversives.

1 I would think that part of the investigation would be to put
2 that down. And that is really what you are talking about. And
3 I do not know that one should want to limit that.

4 Senator Hart (Michigan). Well, maybe there is not any
5 happy solution to this, but we would be doing would be
6 reporting on first amendment activities of the other groups
7 that would not be eligible to be targeted.

8 Attorney General Levi. I think the report should not be
9 on that. It should be rather on the effort of the group
10 properly being investigated to gain control. And we do have a
11 problem as to what one does with the dissemination or keeping
12 of information, and the guidelines attempt to address that
13 question, whether they have done so sufficiently or not.

14 One reason the guidelines are not all finished, when one
15 gets to the counter or foreign intelligence guidelines and has
16 to deal with organizations which are under active collaboration
17 with foreign governments, and the question is whether they have
18 extended their influence in such a way as to impose a real
19 threat of force and violence, I do not know how effectively
20 one can impose restrictions.

21 We try to do it. The proposed guidelines have not been
22 worked out. One has to remember that if one goes back to the
23 period when I was first in the Department of Justice, there was
24 considerable concern as to the ability of the Japanese and the
25 Nazis to gain control beyond those agencies which were clearly

1 collaborating with them into other agencies. And I just do not
2 know that I want to say to the United States government that
3 that is the kind of information that you may not get.

4 The Chairman. Senator Mathias?

5 Senator Mathias. If Senator Hart has any question which
6 follows right along at this point, I would be glad to yield.

7 Senator Hart (Michigan). No.

8 Senator Mathias. Thank you, Mr. Chairman. I want to
9 join with Senator Hart in thanking the Attorney General for
10 all the help he gives to this committee. Whether we call on
11 him for philosophical treatises or for practical advice, he is
12 always available. I think that is a very real contribution.
13 And the way in which he helps us leads me almost to regret that
14 I did not go to the University of Chicago law school.

15 Attorney General Levi. Senator, you are going to go far.

16 Senator Mathias. You have talked a little about the
17 Smith Act, and about the seditious conspiracy clause in connec-
18 tion with the responsibilities of the FBI. And I wonder if you
19 think there is sort of a dated aspect to these.

20 Attorney General Levi. Oh, of course there is and I want
21 to say that when one talks about the looseness of the guide-
22 lines, one ought to read the statutes which came out of
23 Congress. That is why I say that it is sort of amusing as we
24 go around flattering each other, we all bear -- I mean all of
25 the institutions bear responsibility.

1 Senator Mathias. I could not agree with you more, and I
2 think I have said repeatedly that I think a lot of the problems
3 that are dumped in the courts and a lot of the burdens that the
4 courts bear have begun right here on Capitol Hill because we
5 have not carefully sculpted the laws to make it clear what the
6 legislative intent was. And in fact, perhaps they have been
7 carefully sculpted to obscure the legislative intent in some
8 cases. And the courts then are left with the burden of finally
9 administering the law rather than either the legislature
10 prescribing it, or the executive enforcing it.

11 Attorney General Levi. Not only that, you draft
12 statutes that quite clearly say one thing, the Attorney
13 General is then asked for his opinion which he is required to
14 give, as to what it means to a government department. He gives
15 it. Another House of this Congress then proceeds to make
16 motions to hold the man in contempt for following the opinion
17 of the Attorney General. And Professor Kurland, my good friend,
18 says do not listen to the Attorney General, he is only a
19 lawyer.

20 There is a responsibility in Congress for having statutes
21 clear and for abiding by what they say, and if they do not like
22 them, change them. I agree with you.

1 Senator Mathias. I would hope that with all the admonitions
2 that we are giving to other people these days that we take that
3 one ourselves, that the laws need to be more carefully written.

4 Attorney General Levi. Yes, it is easier to see abuses
5 by others, I know.

6 Senator Mathias. Let me say that I think we need some help
7 in this endeavor, that there are many cases in which the actions
8 taken by Congress are criticized later when the errors might
9 have been avoided by some cooperative action in the process.

10 Attorney General Levi. I meant that to be clear when I
11 was referring to all parts of the government.

12 Senator Mathias. But, specifically in relation to the
13 seditious conspiracy laws in the Smith Act, the courts have
14 talked about the advocacy provisions of the law so strictly as
15 to require incitement of imminent lawless action as a test and
16 that I think does really date these acts.

17 Attorney General Levi. I think so. And while I want
18 to say that in the guidelines we tried to emphasize that there
19 is a question of how much one ought to spell out the nature
20 of the evidence, in part, because I think that even spelling
21 it out might have a chilling effect.

22 Senator Mathias. Now you have lead me right to my next
23 question, which is whether we should put any limitations on
24 the type of information that is to be gathered in a purely
25 domestic intelligence investigation.

1 Attorney General Levi. Well it may be that one has to
2 try one's hand at drafting them. I have.

3 Senator Mathias. It is a tough one, I think, but we have
4 seen as a result of this investigation family matters, is that
5 proper? Can you prescribe it in a general way that sexual
6 activities, purely legal activities, but perhaps not within the
7 mainstream of what most Americans are thinking of doing, per-
8 sonal relationships, all of this kind of thing --

9 Attorney General Levi. Well, one can try. What we did
10 was, as I say, to provide a very tough and maybe too tough
11 standard, because it is specific. And articulable facts,
12 giving reason to believe that an individual is engaged in
13 activities described in the paragraph which is force and violence
14 to do the following things.

15 Now, that may be too restrictive. Now, if one starts to
16 say what kind of things can one look at which might suggest and
17 lead you to see these things, I do not know. And I suppose
18 we all have to admit that public attitudes about activities and
19 therefore maybe the activities themselves mean different things
20 at different times.

21 And maybe one has to have a different set of rules created
22 from time to time and one of the notions of the guideline would
23 be, I think, to do that.

24 I am not in favor of Congress every year deciding whether
25 it is against homosexuality or particular other aberrant sexual

1 conduct.

2 And therefore this can be included or not included as the
3 winds blow. I think that would be probably not legislatively
4 very desirable.

5 Senator Mathias. Let us suppose, however, just for the
6 sake of discussion that these activities are the proper scope
7 of a domestic intelligence investigation and that that investi-
8 gation is conducted and its object is obtained and the investi-
9 gation is closed, then what should happen to this material,
10 given the infinite capacity of the government today to store
11 and retrieve information?

12 Attorney General Levi. Well, the guidelines attempt to
13 go in the direction that after a period of time that material
14 should be done away with.

15 Senator, you have often posed questions for me to think
16 about and this is another one that I think we ought to think
17 about together: that is the destruction of information. It
18 is also the destruction of evidence which might be used to show
19 abuses by the Bureau.

20 So --

21 Senator Mathias. If I knew the answer I would not ask
22 the question.

23 Attorney General Levi. If I knew the answer I would give
24 it.

25 But, I am saying, because I think it is a very important

1 question --

2 Senator Mathias. I think what you suggest is a very per-
3 tinent, very current consideration, that if you destroy all the
4 files, you can do more than all the perfumes of Arabia in washing
5 out the blood.

6 Attorney General Levi. The guidelines do move in that
7 direction. There is an argument about the time for the destruc-
8 tion of information.

9 Senator Mathias. There is a concurrent question: if files
10 are retained for any period of time, are they open for the pur-
11 pose of name checks during that period, which is a related
12 but really a separate question, for background checks, for
13 employment checks, that kind of thing.

14 Attorney General Levi. Well you could have selective
15 sealing of files and I suppose selective destruction of items.
16 But it is a very difficult thing.

17 Senator Mathias. I would like to explore briefly your
18 thoughts on a subject we have discussed with other witnesses
19 at some length. And that is whether you believe that a
20 warrant requirement for beginning a domestic intelligence
21 investigation would meet the standards in the Fourth Amendment
22 if it required less than probable cause for the issuance of
23 a warrant, probable cause to believe that a crime has been or
24 was about to occur.

25 Attorney General Levi. I think the question really

1 would be what the warrant would enable the obtainer to do.

2 Under the guidelines, just opening a preliminary investiga-
3 tion, what can be done is not very much. It is so much less
4 than a full investigation. So, I think I would turn the
5 question around.

6 I think the court would really wonder why you want the
7 warrant. And it certainly would clog the courts.

8 Senator Mathias. The intrusion of an informant, for
9 example, into a political discussion, or any other activities
10 is a much greater intrusion than a bug or a wiretap in that
11 same conversation.

12 Now, would this be, would the placement of an informant
13 be that kind of activity?

14 Attorney General Levi. Well, you see, the preliminary
15 investigation does not really allow new informants, so, as I
16 say, it is quite limited.

17 And I did respond that I understand there is a problem
18 about the human ear, the human eye, which we discussed last
19 time. But, I doubt when you ^{that} are going for a warrant that in
20 each one of those cases is feasible.

21 And I think we have to be grown up enough not to feel that
22 we always have to go to the courts. Now, that may make us feel
23 that there is a lack of protection. But I think a greater
24 protection is to curtail the scope of the investigations to
25 make sure that they are held to a high standard and to control

1. dissemination of the information.

2. Senator Mathias. Well, I think that is the proper test:
3. whether you can embark upon what are obviously immature reactions
4. to events.

5. I do not think the Fourth Amendment itself is subject to
6. a test of maturity or immaturity, but --

7. Attorney General Levi. No, I do not think the Fourth
8. Amendment requires a warrant.

9. But I understand the argument that it is better, it is
10. sometimes better to put a man on the moon, because he will know
11. more than a machine. So you are saying the same thing in
12. terms of informers.

13. Senator Mathias. Finally, let me just return to the Smith
14. Act for a minute, which, as I understand it, requires incitement
15. to imminent action to overthrow the government by violence.

16. If a domestic intelligence investigation can begin with
17. far less, only a theoretical advocacy of some change --

18. Attorney General Levi. I do not think it should begin with
19. a theoretical advocacy of change.

20. Now, if you asked me whether it ever does, my answer is
21. I do not know. But I do not think it should begin with that.

22. Senator Mathias. Well, I think that between those two
23. positions, there is a danger of First Amendment violations. And
24. I like your position. I am not arguing with you --

25. Attorney General Levi. Well, we wrote this domestic

1 security investigation guideline because I was disturbed by
2 the prior draft as not being tough enough and I think that I
3 may now have come out with something that is too restrictive.
4 I am not sure. And this is a proper process of discussion
5 and back and forth, not only here but with the Bureau and I
6 hope that one can get something from it that is useful.

7 Senator Mathias. Thank you very much.

8 The Chairman. Senator Mondale.

9 Senator Mondale. Thank you, Mr. Chairman.

10 Mr. Levi, I think the most faithful question that this
11 Committee, our Congress and our government must face is whether
12 we are going to step beyond the Stone line permitting investi-
13 gative agencies to go beyond matters of law enforcement, matters
14 of so-called "internal security."

15 If we decide that we must, then I am persuaded we should
16 only do so based upon unarguable evidence that an exception
17 is needed and then to grant such an exception only under the
18 severest and closely defined standards, and, if possible, under
19 court supervision.

20 If we fail to do that, I am convinced that this Committee
21 has failed and that in another 50 years, there will be hearings
22 just like this in which the excesses that we have uncovered
23 will have been repeated.

24 And, I say that because I think anything we do has to
25 stand the test of what we have learned. And what we have

1 learned is that the power to use the police for politics is
2 a seductive and irresistible one. No President, no attorney
3 general can resist it. Few have.

4 But we have now found that it is not a partisan issue. The
5 Presidents of both political parties, a director who served
6 under Presidents of both political parties, they were absolutely
7 unable to resist the right to snoop into the private affairs of
8 Americans not to enforce the law but in order to gain some pol-
9 itical advantage.

10 This is, I think if you look at human history, this has
11 happened everywhere. Which is why we adopted the Bill of Rights.
12 The Federal Bureau of Investigation was set up precisely be-
13 cause it happened in World War I and we had the scandal of
14 the Palmer Raids and all the rest.

15 And when I look at these vaguely defined guidelines, I
16 have to ask would they stand up under the direct orders to
17 the contrary from a President of the United States. Would
18 they stand up in the face of a willful director who is angry
19 or hostile or suspicious about some of these political ideas,
20 the next Martin Luther King.

21 My feeling is that based upon what we have learned, with-
22 out any doubt, if you swept away, as quickly as a sand castle
23 being overrun by a hurricane, they would mean nothing.

24 What we decide to do cannot be tested by the words, but
25 by our notions of how human nature works when empowered in this

1 way to play god with the American people.

2 That is the test and it has got to be tested by what
3 happens when the nation is in frenzy and in fear and it has
4 got to be tested by what people do when they do not think they
5 are going to be caught.

6 And, for that reason, I see the step beyond the Stone Step
7 namely beyond the enforcement of the criminal law, is not a
8 step forward, but a step off a cliff, right back into the morass
9 that we find ourselves in today.

10 If you look at this record, it is a horrible one. I mean
11 the way Martin Luther King was hounded and harrassed is a
12 disgrace to every American. That this country once took all
13 the Japanese and put them in internment camps we now know is
14 one of the blackest pages in American history. And it is that
15 kind of record that whatever we do has to be tested against.

16 And, I think for that reason we have to draw a line, the
17 line that Judge Stone suggested, and if we do grant exceptions,
18 they have to be specifically and rigidly and unquestionably
19 drawn, because there is no point in talking about oversight
20 if the standards are not understandable.

21 And these laws have to be so clear that the Attorney
22 General and the director of the FBI would have to say when the
23 President calls, "I am sorry, Mr. President, but we cannot do
24 it, it is against the law."

25 If they are not able to say that, I am convinced we will

1 right back here, someone will, those who follow us, 50 years
2 from now, holding hearings similar to these.

3 Would you respond to that?

4 Attorney General Levi. Well, I think, like the Stone
5 statement, it is a good admonition. As I tried to say in my
6 statement, I do not think the Stone standards indicates that
7 there should not be domestic security investigations because
8 the Stone standard talks about items within the proper juris-
9 diction of the Bureau and violations of law and if you are going
10 to have an investigating agency which is going to be at all
11 responsible in those areas, they have to know some things which
12 are related, closely related to violations of particular kinds
13 of law.

14 And I do not believe that the standards that have been
15 drawn up are as vague as your statement, perhaps, suggests, be-
16 cause, when one uses the standard of the stop and frisk case,
17 that is the standard, very close and perhaps too close.

18 So, I think in terms of the Stone standard, it probably
19 meets it.

20 So, that I am not sure that there is this big gap, because
21 this says specifically, "specific and articulable facts giving
22 reason to believe that an individual or individuals acting in
23 concert are engaged in activities" described in that paragraph.
24 Those are activities of force and violence in violation of
25 criminal statutes.

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1 So -- and I should remind you, as I know I do not have to,
2 that, as we said before, Congress has passed some rather broad
3 criminal statutes.

4 Senator Mondale. Oh, yes.

5 Attorney General Levi. And the Stone standard is not
6 very meaningful if you do that.

7 Senator Mondale. Well, the question now is once we know
8 what has happened, and we know the abuse that arises when people
9 have this unlimited, ill-defined power, what do we do if
10 possible to try to prevent its recurrence? That is the issue
11 that faces you. That is the issue that faces me and I am con-
12 vinced that guidelines written by the executive can be
13 rewritten by the executive, and if not by you, by those who
14 follow. And they will mean absolutely nothing against the will
15 of a willing president, a willing attorney general, or a
16 willing director, absolutely nothing. because they do not have
17 the force of law.

Attorney General Levi. There's no disagreement. I don't think I should apologize for having ventured into the drafting, into having the guidelines drafted. It seems to me that that had to be done. I certainly do not take the position that parts of them should not be put in statutory form, and I certainly do not take the position that some of them should not be put in Executive Order form.

I think we ought to use all the devices, those devices where more permanence is wanted and those devices where there might have to be changes from time to time.

Senator Mondale. Now, Mr. Levi, are you persuaded that you have personally reviewed the specific instances of abuses by enforcement agencies, particularly the FBI? Are you personally confident that your guidelines fit and meet and prevent a recurrence of those abuses?

Attorney General Levi. The guidelines are not completed. Senator Mondale. No, have you personally looked through those materials?

Attorney General Levi. At all the abuses? Certainly not.

Senator Mondale. Well, certainly not, you say. Mr. Schlesinger, confronted with a similar problem, sent a wire to all of his CIA facilities and said, give us all the examples that you know of in which our laws and our authority have been abused. Have you done anything like that?

Attorney General Levi. I have done several things.

1 Senator Mondale. Have you done anything like that?

2 Attorney General Levi. I am trying to answer.

3 Senator Mondale. All right, proceed.

4 Attorney General Levi. We have an investigation going on
5 of the COINTELPRO and COINTELPRO-like activities. We have a
6 communication, several from me to the Director, where he thinks
7 there is sensitive or irregular materials to call it to my
8 attention. We have -- so that I think that we have done both
9 things that were done by Mr. Schlesinger.

10 I assume that Mr. Schlesinger's behavior was purified
11 the CIA. I really do not know.

12 Senator Mondale. Well, let us take the most celebrated
13 case of abuse, Dr. King. Has someone in your Department read
14 the FBI's whole file in this?

15 Attorney General Levi. I cannot answer that question.
16 Three people now are going through the entire file.

17 Senator Mondale. FBI file?

18 Attorney General Levi. Yes.

19 Senator Mondale. The entire FBI file?

20 Attorney General Levi. So far as I know, yes.

21 Senator Mondale. Are you sure of that?

22 Attorney General Levi. So far as I know, yes. If the
23 question suggests that they cannot get at the file, that is
24 really not the problem. The problem might be that there are
25 so many files which may be in a variety of other files and

3
1 references that it may be difficult, but there is not a problem
2 about their getting access to the files, and they tell me they
3 are doing it. I have not myself done it.

4 I have some feeling myself that I do not want to read
5 the Martin Luther King file. I wanted to regard it, in fact,
6 out of the sense of proprieties and privacy as sealed because
7 it seems to me that it was appropriate for the sake of the
8 privacy of Dr. King to have that material disposed, and I saw
9 no point in my personally reading it.

10 Senator Mondale. In other words, you are of the understand-
11 ing that all of the FBI and other investigative Justice Depart-
12 ment files of Dr. King have been reviewed?

13 Attorney General Levi. No. I am saying that I was
14 sufficiently disturbed about it so that I am having them all
15 reviewed.

16 Senator Mondale. You said you asked the Director of the
17 FBI, Mr. Kelley, for improprieties. Have you gotten a report
18 on that?

19 Attorney General Levi. We have had some reports on where
20 he thinks there are sensitive matters.

21 Senator Mondale. Do you have a complete report on impro-
22 prieties?

23 Attorney General Levi. I do not know that I would put it
24 that way because there is a problem of what is an impropriety;
25 where there are sensitive issues which he thinks may raise a

1 question, my belief is that he now brings them to me.

2 Senator Mondale. What was your request to him?

3 Attorney General Levi. Well, I do not have the precise
4 statement.

5 Senator Mondale. I mean, what were you trying to get
6 from him? Was that evidence of FBI improprieties? A record
7 of what had happened?

8 Attorney General Levi. Well, there are problems of
9 misbehavior, of what I would regard as misbehavior, or might
10 regard as misbehavior, and when one deals with matters of this
11 kind, it is a learning process because the words do not always
12 carry the same meaning.

13 I was told when I came to the Department that the COINTELPRO
14 project had been completely reviewed and exposed. After I was in
15 the Department, I discovered -- and I think partly as a result
16 of miscommunication to the Director -- that they had found
17 other items in the COINTELPRO project, and those were reported
18 to this Committee and to other Committees, but the point is
19 that you might have projects which go beyond the confines of
20 the COINTEL project, which might still involve similar behavior.

21 Senator Mondale. Was it your testimony, if I heard you
22 correctly just now, that this Committee has received the
23 reports given you by Director Kelley in response to your request?

24 Attorney General Levi. No, I did not say that. I said
25 that this Committee received, I believe, a letter from me

1 describing the additional COINTELPRO projects.

2 Senator Mondale. Not just COINTELPRO. As I understand
3 your statement on page wight, "I instructed Director Kelley to
4 report to me any requests made of the Bureau or practices
5 within the Bureau which he deemed improper or which the
6 appearance of impropriety, and then on February 28 Director
7 Kelley ordered the FBI personnel report such requests or pract-
8 ices to him, " and I think you indicated that you have received
9 some in response to that inquiry.

10 Attorney General Levi. I say here, The Director promptly
11 replied he has regularly provided information on programs
12 underway within the Bureau which could raise questions.

13 Senator Mondale. Did you get a report to him in response
14 to that request?

15 Attorney General Levi. I have gotten reports from him.
16 That is what this sentence says. He has provided information
17 on conduct that could raise questions.

18 Senator Mondale. Ordered the FBI personnel to report
19 such requests or practices to him. Now, has that been done?

20 Attorney General Levi. Yes, he did report them.

21 Senator Mondale. He ordered it. Did he get the report?

22 Attorney General Levi. Well, I believe he did because I
23 think that was one of the reasons that that the additional
24 COINTELPRO items surfaced.

25 Senator Mondale. Was this just limited to COINTEL?

1 Attorney General Levi. No.

2 Senator Mondale. Now, can we have those reports?

3 Attorney General Levi. I do not think they are very many
4 of them, but I assume you can have them. The only thing is that
5 it is hard to, it is a continuing process, and there are -- I
6 would probably not think they would raise questions of misconduct
7 but more be a matter of sensitive questions.

8 Senator Mondale. Well, I would like to have the reports
9 that came to Director Kelley in response.

10 Attorney General Levi. Well, that I do not know about.

11 Senator Mondale. But, I am asking you as the head of the
12 Justice Department if we could get those reports?

13 Attorney General Levi. Well, I do not know if you can
14 or not, but we will certainly consider it.

15 Senator Mondale. Why not?

16 Attorney General Levi. Because I think that it is one
17 thing to give reports of that kind in confidence to a Committee
18 of this kind and another thing to make them public.

19 Senator Mondale. The CIA gave theirs to us. Why cannot
20 you?

21 Attorney General Levi. Well, I am not in the CIA. I
22 do not care to be. I do not wish to be.

23 Senator Mondale. Do you consider that a good answer?

24 Attorney General Levi. I -- yes, I consider the answer
25 as good as the question.

1 Senator Mondale. Well, I think that kind of arrogance
2 is why we have trouble between the Executive and the Legislative
3 Branch. Thank you, Mr. Chairman.

4 The Chairman. I understood Senator Mondale's question to
5 be whether you would furnish certain documents to the Committee,
6 not if you wished them to be made public or not that he was
7 asking that the Committee make them public. I do not know
8 that we have had any problem in the past with the Department
9 in getting information of this kind.

10 Attorney General Levi. I apologize to Senator Mondale if
11 I appeared arrogant. I thought that somebody else was appearing
12 arrogant, but I apologize.

13 The point is that if you ask agents to report on what they
14 may think is misconduct, if they think that that is going to
15 be made public, that would, I believe, to be very chilling.
16 I, personally, have no reason to not want to give it to a
17 Committee if it is to be kept in confidence. I do not know
18 what the Bureau's position on that would be, and my relationship
19 with the Bureau is that I like to discuss these matters with
20 them before giving a definitive answer because I am not that
21 arrogant.

22 The Chairman. Well, leaving all personal references aside,
23 I think that you know that when this Committee has asked and
24 received information in confidence, it has kept the confidence.

25 Attorney General Levi. And we have tried very hard to give

1 you information.

2 The Chairman. So that ought not to be any problem, and I
3 would appreciate your following up Senator Mondale's request
4 because I regard it as an important one and not a frivolous
5 one, and in that connection let me say just before we move on
6 to further questions that sometime ago, in early August, you
7 sent a letter to me in which you requested from the Committee --
8 this seems appropriate now because it is a request in reverse --
9 you requested of the Committee information that was contained
10 in our files, transcripts and testimony which might bear upon
11 investigations currently being conducted by this Department.
12 You did not get a written reply to that letter, but, as I think
13 you will recall, we met shortly later -- and I think Judge
14 Tyler was present, and I was present at the time -- and this
15 subject was touched upon, and I said that the Committee wanted
16 to cooperate in making available whatever information we could
17 that would be helpful to the Department and that there would be
18 a follow-up in which Mr. Schwarz and Mr. Smothers would
19 corroborate with representatives of your Department to find
20 out the best way for proceeding to implement the Justice
21 Department's request.

22 Since then you have sent several more letters. Just
23 recently we have received more letters relating to more targeted
24 matters, including Dr. Martin Luther King matter and the Chilean
25 matter.

1 I simply want to assure you, as a matter of public record,
2 that the Committee, having considered this earlier request,
3 is fully willing to cooperate in any way, and we will see to
4 it that procedures are now worked out so that there will be
5 no further delay. Our preoccupation with the assassination
6 investigation and the issuance of the Committee's report has
7 preempted our time, but we think that these requests are important,
8 and we stand ready to work with the Justice Department in making
9 all relevant information available.

10 Attorney General Levi. I am delighted to have that assur-
11 ance.

12 The Chairman. Now, Senator Schweiker.

13 Senator Schweiker. Thank you very much, Mr. Chairman.

14 Attorney General Levi, I am pleased to see that you have
15 announced this week the establishment of the Office of
16 Professional Responsibility to aid in the oversight of the
17 investigations or allegations of misconduct by different
18 employees within the Department of Justice.

19 I have been interested in something along this line for
20 some time, and I commend you for taking this lead in this area.
21 I would just like to really ask you a few questions about the
22 kind of concept that this is.

23 Originally, Attorney General Saxbe had something that at
24 one point was labeled the Office of Special Review. I just
25 wonder briefly how it differs and what the difference might be

1 in terms of structure or organization?

2 Attorney General Levi. Well, the differences may not be
3 as great as I thought they were when I drafted out this new
4 order but there are, I think, these differences. In the first
5 place the Counsel will be in the Office of Special Responsibility
6 unlike the person who would be in the Office of Special Review.
7 He is in a position to directly receive complaints, and he is
8 in a position then to directly either refer them or to make
9 a recommendation to me about them.

10 As I read the Office of Special Review, the holder of that
11 office would not have been in a position to receive complaints
12 unless the complaint was given to him by the Attorney General
13 or the Deputy Attorney General.

14 Now, I thought that additional channel, while I hope it
15 will not be the major channel, was an important thing to keep
16 open, and, therefore, I wanted to make that clear. I also
17 wanted to embody in this new order the experience that we have
18 had. We have called in special groups to do investigating as
19 we did with the DEA when we organized a special team, and I
20 wanted to reflect in this order that there would be occasions
21 when the ordinary investigative practices would not be sufficient.
22 I wanted to have the Counsel put in the position where he could
23 recommend that a special kind of review would be necessary through
24 a different kind of a group, perhaps through a group assembled
25 by him, perhaps going outside of the Department.

I think this spells it out better, although my belief now is that one could have found that probably in the prior order. It was not as clear to me.

Finally, I wanted to be sure that there was a memory in the Department and a continuation and a continual review of practices and procedures and ability to get the material from any part of the Department. I wanted to spell that out and frequent reporting, and I also wanted to have an advisory committee from the whole Department to this Counsel.

Now, as I say, as I have thought about it since, I wonder, is it that different? I think it is different. In some respects it is stronger, and I felt we should make it stronger.

Senator Schweiker. Will this office have the authority to go into, maybe, a program review like the GAO program audit, or will it be focused on primarily allegations of misconduct kind of thing or both?

Attorney General Levi. Well, I think it will be focused on allegations of misconduct and on -- it will also focus on the procedures and effectiveness of review, but it is set up so that it can recommend beyond that, and if it wishes to recommend for the Department such other kinds of review then it is within the Counsel's prerogative to do that.

Senator Schweiker. And what kind of staffing is anticipated?

Attorney General Levi. I anticipate a small staff because I do not want to build up another bureaucracy with a large

1 investigative staff. I think that, by and large, if the Counsel
2 makes such suggestions we will then have to find out where to
3 go and how to deal with it. I do not want to set up another
4 large investigating staff, which will have to be investigated.

5 Senator Schweiker. One of the things that came out this
6 week -- and I am not sure that this would be subject to this
7 new committee or office procedure or not -- but there has been
8 a lot of discussion about the personal files of Mr. Hoover that
9 Helen Ganty had, and I would just like to read one paragraph
10 from the latest issue of "Time" magazine that seems to show
11 a little bit of twist, if I understood it, because up until
12 now, as I understood it, there were mainly personal files that
13 Miss Ganty went through.

14 This latest edition says, "Before secretary Ganty could
15 look at Mr. Hoover's office, the files, the most sensitive
16 papers were carried off in an FBI truck to West Virginia's
17 Blue Mountain Ridge Club, a Shennandoah Mountain hideaway used
18 by innermost FBI officials for regular poker games. the CIA
19 and other cronies. The papers were burned in the club's
20 large fireplace. Precisely who ordered this destruction and
21 carried it out has not been disclosed. The three-story
22 club worth \$300,000, was burned down in a fire of unknown cause
23 December 23rd. No evidence of arson has been discovered."

24 I guess my question here -- and maybe you have this under
25 investigation, I do not know, but this indicates to me, if it

1 is true, and I do not know if it is true at all, some
2 FBI participation in terms of separating out so that even Miss
3 Ganty could not see some of these files, and obviously somebody
4 had to make a decision, and obviously if the story is accurate,
5 they were destroyed. Can you shed any light on that, or is
6 this something that the Office of Professional Conduct would
15 7 be looking into or not?

6-1 1

Attorney General Levi. I have asked the Criminal Division to investigate any and all of the items relating to the Department of Justice which have come before this committee. And, of course, one reason that they are rather anxious to get this material, and this certainly will be part of it.

6

Senator Schweiker. Can you give us any indication whether that account is accurate at this point or not?

8

Attorney General Levi. Well, I really cannot because I have to say that it does not -- it does not conform to my memory of the documents that I have seen. But I cannot really answer that question.

12

Senator Schweiker. On the matter of the Office of Professional Conduct, will it have the right to go in anywhere it feels it should go in terms of pursuing its job, as I understood what you said? In other words, following an investigation, within the Department anywhere in the field so that it should pursue it subject to what restrictions in that aspect?

16

Attorney General Levi. I think it will not be subject to restraints. I think it may have to be subject to negotiation.

20

Senator Schweiker. And it would have access to all of the material in its original form if need be?

22

Attorney General Levi. I think the negotiation might be whether, if need be. I can understand that there might be some sensitive information which there would be resistance to giving and so on. But I think that anything it needed it

25

1 would get.

2 Senator Schweiker. Would material such as their reports,
3 would you envision that a new joint committee of Congress
4 charged with overseeing intelligence activities might have
5 access to that information or not?

6 Attorney General Levi. Well, I think that is going to be
7 dependent -- that is a touchy subject because if it is going to
8 be public, then the way the material is obtained and the way it
9 is written about will be in a certain way. If it is going to
10 be kept confidential, and we know it is going to be confiden-
11 tial, then there are less problems, I am not sure.

12 Senator Schweiker. So as far as you are concerned, that
13 is open to negotiation at this point in terms of working some-
14 thing out that would meet the guidelines you have in mind?

15 Attorney General Levi. Well, I think so. There is no
16 joint committee at present, and of course, that is one of the
17 problems. Certainly one would hope that a reasonable exposure
18 to what was being done would be available. But I do not
19 really believe -- I do not really think that it is appropriate
20 for a joint committee to be on top of exploring the files of
21 the Bureau.

22 Now I know there is a great difference of opinion between
23 some members of the committee at least on that. I think that
24 is close to the line of managing the Bureau and I think its
25 management really is not a legislative function. But certainly

1 to be advised, to have that kind of appropriate oversight to be
2 helpful on that, I think would be fine.

3 The Chairman. Would the Senator yield?

4 Of course it is not an appropriate function of the Congress
5 to mandate the FBI or to second guess their investigation of
6 ongoing cases. But assuredly, it is part of the responsibility
7 of the Congress to investigate wrongdoing and if we have reason
8 to believe that there is wrongdoing, within the Bureau, it may
9 be necessary to get to the raw files in order to ascertain
10 that. And that -- if that does not go to the heart of the
11 oversight function, I do not know what does.

12 Attorney General Levi. Well it is like many of the ques-
13 tions that we have discussed earlier. One has to be very
14 sensitive to the limitations because if you have an open
15 investigation and there is the possibility of any political
16 influence, either to act or not act, then I get very upset at
17 the notion of those going to a congressional committee.

18 And I think everyone can understand that kind of problem.
19 So it has to be balanced.

20 Senator Schweiker. Well, Mr. Attorney General, I can
21 understand protecting informants and protecting raw files. I
22 think that is legitimate. That is something that we would have
23 a responsibility in the Congress to do. But I do have trouble,
24 assuming that can be worked out, and I think that is a very
25 important point, particularly from the administration of the

1 Department of Justice and the FBI. But assuming that can be
2 worked out, I do not see how you can possibly be protected; that
3 what we just saw happen in the last 30 years will not happen
4 again, and that your inspection force will work, or that any
5 oversight committee will work unless we do have that kind of
6 prerogative.

7 On the basis that I outlined, it just seems to me we are
8 sort of deluding ourselves in view of what has happened, not to
9 have that access, first for you, but secondarily for some
10 responsible element of the Congress that would be guided by
11 certain restrictions protecting that.

12 Attorney General Levi. My only suggestion is that it may
13 be that the Attorney General should be able to see things which
14 the congressional committee ought not to see. And I just think
15 we have to think that through. There are stages. They are
16 all problems of privacy. They are all problems of exposing
17 individuals to obloquy. I think we have to take all that into
18 consideration.

19 Senator Schweiker. That is all I have.

20 The Chairman. If we had not had access to the raw files,
21 we would never have discovered the FBI's plan to discredit
22 Mr. King and pick his successor. And you recognize the
23 responsibility of this committee and we have worked out pro-
24 cedures which have enabled us to reach this basic evidence in
25 ways that did not reveal informants or did not reveal agents.

1 And I think the guidelines of that kind could be worked out
2 between a permanent oversight committee and then Attorney
3 Generals so that the committee could get its job done. So I
4 really do not believe that the problem is insuperable, and the
5 fact that we have been able to get to the raw files when we
6 needed to demonstrates that it can be done.

7 Senator Hart?

8 Senator Hart (Colorado). Mr. Attorney General, I would
9 like to pursue this last question one minute further, and that
10 has to do with raw files. It is my understanding that in the
11 recent GAO inquiry into Bureau activities that they worked
12 almost exclusively, if not totally exclusively, from Bureau or
13 Departmental summaries. Is that correct, in their investiga-
14 tion?

15 Attorney General Levi. Well, that is what I understand.

16 Senator Hart (Colorado). And what you are saying here
17 today is that in the future, if there is established an over-
18 sight, a permanent oversight congressional committee, that
19 your recommendation would be that raw files reporting under
20 some restrictions would be available; that it would be the
21 same guidelines and the same kinds of investigation that the
22 GAO does.

23 Attorney General Levi. I did not mean to assert that it
24 would have to be based on summaries. No, I did not. I just
25 think we have a problem as to the proprieties of what the

1 joint committee -- if there is a joint committee -- would want,
2 and what we should appropriately give.

3 I have to say that there might be a temptation on the
4 part of our Department of Justice to give more than it wanted
5 to, and in later years that might be a problem. So one has to
6 balance that.

7 Your committee, this committee did not ask for all of the
8 King files. And I rather suspect that this committee had the
9 same, to some extent at least, the same feelings of sensitivity
10 and propriety which I had when I said I did not want to look at
11 them because there are materials there which I really think
12 should be regarded as secret. And that is the kind of problem
13 one has to get into.

14 Senator Hart (Colorado). But as a basic proposition, you
15 are willing to go beyond that to some degree?

16 Attorney General Levi. Yes, I am. Of course the Bureau
17 might not like the idea.

18 Senator Hart (Colorado). Oh, I am sure they will not.

19 Yesterday I asked Director Kelley about the letter we
20 received from one of your assistants, Mr. Pottinger, in connec-
21 tion with investigation of the King case internally. And he
22 asked us for FBI records and documents, all materials was I
23 think the phrase he used. The Director seemed somewhat
24 puzzled by that, but I guess my question is: why is the
25 Justice Department contacting this committee for FBI records?

1 Attorney General Levi. Well, I cannot imagine why, unless
2 you were given the only copies.

3 Senator Hart (Colorado). I would be surprised if that
4 happened.

5 Attorney General Levi. But if the suggestion is that he
6 can only get them that way, and not directly from the Bureau,
7 I think that is really incorrect because it just happens that I
8 have specifically asked Mr. Pottinger whether he had access to
9 all the materials and he said yes. But it may be that our form
10 of record keeping is such that you have things where we do not
11 know where the copies are, and you have a great deal of material.

12 Senator Hart (Colorado). But you have no doubt that you
13 will get everything the FBI has on this matter?

14 Attorney General Levi. I have no doubt that people
15 investigating it for me will get everything the FBI knows that
16 it has.

17 As you know, it is possible that there are materials in
18 other files somewhere.

19 Senator Hart (Colorado). Well, I am talking about
20 conscious withholding.

21 Attorney General Levi. I do not believe there will be
22 conscious withholding.

23 Senator Hart (Colorado). If or when you depart from the
24 Department of Justice, will you do so with any degree of fear
25 of an overly independent FBI in the future? Leaving aside the

1 question of the relationship that exists now, but is it a matter
2 of concern to you about your successors; that the Bureau is too
3 independent of the Attorney General?

4 Attorney General Levi. Well, I have already said that I
5 think that there is a certain amount of distance and indepen-
6 dence. It is probably desirable. But, of course I am concerned,
7 of course I am concerned. I am concerned not only about the
8 future but today.

9 Senator Hart (Colorado). And therefore you would suggest
10 that Congress ought to also be concerned about that?

11 Attorney General Levi. I have said so. I agree.

12 Senator Hart (Colorado). In connection with these guide-
13 lines that we are talking about, as you know one of the very
14 puzzling areas that this committee is in is the Huston Plan,
15 Operation CHAOS and so on, back in the '60s and early '70s;
16 the tendency on the part of both the Department and the Bureau
17 and many in the White House to fear that domestic protest
18 groups, particularly in connection with matters of race or
19 the Vietnam War, had some outside or foreign domination or
20 guidance or direction or support.

21 What do you think these guidelines should say for the
22 future about separating genuine domestic, domestically :
23 oriented and controlled protest that is legitimate and consti-
24 tutional, from the kind of official governmental harrassment
25 that did in fact go on with very, very little substantial

1 support for the proposition that it was foreign dominated? What
2 can be done about that in the future?

3 Attorney General Levi. It is terribly difficult for the
4 very reason of your last phrase, in which you correctly empha-
5 sized that we do not have the guidelines on the foreign dominated
6 organizations. The question is how close one can come to
7 barring evidence of that domination when the purpose of the
8 investigation in some sense has to be to obtain that very data.
9 So I suppose that one would try to do is to use some kind of a
10 likely standard or something of that sort as one approaches it
11 and then a reason to believe or some such thing which we have
12 come to temporarily on the domestic security ones, the stop and
13 frisk standard which is a pretty stringent standard for inves-
14 tigation.

15 But I think there is a problem.

16 Senator Hart (Colorado). But not with judicial approval;
17 I think that is your strong recommendation?

18 Attorney General Levi. I do not whether it is strong or
19 not.

20 Senator Hart (Colorado). It is consistent.

21 Attorney General Levi. I just do not think that is the
22 most desirable path. I think it puts an enormous burden on
23 the court. I do not know how the court will exercise it. I
24 doubt if it is the best way. But it may be one way.

25 Senator Hart (Colorado). In a hypothetical situation,

1 where you as the ultimate decision maker as to whether a wire-
2 tap should be implanted and surveillance, all of it, and the
3 rights of the individual who would be jeopardized, the consti-
4 tutional rights of that individual or that group would be
5 jeopardized by the proposed surveillance, wiretapping or what-
6 ever, what would be your own personal judgment on that where
7 there was an absolutely even question; there was no question
8 constitutional rights would infringed upon or even violated,
9 and yet the balancing consideration was that there might be
10 some evidence of criminal activity or subversion or whatever?

11 Would you come down on the individual or group's side, or
12 the other way?

13 Attorney General Levi. Well, I must believe that there
14 is a misunderstanding between us because I do not authorize
15 anything where I think there is a violation of constitutional
16 rights. So I think I must be misunderstanding.

17 Senator Hart (Colorado). Well, I am trying to get inside
18 the mind of an individual who is going to have this authority;
19 that you do not want an officer of the court to have, about what
20 outweighs what, where you do not know what information you are
21 looking for, and the Bureau agent is recommending a wiretap or
22 a mail search and he is just saying I think there may be some
23 evidence here that we might need, and so on and so forth.

24 So I have to put it in a hypothetical --

25 Attorney General Levi. You see --

1 Senator Hart (Colorado). Do you resolve differences in
2 favor of the individual?

3 Attorney General Levi. I do want to say something about
4 the hypothetical. In this first place, under Title III, the
5 wiretaps is judicious and the legislation that we are drafting
6 on electronic surveillance which is not a Title III matter, we
7 are suggesting because of reasons which I think I stated before
8 to the committee, our judicial approval.

9 As to mail openings, it seems to me that, at the present
10 time at least, that would require a warrant so that--

11 Senator Hart (Colorado). Well, I am talking about a
12 national security area where there is no judicial --

13 Attorney General Levi. I do not know of any national
14 security authorization. I do not want to get into that area.
15 But I do not know of a present authorization which would permit
16 me to, without a warrant, authorize the opening of mail. So I
17 think one has to weigh the individual rights very seriously and
18 obviously give them emphasis. But I do not like to be
19 suggesting by my answer that in those particular hypotheticals
20 that the decision would be made without -- or could be made or
21 would be made without judicial review because I think in those
22 particular examples there would be a warrant -- there would
23 have to be a warrant.

24 Senator Hart (Colorado). Well, I am talking about the
25 area where there are no warrants. But I cannot frame the

1 hypothetical clearly enough.

2 Attorney General Levi. Well, it has been framed in terms
3 of the use of informants; and where I do not think there should
4 be a warrant, and there is not a warrant, as far as I know, and
5 there does not have to be, in terms of constitutional require-
6 ments, at least at the present time. I think one does have to
7 be very sensitive. I think Stone was correct and if you are
8 going to have an agency of this kind, and it is going to
9 survive with the proper discipline and so on, it has to be
10 extremely sensitive to individual rights.

11 The Chairman. Senator Hart, do you have further questions?

12 Senator Hart (Michigan). Yes, Mr. Chairman, on specifics
13 really.

14 On this business of congressional oversight, we have been
15 going back and forth with you and with others earlier on the
16 standards and guidelines of investigations.

tape 6

1 This morning you indicated that some of the guidelines
2 might well be in statute and others in regulation, and you
3 suggested Executive Orders, and that gets to the point that
4 even in the area where statutory definition of guidelines is
5 appropriate, no matter how skilled the drafter, it will leave
6 unanswered certain things. So, it also will have to be imple-
7 mented by Departmental orders and guidelines, making even more
8 explicit the dos and donts and safeguards.

9 Should not those regulations, which you or you and the
10 Bureau or the Bureau issue to implement or elaborate on whatever
11 we do by statute, be subject to debate and approval, at least
12 by the Oversight Committee, which everybody assumes we will
13 have, if not by the Congress? Is not that really the starting
14 point for a useful oversight?

15 Attorney General Levi. Well, I think a useful oversight
16 can involve debate and, hopefully, it will involve approval,
17 but if you mean by that, formal approval by a committee as a
18 new form of additional legislation, I think it raises Constitu-
19 tional questions, and I really do not know why one would want
20 to raise those questions because it does not seem to me essential.

21 Senator Hart. (Michigan) Well, it may be unconstitutional to
22 require the elections commission to come in and tell us what they
23 propose to do to implement the rules of criminal procedure.

24 Attorney General Levi. Well, Senator Hart, I had been
25 asked how Constitutional I am in various ways, and I think the

1 Constitution applies and should be followed, and I think there
2 is a Constitutional question. It may be we should change the
3 Constitution and have a form of subsequent legislation through
4 Congressional committees.

5 I think there is a problem. There is an abuse. I happen
6 to think that the affirmative action legislation, if you
7 trace affirmative action legislation by the Congress to
8 Executive Orders and then to the Labor Department, you have a
9 horror story. It happens to be a horror story that some people
10 like, but I regard it as a horror story because the deviations
11 are quite great.

12 So, it is possible that here, if you have very general
13 legislation and then you have Executive Orders and then you
14 have other orders, the deviation may be very great, and I
15 understand the problem, and I would hope that an Oversight
16 Committee could look at it, but to have the Oversight Committee
17 then have a veto power or a new subsequent enactment power
18 seems to me to be a strange creation of a sub-house of, I do
19 not know what, the Congress, and I regard it as probably not
20 legislation, but rather an executive function.

21 If it is going to be legislation, I think it should be
22 legislation.

23 Senator Hart. (Michigan) I am not wise, but I am wise enough
24 not to pursue a Constitutional issue with you. I am almost tempted
25 to have you ask the Department and the Bureau who does those

1 things to give us a memo on why it might be unconstitutional
2 with respect to the point I am suggesting, reviewing and
3 approving guidelines, interpreting statutory direction with
4 respect to the Bureau, but not unconstitutional for us to
5 claim, as we do and have, the right to veto rules of criminal
6 procedure, but the Director has been burdened enough.

7 Attorney General Levi. We could put it back and require
8 enactment. You could have a procedure in which after the
9 statute, the regulations would be put before the Congress and
10 require enactment in order to be effective.

11 Senator Hart. (Michigan) That would certainly be oversight.
12 This follows up an earlier point of discussion. When we do pass a
13 statute, we can see how the courts and the agencies are applying
14 them because of the agencies' actions and the courts' decisions
15 are public. It would not really affect safeguards in this area,
16 require that the Oversight Committee be able to see the kind of
17 documentation that had been given to you, or if it is a case
18 of going to a court, seeking a warrant, that underlying material
19 really would be the best basis for an Oversight Committee making
20 the judgment as to whether the Attorney General appropriately
21 was supplying what was intended.

22 Do you agree that oversight, how the statute or your
23 guidelines or others' guidelines requires that kind of access?
24 I know this looks way down the road.

25 Attorney General Levi. Yes, I think it does. Well, the

1 facts of life are that you cannot look much because you will
2 not have the time, and the facts of life are that at least
3 I do not think it is good administration to have Congressional
4 investigators plowing through an agency. So I think one has to
5 think about those questions.

6 I do believe that with proper safeguards of confidentiality
7 a Committee could get such material.

8 Senator Hart. (Michigan) As my question implied, it would seem
9 to me that unless we knew the kind of argument and evidence that
10 an Attorney General is finding adequate to meet that standard,
11 we would not know whether our standards were--

12 Attorney General Levi. That is right. There might be
13 some problems. Every once in awhile there is something of
14 such sensitivity that it might be in a special category, I
15 am sure.

16 Senator Hart. (Michigan) On the matter of electronic surve-
17 illance you said some weeks ago the standards to be used with a
18 citizen, with an American citizen, would be, would depend on
19 where he is here or overseas. Perhaps that does not fairly
20 summarize what you said.

21 Attorney General Levi. No, it does not.

22 Senator Hart. (Michigan) All right. I will be a little
23 bit more fair. You said the different standards would apply
24 when the citizen was an agent of a foreign power, which is what
25 you said. Is it your view that the same standard which really

1 is to say does the Fourth Amendment apply equally to an American
2 citizen, whether he is operating at home or abroad, in terms of
3 the electronic surveillance that can be used by our Government,
4 or at the request of our Government?

5 Attorney General Levi. I do not think it is absolutely
6 clear, but my answer would be yes, but I do not think it is
7 clear in the decisions.

8 Senator Hart. (Michigan) What are the present policies
9 regarding dissemination of the product of electronic surveillance
10 when it is targeted on an embassy or a foreign diplomat, but
11 the device picks up non-criminal communications as to Americans?
12 Specifically, suppose an American is talking on the phone to
13 an embassy of a Middle Eastern country, and he is discussing
14 plans for political activities to lobby Congress for support
15 of action which he and other Americans plan. They might even
16 be discussing legislative plans of Senators who disagree with
17 the Administration.

18 If you have a national security tap on an embassy and
19 pick up that conversation, is that fair game for sending to the
20 White House simply because the tap was legal?

21 Attorney General Levi. The answer is no.

22 Senator Hart. (Michigan) On the matter of future deterrence
23 of unauthorized activity, we have been talking what should be
24 authorized and how to set up procedures. No matter how brilliantly
25 we draft our statutes and guidelines, the problem of human

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2 frailty will be there. The best system will not eliminate
3 temptation or occasional succumbing to temptation
4 or transgression. Should there be specific criminal penalties
5 for government officers who take or approve unauthorized action
6 in this area?

7 Attorney General Levi. In the areas of what?

8 Senator Hart. (Michigan) Government official who ignores,
9 averts, or violates a guideline.

10 Attorney General Levi. Well, there are all kinds of
11 penalties now, and all kinds of threats of damage suits, and
12 whatnot. I think it is a question of how serious the violation
13 is, how willful it is. I think I would have to know more
14 about it.

15 Senator Hart. (Michigan) Would a good stiff penalty on
16 the books serve as a deterrent for possible abuse?

17 Attorney General Levi. It depends upon the kind of abuse
18 one is talking about, and, as I indicated before, the privacy
19 statute in itself imposes penalties now. If we are talking
20 about the grosser acts of some Presidents, let us say, or
21 others making illegal, unauthorized operations or uses, well,
22 I do not know what the penalty would be on the President, and
23 somehow or other I have a feeling that I am not sure that is
24 where a great penalty would make a difference.

25 Senator Hart. (Michigan) Let us look at it from the
point of view of the fellow whose privacy has been invaded,

1 and violations notwithstanding, statutory or guideline rule,
2 should he be given standing to sue for damages?

3 Attorney General Levi. Well, as to whether he has standing
4 and should be able to sue, where the conduct is illicit, there
5 is no doubt that there will be suits. There are suits.

6 Senator Hart. (Michigan) But my notes say that the court
7 has held that unless you can show specific damages, which is
8 a tough thing under the First Amendment, that you are barred
9 from challenging investigation.

10 Attorney General Levi. But I think that there is not,
11 really is not any real damage. I am not sure that damages should
12 be given. I really do not think that is the way one can --

13 Senator Hart. (Michigan) Now about standing to seek an
14 injunction? Even though there is not reason for damages?

15 Attorney General Levi. An injunction so that the court
16 would be operating that segment? I would think that would be
17 another problem as to the separation of powers, really; an
18 injunction related to that particular person maybe. I do not
19 think a class action telling the Department of Justice that
20 they could never use this, that or the other device toward
21 this group --

22 Senator Hart. (Michigan) Well, there is nothing novel
23 about seeking injunctions against the Attorney General or
24 other departments from doing something, so I am curious about
25 what we do about someone who is being tailed.

1 Attorney General Levi. Well, I thought that you were
2 thinking about not the problem of damages so much, as to the
3 problem of controls on the operation of the Department, and
4 I was looking at it from that standpoint. I think there is
5 a problem about damages. There is a problem about the rights
6 of people who may have been injured and whether they should
7 be notified, and I, frankly, do not know the answer to that
8 question.

9 Senator Hart. (Michigan) And you do not know the
10 answer yet on that one?

11 Attorney General Levi. I think it is a very mixed question,
12 and it may be that they should be notified. I do not know how
13 they would be notified, what the basis would be. It is not
14 something which I care to express myself.

15 Senator Hart. (Michigan) Well, the mechanics of notifying
16 somebody whose mail has been opened, that is not complicated.

17 Attorney General Levi. I am not talking about mail openings.
18 I am talking about such things as in the COINTELPRO, possibly.

19 Senator Hart. (Michigan) Let me read you the full question
20 to make sure we have covered this. I really thought that you
21 had under study methods which might respond to the abuses
22 in terms of, at least alerting American citizens whose privacy
23 had been invaded upon.

24 Attorney General Levi. We do, but I am just saying that
25 I do not know what the answer is.

1 Senator Hart. (Michigan) You are studying and seeking
2 the right answer?

3 Attorney General Levi. Yes.

4 Senator Hart. (Michigan) Well, why is there a problem?
5 Why is the search for the right answer so complicated in terms
6 of those who have the subject of COINTEL files? Now, maybe
7 they will read about it through these hearings, but there are
8 a whole slew of them.

9 Attorney General Levi. There has been a lot of reading
10 about it. There are Freedom of Information Act requests which,
11 obviously, reflect a knowledge on the part of some people, but
12 all I am really saying is that that is one of those matters
13 which I think one has to explore. The first reaction, and
14 certainly my reaction, is that in some way they should be
15 notified. Then I come to the question of how do we know who
16 they are. Suppose nothing actually occurred. Is then the
17 person to be notified? Or suppose it is the kind of case where
18 if the person is notified, there might be embarrassment to the
19 person, which is conceivable, and so on? Is it appropriate
20 for the Department, itself, to make a tentative judgment as to
21 whether there was any injury or not, or is that inappropriate?

22 There are lots of questions in there, and my own inclination
23 is that they should be notified in some way, but I think it is
24 worth some thought.

25 Senator Hart. (Michigan) And that thought is being given?

1 Attorney General Levi. Oh, yes.

2 Senator Hart. (Michigan). So that Martin Luther King,
3 who would have known about a lot of things that were going on,
4 and a lot of people whose names will never surface in connection
5 with this Committee, who have had similar -- well, not similar,
6 but experiences which might very well give rise to a claim.
7 How soon do you have to be able to figure out what, if anything,
8 the Department's obligation is toward them?

9 Attorney General Levi. Senator, I really do not know.
10 I have called together a group on that, in fact, two groups.
11 I think whatever answer is given by the Department may well have
12 to be the same answer that is given by other parts of the
13 Government. That seems to me to require some further discussion.
14 And one has to try to think through, as I say, the consequences.
15 To notify a person that he or she was the subject of COINTELPRO
16 at this time many years later may actually cause, perhaps, it is
17 strange to think this, but it might actually cause embarrassment
18 to that person now who would rather not know it, and if they
19 had no consequence, if it had no consequence, is that a good
20 thing to do?

21 Let me tell you, I was told when I came down to the Depart-
22 ment -- I do not know if you believe this or not -- but I was
23 the recipient of a COINTELPRO letter, but more recently, since
24 I have ordered a review of all the COINTELPRO files, I have had
25 this letter confirmed to me.

1 When I was President of the University of Chicago, apparent-
2 ly an anonymous letter was written, I gather, claiming that
3 some professor was a Communist, and I do not know what was
4 supposed to follow from that, but, in any event, there was
5 and I do not know whether the letter was anonymous, but it
6 probably was.

7 If I got the letter, I would have thrown it away. It would
8 have had no consequence, and I have no recollection of it. Now,
9 if there is such a letter and persons exist, then notification
10 of that person, is that desirable? I just do not know.

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1 Senator Hart (Michigan). I would suggest that the Depart-
2 ment ought not make the judgment as to whether, to use your
3 expression, it had no consequence to the subject. I think that
4 that would be a decision that more correctly should be made by
5 the subject in his mind, and not the Department of Justice, as
6 you go through that file.

7 I would hope there could be a resolution of which you
8 would say to be the right answer.

9 Attorney General Levi. I have thought of suggesting the
10 Congress establish some kind of a claims division. But, in any
11 event, it is something we are thinking about.

12 Senator Hart (Michigan). Well, I hope we can come out of
13 this with some teeth in what we do because you suggest perhaps
14 criminal penalties would not be very effective, and you
15 describe the difficulties that attach to civil remedies, and
16 you suggest that no matter how carefully drafted --

17 Attorney General Levi. Well, there are civil penalties
18 now, but I hate to think that, if guidelines are drafted and
19 is a violation of one of the guidelines, that the consequence
20 is a criminal penalty. Somehow or other that seems to me
21 an inappropriate way.

22 Senator Hart (Michigan). It would not be a criminal
23 penalty unless the person knowingly took action in violation
24 of the guidelines. And if you are paid by the taxpayer, why
25 should you not be subject to sanctions of that kind?

1 Attorney General Levi. I do not really see why payment
2 by the taxpayer --

3 Senator Hart (Michigan). Well, why should you not be
4 subject to sanctions if you knowing break the rule?

5 Attorney General Levi. I think my problem is that I think
6 you have problems of discipline in any organization, and I think
7 one ought to be careful not to cover the field of administra-
8 tive discipline in a government with criminal penalties which
9 I think is self-defeating. So, that is the only reason.

10 The Chairman. Just two subjects, Mr. Attorney General,
11 and then I am finished, and I will conclude the hearing.

12 Yesterday I asked Director Kelley about the amount of
13 time and money and general imposition on the overall resources
14 of the FBI that was represented in the many investigations they
15 routinely make that deal with appointees or nominees, and
16 people being considered for federal employment. And he said he
17 would supply those figures and give us some idea of how much of
18 the workload this represented.

19 It is my understanding that the FBI does these investiga-
20 tions only for sensitive civilian jobs, and wherever a name
21 check digs up information from FBI files indicating a possible
22 security risk. In other words, the FBI name check is there if
23 there is an allegation in the FBI files that a person might
24 have once been associated with a subversive or extremist
25 organization or something like that, or if the position to

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1 which the nominee is to be appointed is regarded as sensitive.
2 Then the FBI does the investigation of the nominee. Otherwise,
3 it is done by the Civil Service Commission.

4 I am wondering if when it comes to guidelines, that not
5 ought to be a good place to look pretty carefully to see how
6 much of this is really necessary. My impression in the past
7 has been that there are many FBI checks being done for posi-
8 tions that could not possibly be regarded as sensitive as far
9 as national security is concerned, and maybe we just have over-
10 done this back in the period when we were terribly frightened,
11 in the McCarthy years, and it has never been looked at
12 sufficiently since to see if it still is all that necessary.

13 Attorney General Levi. Well, I agree and a good place to
14 begin is with the executive order that has been modified many
15 times on suitability for employment.

16 The Chairman. I do not know whether it is feasible to try
17 to legislate here, or whether there could be a way that legi-
18 slation might be helpful as a part of the basic or generic FBI
19 law that we hope to draw up concerning this phase of the FBI's
20 activities. But I wish you would give some thought to that,
21 would you please?

22 Attorney General Levi. Surely.

23 The Chairman. The other matter that I want to deal with
24 is that time and time again in our investigation of the intelli-
25 gence agencies, including the intelligence aspect of the FBI's

1 work and the counterintelligence aspects, we are up against
2 the problem of accountability. And with the FBI, of course, we
3 have had the additional question of the president putting the
4 agency to his personal or political use; and a difficulty which
5 I think Senator Mondale rightly referred to -- the difficulty,
6 no matter what the regulations may be, and even perhaps
7 contrary to positions of the law, of refusing to do the presi-
8 dent's bidding. You know, the order of the president or the
9 desire of the president can be easily rationalized or some kind
10 of plausible excuse can be given for it that it sounds like it
11 might fall within the purview of the law.

12 And neither an attorney general or a director of the FBI
13 is in very much of a position to argue with the president. And
14 then there is a feeling of who is going to find about it any-
15 way.

16 I asked Director Kelley yesterday if he thought that
17 orders should be transmitted to him from the president through
18 the attorney general; and secondly, if orders are transmitted
19 to him to undertake an investigation in which the president has
20 expressed some interest, they ought to come in writing, and a
21 permanent file be kept so that the accountability is there
22 for review of a congressional committee or for whatever.

23 He said that he thought that such directives should be in
24 writing and that a file, a permanent file of them should be kept.
25 I would like to ask you how you would respond to those

1 questions. And I put the questions in this order: first, do
2 you think that if the president wants the FBI to go out and make
3 an investigation for him and report back to him, that that
4 order should be transmitted through the attorney general? And
5 secondly, whether you think orders of that character coming
6 from the president should take the form of a written order and
7 permanently maintained in the files of the Bureau?

8 Attorney General Levi. Well, I think the orders probably
9 should be written. Now as to the first part of your question,
10 the hypothetical case might be that the president has decided
11 that he wishes to appoint a certain person to the cabinet and
12 he wishes a full field investigation. Under the guidelines,
13 the president, the counsel to the president or associate
14 counsel could ask the Bureau to do that.

15 I would think, unless there is some particular reason,
16 that the attorney general should be notified as to what is
17 going on. I think any suggestion of any other kind of investi-
18 gation of an organization or something of that sort, which I
19 thought you were suggesting, should not come from the president
20 to the director, in any case, and if it did come, it certainly
21 should come in writing and the attorney general should be
22 notified.

23 I certainly do not want to say that the president cannot
24 speak to anybody he wants to speak to and there is no reason
25 why he should not be talking to members of the Department of

1 Justice. I do think it is a desirable thing when that occurs,
2 unless it is discussing the criminal activity of the attorney
3 general, that the attorney general be notified.

4 Now I think in fact, at the present time, and I maybe I
5 would be the last one to know, but I think the communications
6 are through the attorney general, except for the kind of inves-
7 tigation for appointments which might or might not come to me.

8 The Chairman. But it is possible that that too might
9 be the subject of that kind of procedure, the very kind you have
10 outlined can be the subject of a statute. And if it were, do
11 you think the president would be bound by it?

12 Attorney General Levi. Oh, he might not be, but in fact
13 he would, I would think, wish to adhere to it and it would
14 make it easier for others to suggest that there was kind of a
15 propriety about it.

16 The Chairman. Before you leave, and I want to express the
17 gratitude of the committee for your testimony today and for
18 your continued cooperation in this joint endeavor, but I also
19 want to say that Mike Shaheen, who has been the liaison with
20 the committee staff, has done an excellent piece of work and
21 the staff wishes for me to express its appreciation to him.

22 Attorney General Levi. I would thank the committee and
23 thank you, and I hope that -- you can tell Senator Mondale that
24 I am not half as arrogant as he thinks I am.

25 The Chairman. Thank you, Mr. Levi.

(Whereupon, at 1:00 o'clock p.m., the Committee adjourned,
subject to the call of the Chair.)

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UNITED STATES GOVERNMENT

Memorandum

TO : Mr. J. B. Adams

FROM : Legal Counsel

SUBJECT: SENSTUDY 75

1 - Mr. Mintz
1 - Mr. Wannall
1 - Mr. Cregar

DATE: 1/2/76

1 - Mr. Hotis
1 - Mr. Daly

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
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Director Sec'y _____

Attached is a copy of the testimony of the Attorney General Edward H. Levi before the Senate Select Committee on Intelligence Activities on December 11, 1975. The attached copy was furnished to us by Mark L. Wolf, Special Assistant to the Attorney General in the Department.

RECOMMENDATION:

For record purposes.

Enclosure

#MOR-16
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2ALM/pw

ENCLOSURE

ENCLOSURE ATTACHED

REC-51

ST-114

15 JAN 9 1976

LEGAL COUNSEL

84

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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

- 1 - Mr. J. B. Adams
- 1 - Mr. J. A. Mintz
- 1 - Mr. J. Cochran
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Mr. W. R. Wannall

1/2/76

W. O. Cregar

- 1 - Mr. W. R. Wannall
- 1 - Mr. W. O. Cregar
- 1 - Mr. S. F. Phillips

HOUSTUDY 75

ALL INFORMATION CONTAINED
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DATE 11-3-00 BY SP2 PAK/ku

Legal Counsel to Mr. J. B. Adams memorandum 12/30/75 reported intention of House Select Committee on Intelligence (HSC) to take depositions from former FBI Special Agents (SAs) Joseph William Magee and Joseph Leo Gormley concerning U. S. Recording Company purchases made by the FBI.

Pursuant to Recommendations 2 and 3 of the above-referred-to memorandum, addresses and telephone numbers were obtained from the personnel files and furnished to Supervisor P. V. Daly of the Legal Counsel Division on the morning of 1/2/76 so that he might orally advise the HSC of the current whereabouts of Magee and Gormley. Prior to furnishing of information to Daly, Supervisor S. F. Phillips of the Senstudy 75 Project had telephone conversations with both Magee and Gormley, also on the morning of 1/2/76, for the purpose of alerting them to the HSC interest and with the suggestion that, if they are contacted, they might call the Legal Counsel Division for further assistance. Both indicated that they would take such action and expressed appreciation for being alerted in advance. In addition, Magee advised of certain information which is being recorded hereinafter for information purposes.

Magee advised that on a Friday, about 9/18/75, he was telephonically contacted by a Mike Epstein of the Senate Select Committee on Intelligence (SSC) who indicated a desire to talk to him immediately. Magee told Epstein that he was

62-116464

RECORDED

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1 - 62-116395 (Senstudy 75)

1 - 67-123249 (Personnel File Former SA Joseph William Magee)

1 - 67-129682 (Personnel File Former SA Joseph Leo Gormley)

1 - 67- (Personnel File Former SA William C. Sullivan)

SFP:lhb

CONTINUED - OVER

84 JAN 9 (78)

Memorandum to Mr. W. R. Wannall
Re: Houstudy 75
62-116464

quite busy and would not be able to see him immediately. The only information Epstein gave as to the reason for wanting to interview Magee was to get information about the early organization of the FBI Laboratory. There followed some further telephone calls between the two but they never got together for an interview at that time. However, Epstein again called Magee early during the week of 12/28/75 and asked Magee to appear for interview Tuesday, 1/6/76. The only information Epstein gave as to the subject matter of the interview was that it would be about the operations of the Bureau. Magee agreed to appearing for the interview.

It was explained to Magee that the same procedure relative to an SSC interview would apply as that for one of the HSC, and it was suggested that immediately after completing the conversation with Phillips, Magee telephone the Legal Counsel Division for further information, particularly as to waiver of the confidentiality agreement he has with the Bureau. Magee said that he would immediately call Mr. Mintz' office.

As a matter of interest, Magee also advised that, when he was first contacted by Epstein September last, he asked Epstein where the latter had gotten his name and Epstein said it was from Bill Sullivan. Magee then told Phillips that he could just not understand some of the things which he has been learning about Sullivan and he expressed dismay at some publicized reports that Sullivan had been making statements derogatory to the Bureau and the late Mr. Hoover. Magee said that at the time former Acting Director L. Patrick Gray left the Bureau, and before Mr. William D. Ruckelshaus was named to succeed him, Sullivan contacted Magee. Sullivan told Magee that he, Sullivan, fully intended to become FBI Director and that,

CONTINUED - OVER

Memorandum to Mr. W. R. Wannall
Re: Houstudy 75
62-116464

if he did, he wanted Magee to return to the Bureau to serve as Assistant Director in the Laboratory. The tenor of Magee's remarks was that he thought Sullivan was talking rather wildly in making such a job offer to him and that this applied as well to the idea of Sullivan becoming FBI Director.

RECOMMENDATION:

None. For information and record purposes.

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HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SR2A/ryw

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CHANGED TO
62-116464-268X2

FEB 18 1976

Cons. / mod.

1 - Mr. A. Mintz
1 - Mr. W. R. Wannall
1 - Mr. J. G. Deegan
1 - Mr. W. O. Cregar
1 - Mr. S. J. Miller

The Attorney General

December 31, 1975

Director, FBI

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

Enclosed is the original of a memorandum, with attachment, reporting the results of an interview of FBI Special Agent Neil P. Shanahan by SSC Staff Members. Also enclosed is a copy of the memorandum, with attachment, for forwarding to Mr. James A. Wilderotter, Associate Counsel to the President.

Enclosures (4)

ALL INFORMATION CONTAINED
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DATE 11-3-00 BY SP2A/CM/R

62-116395

1 - The Deputy Attorney General
Attention: Michael E. Shaheen, Jr.
Special Counsel for
Intelligence Coordination

1 - 67- (Personnel File SA Neil P. Shanahan)

SJM:1hb/hb
(10)

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GPO : 1975 O - 569-920

1 - Mr. A. Mintz
1 - Mr. W. R. Wannall
1 - Mr. J. G. Deegan
1 - Mr. W. O. Cregar
1 - Mr. S. J. Miller

62-116395

December 31, 1975

U. S. SENATE SELECT COMMITTEE TO
STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES (SSC)

RE: INTERVIEW OF FBI SPECIAL AGENT (SA)
NEIL P. SHANAHAN BY SSC STAFF MEMBERS

The following concerns an interview on November 21,
1975, of FBI SA Neil P. Shanahan by SSC Staff Members.

Shanahan's report of the results of the interview
is contained in a memorandum dated November 26, 1975, a
copy of which is attached.

Enclosure

1 - 67- (Personnel File SA Neil P. Shanahan)

SJM:1hb/hb
(9)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2ALM/PR

NOTE:

The LHM setting out Shanahan's report of the
interview was furnished the Bureau by Philadelphia airtel
11/26/75 captioned "Senstudy 75."

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Laboratory _____
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Spec. Inv. _____
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GPO : 1975 O - 569-920



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to
File No.

Philadelphia, Pennsylvania

November 26, 1975

UNITED STATES SENATE SELECT
COMMITTEE TO STUDY GOVERNMENTAL
OPERATIONS WITH RESPECT TO
INTELLIGENCE ACTIVITIES (SSC)

RE: GARY THOMAS ROWE

At 11:00 a.m., November 21, 1975, Special Agent NEIL P. SHANAHAN of the Philadelphia Division of the FBI was interviewed under oath by two staff members of the above styled committee in the Old Senate Office Building in Washington, D.C. Present during the interview and doing most of the questioning was Mr. ROBERT KELLY, and Mr. JOHN BAYLY, who identified themselves as staff members of the Senate Select Committee (SSC).

Prior to any questioning, it was explained by Mr. ROBERT KELLY that SA SHANAHAN would be testifying voluntarily and that he had a right to be represented by counsel if he so desired. Also prior to any questioning, Mr. KELLY explained that he had previously interviewed GARY THOMAS ROWE, a former confidential informant for the FBI and would be asking questions prompted by information furnished to him by Mr. ROWE.

After responding to questions of a general informative nature, such as when SA SHANAHAN handled Mr. ROWE, and the general dates of Mr. SHANAHAN's employment and assignments with the FBI, certain specific areas were covered and recalled by SA SHANAHAN as follows:

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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.



62-116395-1239X2

UNITED STATES SENATE SELECT
COMMITTEE TO STUDY GOVERNMENTAL
OPERATIONS WITH RESPECT TO
INTELLIGENCE ACTIVITIES (SSC)

A question was asked concerning activities taken by SA SHANAHAN upon receipt of information from Mr. ROWE that the Ku Klux Klan was going to immediately engage in some form of violent activity. SA SHANAHAN responded that upon receipt of such information, it was immediately reported to his superiors, and evaluated to determine what immediate action, such as dissemination to local authorities, etc., was required. A question was asked in this area directly on the issue of whether anyone in the FBI instructed Mr. ROWE to engage in any violent activities. Mr. SHANAHAN responded that at no time did he, or anyone else to his knowledge, instruct Mr. ROWE to engage in any violent activity. In fact, he was often instructed to avoid engaging in violent activity.

At one point in the interview, Mr. JOHN BAYLY asked questions concerning whether SA SHANAHAN could express his opinion as to the morality or ethics involved in certain activities which Mr. ROWE had reported that he had engaged in. This question was re-phrased several times by Mr. BAYLY because of SA SHANAHAN's repeated statements that he did not understand the extent of the information sought by Mr. BAYLY.

Another critical area of questioning dealt with a statement made by Mr. ROWE that at some time during the trials of three members of the Ku Klux Klan, for killing Mrs. VIOLA LIUZZO, he had advised Mr. JOHN DOAR, Assistant Attorney General, that they had been introducing testimony from one Mr. LEROY MOTON, who was identifying himself under oath as the man present in the automobile with Mrs. LIUZZO when she was shot. Mr. ROWE had advised Mr. DOAR that Mr. MOTON was not the same man who was in the auto with Mrs. LIUZZO when she was shot. In response

UNITED STATES SENATE SELECT
COMMITTEE TO STUDY GOVERNMENTAL
OPERATIONS WITH RESPECT TO
INTELLIGENCE ACTIVITIES (SSC)

to these questions, Mr. SHANAHAN testified that Mr. ROWE had at some point during these trial proceedings, seen either in person or a photograph in the newspaper of Mr. LEROY MOTON, and had advised Mr. SHANAHAN that this man was not the same man he had seen riding in the car with Mrs. LIUZZO. At the next opportunity, Mr. SHANAHAN contacted Mr. JOHN DOAR and had Mr. ROWE relate to Mr. DOAR his opinion concerning the identity of LEROY MOTON as the man present in the car with LIUZZO. Mr. SHANAHAN further testified that he did not know what, if any, impression this had on Mr. DOAR and the further content of the trial.

At a point the interview appeared to be over and Mr. KELLY and Mr. SHANAHAN conversed off the record, during which conversation Mr. KELLY related that Mr. ROWE had currently had some difficulties with Mr. DOAR and the Department of Justice after the FBI had relocated him in another part of the country and that some of the statements being made by Mr. ROWE concerned his treatment by the Department of Justice after he was no longer under FBI control. Mr. SHANAHAN mentioned that he recalled that GARY THOMAS ROWE received a written agreement signed by Attorney General NICHOLAS D. KATZENBACH, which outlined what agreement would exist between Mr. ROWE and the Department of Justice. Mr. KELLY asked Mr. SHANAHAN to go back on the record and relate this under oath, which was done. Mr. SHANAHAN testified only that he had been present during negotiations between Mr. ROWE and Mr. DOAR about this agreement and had seen the agreement furnished to Mr. ROWE prior to Mr. ROWE's testimony during the Federal trial in Montgomery, Alabama.

TO: Intelligence Community Staff
ATTN: Central IndexFROM:
FBI

SUBJECT: Abstract of Information Provided to Select Committees

1. HOW PROVIDED (check appropriate term. If a document was made available
for review but not transmitted, so note.)

2. DATE PROVIDED

DOCUMENT

BRIEFING

☒

INTERVIEW

TESTIMONY

OTHER

12/31/75

3. TO WHOM PROVIDED (check appropriate term; add specific names if appropriate)

SSC

the

HSC

The Attorney General with a copy for forwarding to
the White House4. IDENTIFICATION (provide descriptive data for documents; give name or identification number of briefer,
interviewee, testifier and subject)Memorandum reporting results of an interview by SSC Staff Members
of incumbent SA Neil P. Shanahan5. IN RESPONSE TO (list date and item number if in response to formal request, other-
wise state verbal request of (name), initiative, subpoena, etc.)

NA

6. CLASSIFICATION OF
INFORMATION (enter
U, C, S, TS or
Codeword)

U

7. KEY WORDS (enter the appropriate key words from the list provided separately; if key words not listed are
used underline for emphasis)Information handling
Intelligence collectionALL INFORMATION CONTAINED
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8. SUMMARY (see reverse side before completing this item)

Interviewed regarding his handling of the former confidential
informant, Gary Thomas Rowe. The questions were prompted by
information furnished by Mr. Rowe.

62-116395

FMK: fmk

(4) ORIGINAL VIA LIAISON TO CENTRAL COMMUNITY INDEX
IN CONNECTION WITH SENSTUDY 75

TREAT AS YELLOW

1 - Mr. J. A. Mintz
1 - Mr. W. R. Wannall
1 - Mr. J. G. Deegan
1 - Mr. W. O. Cregar
1 - Mr. S. J. Miller

The Attorney General

December 31, 1975

Director, FBI

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

ALL INFORMATION CONTAINED
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Enclosed is the original of a memorandum, with attachment, concerning an interview of FBI Special Agent Garry G. Lash by SSC Staff Members. Also enclosed is a copy of the memorandum, with attachment, for forwarding to Mr. James A. Wilderotter, Associate Counsel to the President.

Enclosures (4)

62-116395

ST 115

1 - The Deputy Attorney General REC-51
Attention: Michael E. Shaheen, Jr.
Special Counsel for
Intelligence Coordination

62-116395-1239X

5 JAN 28 1976

1 - 67- (Personnel File SA Garry G. Lash)

SJM:1hb/lhb
(10)

3 ENCLOSURES

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____

Director Sec'y _____ MAIL ROOM ☒ TELETYPE UNIT ☐

1 - Mr. J. A. Mintz
1 - Mr. W. R. Wannall
1 - Mr. J. G. Deegan
1 - Mr. W. O. Cregar
1 - Mr. S. J. Miller

62-116395

December 31, 1975

U. S. SENATE SELECT COMMITTEE TO
STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES (SSC)

RE: INTERVIEW OF FBI SPECIAL AGENT (SA)
GARRY G. LASH BY SSC STAFF MEMBERS

The following concerns an interview on
November 20, 1975, of FBI SA Garry G. Lash by SSC Staff
Members.

Lash's report of the results of the interview
is contained in a memorandum dated November 26, 1975, a
copy of which is attached.

Enclosure

1 - 67- (Personnel File SA Garry G. Lash)

SJM:lhb/lhb

(9)

ALL INFORMATION CONTAINED
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NOTE: SA Lash furnished the LHM setting out the results
of the SSC interview by airtel 11/26/75 captioned "Senstudy 75."

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
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UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to
File No.

Buffalo, New York
November 26, 1975

UNITED STATES SENATE SELECT COMMITTEE
ON INTELLIGENCE ACTIVITIES (SSC)

RE: INTERVIEW OF FBI SPECIAL
AGENT GARRY G. LASH BY
SSC STAFF MEMBERS
ANDREW POSTAL AND JEFF KAYDEN
ON NOVEMBER 20, 1975

Interview of Special Agent LASH by SSC Staff Committee members was conducted in SSC office space. The interview lasted from approximately 11:15 AM until 1:15 PM.

Prior to the interview SA LASH was advised of the identity of the interviewers and that he was free to exercise his rights at any time as guaranteed by the United States Constitution. SA LASH was advised that he had the right to have an attorney present and the right to have a United States Senator present. SA LASH waived both of these rights. He was also advised that the scope of the inquiry would concern the handling of JFK Act 6 (4) a former FBI informant, exclusively.

A court reporter was present who dictated into a cassette recording machine during the interview.

SA LASH was not sworn.

As follows are the questions directed to SA LASH and the answers that he provided according to the best recollection of SA LASH:

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62-100320-1239X

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

ANDREW POSTAL SA LASH, what is your present employment?

SA LASH Special Agent of the FBI

POSTAL Where are you assigned?

LASH Buffalo, New York

POSTAL Were you assigned there during the Summer of 1973?

LASH Yes

POSTAL Did you specialize in any type of investigations?

LASH Yes, Internal Security investigations

POSTAL Did you have occasion to recruit Mary Jo Cook as an informant in an organization known as Vietnam Veterans Against the War (VVAW) (Characterization of which is contained in appendix hereto)?

LASH Yes

POSTAL Would you state why the Buffalo Chapter of the VVAW was being investigated by the FBI?

LASH I do not feel that I can answer this question within the scope of the current interview.

POSTAL Who was your supervisor at the time you handled Mary Jo Cook?

LASH Francis Jenkins

POSTAL Who was your SAC at the time?

LASH Richard Ash

POSTAL Would you describe for us the methods of recruiting Mary Jo Cook.

LASH Upon discovering that Mary Jo Cook had attended some meetings of the Buffalo Chapter of the VVAW, I interviewed her concerning her attendance and indicated to her that I wished her to become an informant for the FBI.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL Specifically, what instructions did you give her?

LASH I told her to become a member of the Buffalo Chapter of the VVAW in order that she might gather information concerning violent or radical activities engaged in by the organization.

POSTAL What specific area was Miss Cook assigned to work in?

LASH Initially she became a member of the women's group of the VVAW.

POSTAL Was this group of the VVAW engaged in any specific type of activity at the time?

LASH I believe at this point in time they were trying to develop various programs they could implement in the future.

POSTAL Did you tell her she was to obtain background information concerning individuals in the group?

LASH I told her to obtain information concerning members of the VVAW.

POSTAL What do you mean by "a member?"

LASH The VVAW did not have membership cards as such, however, I considered a person who attends meetings of the Chapter or gives financial or other support to be a member of the organization.

POSTAL What type of background information did she obtain?

LASH She obtained physical descriptions and other types of background information such as residences or employment which would allow me to differentiate between that individual and other individuals in the Buffalo area.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL Did you have her provide any other information concerning individuals in the organization?

LASH I asked her to identify those individuals who had a capability of engaging in radical or violent activities.

JEFF KAYDEN What is the difference between violent and radical activities?

LASH Radical activities that are not violent are those which are illegal or infringe upon the rights of other citizens.

POSTAL Did you have another Agent present with you when you recruited Mary Jo Cook?

LASH Yes, I did.

POSTAL For what reason?

LASH It is a FBI regulation that two Agents be present during initial interviews with female informants.

POSTAL Did this Agent become a handling Agent of Mary Jo Cook?

LASH No, he did not. He was merely present during the initial interview.

POSTAL When did you first contact Mary Jo Cook?

LASH June, 1973

POSTAL Did Mary Jo Cook attend meetings of the VVAW with her boyfriend, whose name we shall not mention?

LASH I believe she did.

POSTAL Did she and her boyfriend ever give joint reports?

LASH I can not discuss that matter within the scope of this inquiry.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL

Miss Cook stated that the objectives of the VVAW were as follows:

To end the war in Viet Nam, to obtain better veteran's benefits, to upgrade bad conduct discharges, to obtain drug treatment for veterans. Is this correct?

LASH

I believe they embraced those objectives but they also had others.

POSTAL

What were the other objectives?

LASH

As she described them, the destruction of U. S. imperialism and the replacement of our form of government with a socialist government, probably modeled after the government of Red China.

POSTAL

Did the VVAW ever engage in violent activities?

LASH

Yes.

POSTAL

Could you cite some examples?

LASH

The first meeting she attended, for example, concerned the planning of a disruption of a U. S. Marine Corps Armed Forces Day display in Buffalo. On other occasions actions were planned which were illegal and disruptive.

POSTAL

Can you give any examples of violent activities by individual members?

LASH

I recall on one occasion several members in this organization told Miss Cook that they felt the actions of an individual who was arrested for a bombing on the University of Michigan campus, which resulted in death, were justified for political purposes.

POSTAL

Do you know of any violent activities that VVAW members actually engaged in since the foregoing could possibly be rhetoric?

LASH

On several occasions members of the

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

LASH VVAW have physically assaulted members of other subversive groups in the Buffalo area.

POSTAL Miss Cook has indicated that you told her that you were interested in attempts by other groups to take over the VVAW. Did this ever happen?

LASH According to information provided by Miss Cook, the Revolutionary Union (Characterization of which is contained in appendix hereto) was attempting to take over the VVAW. I was interested in this.

POSTAL What is the Revolutionary Union?

LASH The Revolutionary Union is a Maoist-subversive group.

POSTAL Was the Revolutionary Union attempting to take over the Buffalo Chapter?

LASH According to Miss Cook, they were trying to take over chapters in several areas of the country and she said that they were taking over the New York City chapter, however, I cannot recall specific attempts to take over the Buffalo chapter while I was handling Miss Cook.

POSTAL Did the Revolutionary Union ever take over the VVAW?

LASH I cannot answer that within the scope of this inquiry.

POSTAL Did you consider the VVAW to be a subversive organization?

LASH Yes

POSTAL Do you know anything about "Cointelpro"?

LASH I cannot answer that within the scope of this inquiry.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL Did you ever use information provided by Mary Jo Cook in any cointelpro-type activities such as getting members of VVAW fired from their jobs or telling the parents of members?

LASH No I did not.

POSTAL Did you ever take any actions against Mary Jo Cook or her family?

LASH No I did not.

POSTAL Did you ever engage in any disruptive or neutralizing action against the organization?

LASH I engaged in no disruptive activities, however, if I learned that the organization was planning something illegal I would alert the local authorities and sufficient police officers would appear at the scene to prevent trouble. I feel this neutralized any planned illegality by the VVAW.

POSTAL Did Miss Cook ever provide you with mailing lists of the organization?

LASH Miss Cook provided me with any number of lists, whether they were described as mailing lists or membership lists, I cannot recall.

POSTAL Did she ever provide you with any contribution lists of the organization?

LASH Not that I can recall.

POSTAL Did you ever tell her that you were interested in determining if the organization was receiving funds from foreign sources.

LASH I cannot specifically recall telling her that.

POSTAL Would you be interested in knowing if the VVAW was receiving funds from foreign sources?

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

LASH Yes I would.

POSTAL Did you ever find out that the VVAW was getting funds from foreign sources?

LASH No.

POSTAL What did you do with the names that were contained on these lists?

LASH I would review the lists to determine if there was anything significant contained in them and a great deal of them I would do nothing with and merely return the lists to Miss Cook. She provided me with a lot of material that I had no interest in.

POSTAL Did she ever provide you with a defense pamphlet?

LASH Not that I can recall

POSTAL Did she ever give you any information concerning VVAW defense strategies?

LASH I believe she gave me material such as reprints of articles from "Psychology Today" and from a magazine called, "Counter Spy" and other information of that nature.

POSTAL Did she tell you that she was working with the Attica Defense Committee?

LASH Yes

POSTAL What is the Attica Defense Committee?

LASH It is an umbrella-type organization in which individuals who are interested in defending Attica prisoners as well as individuals seeking their own ends have gotten together.

POSTAL Did Miss Cook ever indicate that the VVAW was a conduit of mail between the Attica Defense Committee and prisoners in order to get letters in and out of Jail?

LASH I don't recall her saying that.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL Did she ever talk about courtroom tactics or witnesses to be used by the Attica Defense Committee?

LASH Not that I can recall

POSTAL Did you ever give any information she provided to the Attica prosecutors?

LASH None whatsoever

POSTAL Did you ever give any kind of information regarding the Attica Defense Committee to others outside the FBI?

LASH I would pass on information concerning demonstrations, rallies, etc. to the local authorities.

POSTAL Did she ever talk about demonstrations in the courtroom itself?

LASH Not that I can recall.

POSTAL Did she ever provide logistical type information concerning Attica demonstrations?

LASH Yes, on one occasion she was even a "parade marshal" at a demonstration.

POSTAL Was there ever any violence at Attica Defense Committee Demonstrations?

LASH On one occasion another group which was marching in a demonstration planned to march out of the parade and trash the Chase Manhattan Bank in Buffalo provoking the police. This information was brought to the attention of the police and it did not occur. And as I recall, I also told Mary Jo Cook about this plan and might have prevented it from happening.

POSTAL Are any of the individuals who are actually connected with the defense of the Attica prisoners known to be violence-prone individuals?

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

LASH I cannot answer that within the scope of this inquiry

POSTAL What was the method of her providing you with reports?

LASH She would provide me with information either in person or by telephone, which I would dictate to a stenographer, have reduced to writing and have her sign.

POSTAL Did these reports contain background information regarding individuals?

LASH Yes

POSTAL What type of background information?

LASH The same type I described before, physical data, place of employment, residence, etc.

POSTAL Did she give you follow-up data on this background information?

LASH Yes. If a person changed his residence or employment she would tell me.

POSTAL Did she make conclusions in her reports?

LASH She reported information factually, however, I believe she did make conclusions regarding the propensity for violence for individuals in the organization.

POSTAL Miss Cook indicated that after a while she began to give you reports wherein several meetings would be reported in one report if these meetings concerned a central theme. Is this true?

LASH As best I can recall, Miss Cook gave me reports on each individual meeting she attended.

POSTAL Did you ever indicate to Miss Cook that you had specific questions for her from Washington?

LASH I cannot recall saying that.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL She stated that on occasion you provided her with a list of questions which she said came from Washington and sometimes she did not understand the questions.

LASH On occasion I would ask her questions about the organization. I never gave her any list of questions that I said came from Washington. On several occasions I told her, in response to her questions, that the information she provided was sometimes sent to Washington since it pertained to VVAW nationally. I pointed out that this should calm her fears that the FBI might be getting information from informants who are not telling the true story about the VVAW. I also pointed out to her that her information being accurate would in fact offset any mis-information that might come from another informant.

POSTAL Did Miss Cook ever provide out of town reports?

LASH Yes. Miss Cook traveled to other cities and provided reports on activities in these cities.

POSTAL Was she provided with the names of Agents and telephone numbers in these other cities.

LASH Yes she was.

POSTAL Was this so she could report to these other Agents?

LASH No. She was given the number for emergency purposes only, to be utilized if she found out something that required immediate attention or if she suffered some personal emergency such as an automobile accident, etc.

POSTAL During her trips to other cities and attendance at conventions, did she obtain any documents for the FBI?

LASH Yes.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL What was the nature of these documents?

LASH Any number of documents and handouts were provided to the attendees at conventions. Some of these were pamphlets describing VVAW activities, copies of VVAW newspapers, flyers concerning demonstrations and activities in other VVAW chapters, etc.

POSTAL What was the method of payment for Miss Cook's services?

LASH Miss Cook was paid on a COD basis for information provided.

POSTAL Was she paid a salary?

LASH No

POSTAL What determined the amount that she was paid monthly?

LASH She was paid on a monthly basis COD for information provided. Inasmuch as she provided a good deal of information every month, she was usually paid the maximum amount permitted by FBI Headquarters, therefore monthly payments often totaled similar amounts.

POSTAL Was she instructed to pay income tax?

LASH She was advised to treat all money she received from the Bureau as income and to pay appropriate taxes.

POSTAL Was she given any instructions on how to report her income from the FBI?

LASH I cannot recall giving her any specific instructions, however, if I had I would have instructed her to report it as miscellaneous income or income from self-employment, something of that nature.

POSTAL Were these instructions to conceal the fact that she was receiving money from confidential FBI funds?

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

LASH No. This would have been to conceal the fact that she was an FBI informant.

POSTAL Did you get Mary Jo Cook a job?

LASH I aided her in finding employment.

POSTAL What were the circumstances?

LASH Miss Cook indicated that she was being criticized by members of her group for being a "lumpen proletariat" (PH) for not being gainfully employed. This is a Marxist term for anyone being supported by their parents or Welfare, etc. She indicated that it would be necessary for her to find a job and I contacted a social acquaintance of mine who is employed by a Buffalo area bank, who advised that the bank is always looking for tellers. I advised Miss Cook to go to the bank. She did and she got a job as a teller.

POSTAL Did Mary Jo Cook feel she was an Agent Provocateur?

LASH No. On the contrary, I feel if anything she was a non-provocateur since I instructed her to act in such a way as to prevent any violent or illegal act that might be discussed in her presence. I think she understood this and acted in this way.

POSTAL Why did Mary Jo Cook act as an informant?

LASH Mary Jo Cook was an actual member of the VVAW as well as being an informant for the FBI. She reconciled this in her mind by feeling that she was providing the FBI with information that was objective and true about the organization, as well as preventing violent individuals from taking over the group.

POSTAL What percentage of the group did you feel was violence prone?

LASH I do not think I can answer that.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL

You cannot give some approximation?

LASH

According to Miss Cook there were individuals who were not interested at all in violence, as well as individuals who were interested in taking up the gun and fighting in the streets as a defensive measure assuming that a violent revolution would be started by the establishment. There were also individuals who were interested in initiating violence themselves to bring about their political goals. What percentage of the group each of these factions represented, I cannot say.

KAYDEN

Could you indicate the number of violent activities that the VVAW was involved in during the period you handled Mary Jo Cook?

LASH

I cannot recall.

KAYDEN

Was it 2 or 25?

LASH

Between 2 and 25.

KAYDEN

Mary Jo Cook indicated that the VVAW members were the most loving and good people she has ever met. Did she ever indicate that to you?

LASH

Yes.

KAYDEN

If she indicated that these people were so loving and good, how did you feel that they could engage in acts of violence.

LASH

I do not mean to be facetious, but I have read that the "Charles Manson family" in California claim to love each other and are very interested in ecology and other good things. But I believe they certainly seem to be capable of engaging in violence.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL

JFK Act 6 (4) indicates that she felt there were other informants in the group. Did you ever discuss other informants with her?

LASH

On one occasion an individual came to Buffalo from another part of New York state who was suspected of being an informant. The group wanted to take action against him, however JFK Act 6 (4) told them they should take no action, but rather should check with VVAW members in his home area to determine if he was an informant. I believe at the time it was necessary for me to ask her about this situation immediately after it happened and she therefore suspected we had other informants in the organization.

POSTAL

Did you indicate to her that if she were to quit you would put other informants in the organization who would possibly not be as truthful about the VVAW as she was?

LASH

Yes. I believe I did indicate this to her.

POSTAL

Why did she quit?

LASH

Because she indicated that she was having nightmares and suffering actual physical afflictions due to her fears of being discovered as an informant.

POSTAL

She has indicated that she has had long political discussions with you where you disagreed with her on political issues. Is this correct?

LASH

Yes, this is correct.

POSTAL

What prompted these discussions?

LASH

She indicated on many occasions that as a member of the VVAW she was only hearing political perspective from the far left. She asked that I present her with an alternative perspective which I attempted to do. I attempted to point out that there are two sides

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

LASH
(Cont.)

to every question. For example, I recall on one occasion she was told by the VVAW that Bethlehem Steel in the Buffalo area had permitted a worker to die rather than shut down a blast furnace after a worker had fallen down into the furnace area. I checked on this and told her that the true story was that the worker had had a fatal heart attack before falling into the dangerous area and that immediately after his fall everything was shut down for his rescue.

POSTAL

Did she indicate to you that she was especially concerned about the atrocities at Attica Prison?

LASH

Yes, she did.

POSTAL

Did you ever indicate to her that you talked to someone who had been there and said there were no atrocities?

LASH

I indicated to her that I had talked to a physician who had been there after the rebellion had been put down who had told me that the individuals he treated had been injured during the period the prison was in the hands of the rebellious inmates and not during the suppression of the riot.

POSTAL

Did she ever discuss political parties with you?

LASH

The only thing I can recall is her telling me that at some time in the future the VVAW will be a grassroots socialist party in the United States.

POSTAL

Did she mention an individual named Martin Solestry (PH)?

LASH

Do you mean Martin Sostre?

POSTAL

Who is he?

LASH

He is a prison inmate I believe in Auburn Prison.

UNITED STATES SENATE
SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES

POSTAL Is there a Martin Sostre Defense Committee?

LASH I believe so.

POSTAL Did she ever give you any information about the Martin Sostre Defense Committee?

LASH No

POSTAL When she wanted to quit did you try to keep her as an informant?

LASH On several occasions I convinced her that she should remain an informant but at the time of our last contact I felt that she had truly made up her mind and I made no further attempt to convince her to remain an informant.

POSTAL Did it bother you that she was reporting to you on the political activities of these individuals?

Is it Bureau policy that informants report on political activity?

LASH I don't feel that I can answer either of these questions within the scope of the inquiry.

APPENDIX

VIETNAM VETERANS AGAINST THE WAR/ WINTER SOLDIER ORGANIZATION

The Vietnam Veterans Against the War, formed in 1967 by Vietnam veterans to protest United States involvement in the war in Southeast Asia (changed name to Vietnam Veterans Against the War/Winter Soldier Organization (VVAW/WSO) in 1973 to include non-veterans as members), has sponsored numerous anti-government demonstrations, some resulting in violence. The VVAW/WSO National Office (NO) and some key chapters are infiltrated and influenced by the militant Revolutionary Union (RU) organization, and VVAW/WSO leaders have told members that VVAW/WSO is a revolutionary organization, not "just another group of war veterans." The current Marxist-Leninist-Maoist oriented NO, which promotes education of the membership in Marxist-Leninist-Maoist doctrine and directs the organization into political growth along the same lines, has at VVAW/WSO National Steering Committee Meetings (NSCM), in 1974, portrayed VVAW/WSO as a mass anti-imperialist organization and a vanguard of the revolution eventually created by the masses.

VVAW/WSO leaders voted at the December, 1974 NSCM to align VVAW/WSO with the RU, which organization follows a strict Maoist line designed to bring about violent revolution in the United States.

APPENDIX

APPENDIX

REVOLUTIONARY UNION

The Revolutionary Union (RU), founded in early 1968 in the San Francisco Bay area, is a militant semi-covert Marxist-Leninist revolutionary organization ideologically oriented towards the People's Republic of China and the teachings of Chairman MAO Tse-tung. Its objectives as set forth in its theoretical publication, "The Red Papers," and in its monthly newspaper, "Revolution," are the development of a united front against imperialism, the fostering of revolutionary working class unity and leadership in struggle, and the formation of a communist party based on Marxism-Leninism-MAO Tse-tung thought, leading to the overthrow of the United States Government by force and violence. Members of the RU have been identified as collecting weapons while engaging in firearms and guerrilla warfare training. As of July, 1974, RU national headquarters was located in Maywood, Illinois.

APPENDIX

TO: Intelligence Community Staff
ATTN: Central IndexFROM:
FBI

SUBJECT: Abstract of Information Provided to Select Committees

1. HOW PROVIDED (check appropriate term. If a document was made available
for review but not transmitted, so note.)

2. DATE PROVIDED

DOCUMENT

BRIEFING

☒

INTERVIEW

TESTIMONY

OTHER

12/31/75

3. TO WHOM PROVIDED (check appropriate term; add specific names if appropriate)

SSC

The Attorney General with a copy for forwarding to the
White House

HSC

4. IDENTIFICATION (provide descriptive data for documents; give name or identification number of briefer,
interviewee, testifier and subject)Memorandum reporting the results of an interview by SSC Staff
Members of incumbent SA Garry G. Lash5. IN RESPONSE TO (list date and item number if in response to formal request, other-
wise state verbal request of (name), initiative, subpoena, etc.)

NA

6. CLASSIFICATION OF
INFORMATION (enter
U, C, S, TS or
Codeword)

U

7. KEY WORDS (enter the appropriate key words from the list provided separately; if key words not listed are
used underline for emphasis)Information handling
Intelligence collectionALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2 ALM/PL

8. SUMMARY (see reverse side before completing this item)

Interviewed regarding his handling of the former confidential
informant, JFK Act 6 (4), in connection with her membership in
the Vietnam Veterans Against the War.

62-116395

FMK: fmk

(4)

ORIGINAL VIA LIAISON TO CENTRAL COMMUNITY INDEX
IN CONNECTION WITH SENSTUDY 75TREAT AS YELLOW
ENCLOSURE

62-116395-1239X

UNITED STATES GOVERNMENT

Memorandum

REC-51

TO : Mr. J. B. Adams

DATE: 12/31/75

FROM : Legal Counsel *JAM*

SUBJECT: SENATE SELECT COMMITTEE ON
INTELLIGENCE ACTIVITIES
REQUEST BY JACK FULLER FOR
COPIES OF DOCUMENTS

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SPAN/RE

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Eval. _____
Training _____
Telephone Rm. _____
Director Sec'y _____

At 9:25 a.m. on December 31, 1975, Jack Fuller, Special Assistant to the Attorney General, telephonically requested assistance in locating copies of three documents previously sent to the Attorney General by the Director. Mr. Fuller said that he is compiling for the Attorney General materials relevant to questions that were asked by the Senate Select Committee concerning reports made by the Director to the Attorney General regarding sensitive matters in response to the Attorney General's instructions that such reports should be made to him by the Director.

The documents are not readily available to Fuller in the Department due to difficulties in locating them in their filing system and he only had the following general descriptions of the documents:

1. Memorandum from the Director to the Attorney General dated June 4, 1975, captioned "John Caputo and Others, Bribery";
2. A memorandum from the Director to the Attorney General dated November 21, 1975, concerning allegations that an FBI Agent was in violation of the gun control statutes in the Baltimore, Maryland, area;
3. A memorandum from the Director to the Attorney General dated July 22, 1975, which concerned Communications Intelligence Programs. This memorandum was referred to in a subsequent communication dated September 3, 1975.

- 1 - Mr. Wannall
- 1 - Mr. Walsh
- 1 - Mr. Cleveland
- 1 - Mr. Mintz

EX 104

1 - Mr. Daly

REC-51

DEC 31 1975 116 395-1239

ADMINISTRATIVE DIVISION
INTELLIGENCE DIVISION

JAN 7 1976

62-116395

LEGAL COUNSEL

JAM:mfd
(5)

CONTINUED - OVER

84 26 1976

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Memorandum to Mr. Adams
Re: Senate Select Committee

Item 1 appears to be a matter that was handled by the Special Investigative Division; item 2 was handled by the Administrative Division; and item 3 appears to be a matter concerning the Intelligence Division.

RECOMMENDATION:

That the concerned divisions identify the requested documents and furnish Legal Counsel a copy of each for transmission to Jack Fuller by close of business December 31, 1975.

AD

John

John

*At 3:00 PM 12/31/75,
when about to deliver item 3
to L.C.D., P.V. Daly adv. that
Ministry had a copy of it. That
further action by INTD necessary.*

*Material delivered
12/31/75
to Fuller
per*

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Moore *M/p*

FROM : J. H. Campbell *JHC*

DATE: 12/30/75

SUBJECT: DIRECTOR KELLEY'S APPEARANCE
BEFORE SENATE SELECT COMMITTEE
ON INTELLIGENCE ACTIVITIES
DECEMBER 10, 1975

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2ALM/KW

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Telephone Rm. _____
Director Sec'y _____

For record purposes, attached are (1) a copy of the prepared statement which Mr. Kelley read at the outset of his December 10 appearance before the Select Committee on Intelligence Activities of the United States Senate and (2) a transcript of the questions which were asked Mr. Kelley by the Committee members, together with Mr. Kelley's responses to those questions.

On December 10, each Field Office and Legal Attache was sent a copy of Mr. Kelley's prepared statement. A copy of the transcript of the questions and answers is being sent to each Field Office and Legal Attache today.

ST. 115

REC-51

62-116395-1238X

RECOMMENDATION:

7 JAN 23 1976

For information and record purposes.

Enclosures (2)

- 1 - Mr. Callahan - Enclosure
- 1 - Mr. Jenkins - Enclosure
- 1 - Mr. Adams - Enclosure
- 1 - Each Assistant Director - Enclosure (Sent direct)

GWG:jam (19)

8 JAN 28 1976

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

FOR RELEASE
10 A.M., EST
WEDNESDAY, DECEMBER 10, 1975

STATEMENT OF

CLARENCE M. KELLEY

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2 ALM/RW

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES

U. S. SENATE

WASHINGTON, D. C.

DECEMBER 10, 1975



62-116395-1238X

I welcome the interest which this Committee has shown in the FBI and most particularly in our operations in the intelligence and internal security fields.

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

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

This Committee has completed the most exhaustive study of our intelligence and security operations that has ever been undertaken by anyone

outside the FBI other than the present Attorney General. At the outset, we pledged our fullest cooperation and promised to be as candid and forthright as possible in responding to your questions and complying with your requests.

I believe we have lived up to those promises.

The members and staff of this Committee have had unprecedented access to FBI information.

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

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

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

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

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

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

A Justice Department Committee which was formed last year to conduct a thorough study of the FBI's Counterintelligence Programs has reported that in the five basic ones it found 3,247 Counterintelligence proposals were submitted to FBI Headquarters from 1956 to 1971. Of this total, 2,370 -- less than three-fourths -- were approved.

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

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

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

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

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

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

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

FBI employees recognized the danger; felt they had a responsibility to respond; and, in good faith,

initiated actions designed to counter conspiratorial efforts of self-proclaimed revolutionary groups, and to neutralize violent activities.

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

Our concern over whatever abuses occurred in the Counterintelligence Programs -- and there were some substantial ones -- should not obscure the underlying purpose of those programs.

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

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

Where there exists the potential to penetrate and disrupt, the Congress must consider the question of

whether or not such preventive action should be available to the FBI.

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

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

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

Today we place a high premium on openness -- openness both within and without the service.

I have instituted a program of open, frank discussion in the decision-making process which insures that no future program or major policy decision will ever be adopted without a full and critical review of its propriety.

Participatory management has become a fact in the FBI.

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

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

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

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

Within days after taking office, Attorney General Levi instructed that I immediately report to him any

requests or practices which, in my judgment, were improper or which, considering the context of the request, I believed presented the appearance of impropriety.

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

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

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

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

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

I am proud of the 19,000 men and women with whom it is my honor to serve today. Their dedication, their professionalism, their standards, and the self-discipline which they personally demand of themselves and expect of their associates are the Nation's ultimate assurance of proper and responsible conduct at all times by the FBI.

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

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

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

An initial step was taken in the Senate in 1973 when the Committee on the Judiciary established a Subcommittee on FBI Oversight. Hearings had been

commenced, and we were fully committed to maximum participation with the members of that Subcommittee.

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

One of the greatest benefits of the study this Committee has made is the expert knowledge you have gained of the complex problems confronting the FBI. But I respectfully submit that those benefits are wasted if they do not lead to the next step -- a step that I believe is absolutely essential -- a legislative charter, expressing Congressional determination of intelligence jurisdiction for the FBI.

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

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

I would caution against a too-ready reliance upon the Courts to do our tough thinking for us. Some proposals that have been advanced during these hearings would extend the role of the Courts into the early stages

of the investigative process and, thereby, would take over what historically have been Executive Branch decisions.

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

The FBI urgently needs a clear and workable determination of our jurisdiction in the intelligence field, a jurisdictional statement that the Congress finds to be responsive to both the will and the needs of the American people.

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

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

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

The fact that the Department of Justice has commenced the formulation of operational guidelines governing our intelligence activities does not in any manner diminish the need for legislation. The responsibility for conferring jurisdiction resides with the Congress.

In this regard, I am troubled by some proposals which question the need for intelligence gathering, suggesting that information needed for the prevention of violence can be acquired in the normal course of criminal investigations.

As a practical matter, the line between intelligence work and regular criminal investigations is often difficult to describe. What begins as an intelligence investigation may well end in arrest and prosecution of the subject. But there are some fundamental differences between these

investigations that should be recognized -- differences in scope, in objective and in the time of initiation. In the usual criminal case, a crime has occurred and it remains only for the Government to identify the perpetrator and to collect sufficient evidence for prosecution. Since the investigation normally follows the elements of the crime, the scope of the inquiry is limited and fairly well defined.

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

Certainly, reasonable people can differ on these issues. Given the opportunity, I am confident that the continuing need for intelligence work can be documented to the full satisfaction of the Congress. We

recognize that what is at stake here is not the interests of the FBI, but rather the interests of every citizen of this country. We recognize also that the resolution of these matters will demand extensive and thoughtful deliberation by the Congress. To this end, I pledge the complete cooperation of the Bureau with this Committee or its successor in this important task.

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



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

DEC 30 1975

TO: Elmer Larson
Paul Daly

FROM: Ray Hornblower
Assistant Special Counsel for
Intelligence Coordination

SUBJECT: FBI Materials that Treasury Department Intends to Transmit
to SSC, Subject to DOJ Approval

Mike Shaheen recommended that you review these FBI documents before we authorize Treasury to release them to the Senate Select Committee. - Mike and I don't see any problem in releasing them. If you agree, could you send them back to this office at your earliest convenience?

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-30-00 BY SP2ALM/RA

REC-51

62-116395-1238

EX 104

5 JAN 7 1976

2 ENCLOSURE
ENCL BEHIND FILE

cc: Paul Daly



JAN 9 1976

DEC 30 1975

TO: Elmer Larson
Paul Daly

FROM: Ray Hornblower
Assistant Special Counsel for
Intelligence Coordination

SUBJECT: FBI Materials that Treasury Department Intends to Transmit
to SEC, Subject to DOJ Approval

Mike Shaheen recommended that you review these FBI documents before we authorize Treasury to release them to the Senate Select Committee. Mike and I don't see any problem in releasing them. If you agree, could you send them back to this office at your earliest convenience?

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-06 BY SP-ALM/RS

1238

cc: Paul Daly

2 - Mr. J. A. Mintz
(1 - Mr. J. B. Hotis)
1 - Mr. W. R. Wannall
1 - Mr. W. O. Cregar
1 - Mr. R. D. Hampton
December 29, 1975

The Attorney General

Director, FBI

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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2A/CMP

Reference is made to SSC letter dated December 8, 1975, containing a request for access to certain FBI materials regarding FBI investigation of lobbying activities in 1961 and 1962.

Enclosed herewith for your approval and forwarding to the SSC is the original of a memorandum which is our complete response to the above request. Also enclosed for your records is a copy of this memorandum.

Enclosures (2)

62-116395

1 - The Deputy Attorney General
Attention: Michael E. Shaheen, Jr.
Special Counsel for
Intelligence Coordination

RDH:mjg/lhb
(9)

SI 115

REC-51

5 JAN 28 1976

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Admin. _____
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Ext. Affairs _____
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Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

ENCLOSURE IN BULKY ROOM

MAIL ROOM ☐ TELETYPE UNIT ☐

GPO : 1975 O - 569-920

2 - Mr. J. A. Mintz
(1 - Mr. J. B. Hotis)
1 - Mr. W. R. Wannall
1 - Mr. W. O. Cregar
1 - Mr. R. D. Hampton

62-116395

December 20, 1975

U. S. SENATE SELECT COMMITTEE TO
STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES (SSC)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2A/MPW

Reference is made to SSC letter dated December 8, 1975, containing a request for access to certain FBI materials regarding FBI investigation of lobbying activities in 1961 and 1962.

In accordance with established procedures, the FBI file concerning the above has been reviewed and the pertinent material has been extracted. In order to make our response meaningful, the references to our technical coverage of foreign diplomatic establishments have been left in the excised documents. It is noted these documents are classified. Therefore, their contents should not be disclosed or released to the news media without prior FBI authority. These documents are presently available at FBI Headquarters for review by authorized SSC Staff Members.

It should be noted that the documents mentioned above are FBI letters to the Attorney General. The information contained in these letters was in all instances also furnished in substantially the same form to the Assistant Attorneys General of both the Criminal Division and the Internal Security Division of the Department of Justice.

Assoc. Dir. _____

Dep. AD Adm. — 1 - The Attorney General

Dep. AD Inv. — _____

Asst. Dir.: _____

Admin. _____ RDH:mjg/lhb/lhl ORIGINAL AND ONE COPY TO AG
Comp. Syst. — (8)

Ext. Affairs — _____

Files & Com. — _____

Gen. Inv. — _____

Ident. — _____

Inspection — _____

Intell. — _____

Laboratory — _____

Plan. & Eval. — _____

Spec. Inv. — _____

Training — _____

Legal Coun. — _____

Telephone Rm. — _____

Director Sec'y — _____

NOTE: The SSC is also requesting documents regarding this matter from the Department of Justice. Therefore, FBI response to this request was coordinated with Steve Blackhurst of the Department. A copy of referenced SSC request is attached.

MAIL ROOM ☐

TELETYPE UNIT ☐

Advance Copy

FRANK CHURCH, IDAHO, CHAIRMAN
JOHN G. TOWER, TEXAS, VICE CHAIRMAN
PHILIP A. HART, MICH.
WALTER F. MONDALE, MINN.
WALTER D. HUDDLESTON, KY.
ROBERT MORGAN, N.C.
GARY HART, COLO.
HOWARD H. BAKER, JR., TENN.
KARRY GOLDWATER, ARIZ.
CHARLES MC C. MATHIAS, JR., MD.
RICHARD S. SCHWEIKER, PA.

WILLIAM G. MILLER, STAFF DIRECTOR
FREDERICK A. O. SCHWARZ, JR., CHIEF COUNSEL
CURTIS R. SMOTHERS, MINORITY COUNSEL

United States Senate

SELECT COMMITTEE TO
STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES

(PURSUANT TO S. RES. 21, 94TH CONGRESS)

WASHINGTON, D.C. 20510

December 8, 1975

Michael E. Shaheen, Jr., Esq.
Special Counsel for Intelligence Coordination
Office of the Deputy Attorney General
U. S. Department of Justice
Washington, D. C. 20530

Dear Mike:

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2AM/PC

The Select Committee requests that limited staff access be provided to all materials in the possession of the FBI and the Justice Department reflecting the dissemination of information by the FBI from the wiretaps authorized by Attorney General Robert Kennedy in connection with the investigation of lobbying activities in 1961 and 1962. The procedures will be the same as those used for staff access to similar materials pertaining to the so-called "17 wiretaps" under the Nixon Administration.

This request should be handled on a priority basis and expedited accordingly.

Sincerely,

John T. Elliff

John T. Elliff
Director

Domestic Intelligence Task Force

cc: Mr. Paul Daly ✓

ENCLOSURE 62-116395-1237X1

5-140 (Rev. 1-21-74) FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

Oct 12-30

Addressee: SENATE SELECT COMMITTEE

☐ LTR ☒ LHM ☐ Memo ☐ Report dated 12/28/75

Caption of Document: U.S. SENATE SELECT COMMITTEE. 24
29

12/8/75 request - lobbying activities in
1961 and 1962

Originating Office: FBI

Delivered by: J. Stassinos Date: 1/7/76

Received by: Barbara Schwartz

Title: Clerk

Return this receipt to the Intelligence Division, FBI

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP-3 ALM/PC

ENCLOSURE

62-116395-1237X1

TO: Intelligence Community Staff
ATTN: Central IndexFROM:
FBI

SUBJECT: Abstract of Information Provided to Select Committees

1. HOW PROVIDED (check appropriate term. If a document was made available
for review but not transmitted, so note.)

2. DATE PROVIDED

☒ DOCUMENT ☐ BRIEFING ☐ INTERVIEW ☐ TESTIMONY ☐ OTHER

12/29/75

FOR REVIEW

3. TO WHOM PROVIDED (check appropriate term; add specific names if appropriate)

<input checked="" type="checkbox"/>	SSC
<input type="checkbox"/>	HSC

4. IDENTIFICATION (provide descriptive data for documents; give name or identification number of briefer,
interviewee, testifier and subject)

Memorandum

5. IN RESPONSE TO (list date and item number if in response to formal request, other-
wise state verbal request of (name), initiative, subpoena, etc.)

SSC letter 12/8/75

6. CLASSIFICATION OF
INFORMATION (enter
U, C, S, TS or
Codeword)

U

7. KEY WORDS (enter the appropriate key words from the list provided separately; if key words not listed are
used underline for emphasis)

Surveillance, electronic

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2ALM/RW

8. SUMMARY (see reverse side before completing this item)

Available for review by appropriate SSC Staff Members at FBIHQ
materials regarding FBI investigation of lobbying activities
in 1961 and 1962.

62-116395

FMK:fmk

(4)

ORIGINAL VIA LIAISON TO CENTRAL COMMUNITY INDEX
IN CONNECTION WITH SENSTUDY 75

TREAT AS YELLOW

- Mr. J. A. Mintz
(1 - Mr. J. B. Hotis)
1 - Mr. W. R. Wannall
1 - Mr. W. O. Cregar
1 - Mr. H. W. Porter

The Attorney General

December 29, 1975

Director, FBI

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-80 BY SP2ALM/ru

UNITED STATES SENATE SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES (SSC)

Reference is made to a letter from the SSC dated November 21, 1975, requesting delivery of materials pertaining to authorization and purpose of certain electronic surveillances, and to our memoranda of December 1, 8, 15, and 19, which respond to Items 1 through 30 of the November 21 letter as they pertain to telephone surveillances.

Enclosed for your approval and forwarding to the SSC is the original of a memorandum which responds to Items 1 through 3, and 7 through 8, of the November 21 SSC letter. Item 4 deals with Martin L. King, Jr., and this information has been furnished previously to the SSC. We are assembling material in response to Items 5 and 6. Response to Item 9 was included in our memorandum of December 15, 1975, under Item 19.

A copy of this memorandum is being furnished for your records.

Enclosures (2)

62-116395

1 - The Deputy Attorney General
Attention: Michael E. Shaheen, Jr.
Special Counsel for
Intelligence Coordination

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____

HWP:en

(9)

SEE NOTE PAGE TWO

The Attorney General

NOTE:

SSC letter of November 21, asked for material relating to authorizations and purpose of 30 telephone and 9 microphone surveillances. We have furnished information relating to the telephone surveillances by memoranda of December 1, 8, 15, and 19. This memorandum responds to Items 1 through 3, and 7 through 8, of that portion of the SSC letter dealing with microphone surveillances. We have responded to Item 4, relating to King, in previous memoranda to the SSC. We are assembling data relating to Items 5 and 6 and will respond on completion of this effort. Item 9 was included in our memorandum of December 15, 1975, under Item 19.

- Mr. J. A. Mintz
(1 - Mr. J. B. Hotis)
1 - Mr. W. R. Wannall
1 - Mr. W. O. Cregar
1 - Mr. H. W. Porter

62-116395

December 29, 1975

UNITED STATES SENATE SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES (SSC)

RE: REQUEST PERTAINING TO AUTHORIZATION
AND PURPOSE OF ELECTRONIC SURVEILLANCES
CONDUCTED BY THE FBI

Reference is made to the SSC letter of November 21, 1975, requesting delivery of materials pertaining to the authorization and purpose of certain electronic surveillances conducted by the FBI.

The SSC letter of November 21 referenced a summary chart prepared by the FBI showing electronic surveillances conducted by the FBI since 1960. This chart was furnished to the SSC by letter of October 23, 1975.

This memorandum effects delivery of documents responsive to Items 1 through 3, and 7 through 8 of the November 21 SSC letter, specifically that portion of the letter dealing with microphone surveillances. Those items are as follows:

Item 1 - Nation of Islam, 1960 through 1965 (Boston, Kansas City, Detroit, Buffalo and Seattle).

Item 2 - Elijah Muhammad, 1961 through 1965.

Item 3 - National States Rights Party, 1962.

Assoc. Dir. _____

Dep. AD Adm. _____

Dep. AD Inv. _____

Asst. Dir.: _____

Admin. _____

Comp. Syst. _____

Ext. Affairs _____

Files & Com. _____

Gen. Inv. _____

Ident. _____

Inspection _____

Intell. _____

Laboratory _____

Plan. & Eval. _____

Spec. Inv. _____

Training _____

Legal Coun. _____

Telephone Rm. _____

Director Sec'y _____

HWP:en

(8)

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 11-2-00 BY SP2ADMP/PC

RE: REQUEST PERTAINING TO AUTHORIZATION
AND PURPOSE OF ELECTRONIC SURVEILLANCES
CONDUCTED BY THE FBI

Item 7 - Students for a Democratic Society, 1969.

Item 8 - Black Panther Party, 1970.

Item 4 relates to Martin Luther King, Jr. Information dealing with electronic surveillance of King has been furnished previously to the SSC in connection with a separate inquiry.

Information dealing with Items 5 and 6 is being assembled and will be furnished as soon as possible. Response to Item 9 was handled in our memorandum of December 15, 1975, under Item 19.

1 - The Attorney General

5-140 (Rev. 1-21-74) FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

Addressee: SENATE SELECT COMMITTEE

☐ LTR ☒ LHM ☐ Memo ☐ Report dated 12/29/75

U. S. Senate Select Committee (SSC). Re: Request
Caption of Document: Pertaining to Authorization & Purpose of Electronic Surveillances Conducted by FBI. (SSC letter 11/21/75, Items 1-3, 7-8)

Originating Office: FBI

Delivered by: J. G. Stassinios Date: 1/9/76

Received by: Lynsey Oster

Title: Clerk

Return this receipt to the Intelligence Division, FBI

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2ALM/PR

ENCLOSURE

62-116395-1237X

TO: Intelligence Community Staff
ATTN: Central IndexFROM:
FBI

SUBJECT: Abstract of Information Provided to Select Committees

1. HOW PROVIDED (check appropriate term. If a document was made available
for review but not transmitted, so note.)

2. DATE PROVIDED

X DOCUMENT BRIEFING INTERVIEW TESTIMONY OTHER

12/29/75

3. TO WHOM PROVIDED (check appropriate term; add specific names if appropriate)

X	SSC
	HSC

4. IDENTIFICATION (provide descriptive data for documents; give name or identification number of briefer,
interviewee, testifier and subject)

Memorandum and enclosures

5. IN RESPONSE TO (list date and item number if in response to formal request, other-
wise state verbal request of (name), initiative, subpoena, etc.)

SSC letter 11/21/75, items 1-3 and 7-8

6. CLASSIFICATION OF
INFORMATION (enter
U, C, S, TS or
Codeword)

U

7. KEY WORDS (enter the appropriate key words from the list provided; if key words not listed are
used underline for emphasis)

Surveillance, electronic

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2ALM/R

8. SUMMARY (see reverse side before completing this item)

Effecting delivery of authorization and purpose of electronic surveillances conducted by the FBI on Nation of Islam, 1960-65; Elijah Muhammad, 1961-65; National States Rights Party, 1962; Students for a Democratic Society, 1969; Black Panther Party, 1970.

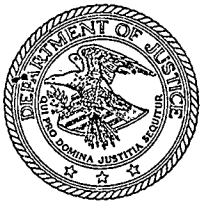
62-116395

FMK:fmk

(4)

ORIGINAL VIA LIAISON TO CENTRAL COMMUNITY INDEX
IN CONNECTION WITH SENSTUDY 75

TREAT AS YELLOW



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

12-29-75

TO: John A. Mintz, Assistant Director
Legal Counsel Division
Federal Bureau of Investigation

FROM: Steven K. Blackhurst
Assistant Special Counsel for
Intelligence Coordination

SUBJECT: Senate Select Committee Request Dated December 23, 1975

Attached is a letter from the Senate Select Committee dated December 23, 1975, which requests FBI materials relating to Sam A. Jaffe. Please arrange an appropriate response.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2ALM/ru

REC-51

EX 104

62-116395-1287

5 JAN 7 1976

cc: Paul Daly

ENCLOSURE



84 JAN 9 1976 11:58

FRANK CHURCH, IDAHO, CHAIRMAN
JOHN G. TOWER, TEXAS, VICE CHAIRMAN

PHILIP A. HART, MICH. HOWARD H. BAKER, JR., TENN.
WALTER F. MONDALE, MINN. GARRY GOLOWATER, ARIZ.
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ROBERT MORGAN, N.C. RICHARD S. SCHWEIKER, PA.
GARY HART, COLO.

WILLIAM G. MILLER, STAFF DIRECTOR
FREDERICK A. O. SCHWARZ, JR., CHIEF COUNSEL
CURTIS R. SMOTHERS, MINORITY COUNSEL

United States Senate

SELECT COMMITTEE TO
STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES

(PURSUANT TO S. RES. 21, 94TH CONGRESS)

WASHINGTON, D.C. 20510

December 23, 1975

Michael E. Shaheen, Esq.
Special Counsel for Intelligence Coordination
Office of the Deputy Attorney General
U.S. Department of Justice
Washington, D.C. 20530

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2ALM/RW

Dear Mr. Shaheen:

In connection with the Committee's investigation,
I am writing to request delivery to the Committee of
the following materials:

All records, files, documents or
other materials relating to Sam A.
Jaffe, presently residing at
6510 Bradley, Blvd., Bethesda, Md.

Sincerely,

John Elliff
John Elliff
Director
Domestic Intelligence
Task Force

cc: John Hotis
Office of Congressional Affairs
Federal Bureau of Investigation



ENCLOSURE

62-116395-1237

- Mr. J. A. Mintz
(1 - Mr. J. B. Hotis)
1 - Mr. W. R. Wannall
1 - Mr. W. O. Cregar
1 - Mr. H. W. Porter

The Attorney General

January 7, 1976

Director, FBI

ST 115 REC-50 62-116395-1236X
UNITED STATES SENATE SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES (SSC)

Reference is made to a letter, with attachment, from the SSC dated December 16, 1975, requesting delivery of certain materials dealing with authorization and purpose of telephone and microphone surveillances directed at American citizens or resident aliens during the period 1973 through 1975.

Enclosed for your approval and forwarding to the SSC is the original of a memorandum which responds to Paragraph 3 of the December 16 letter, and Items 1 through 4 of the attachment.

A copy of this memorandum is being furnished for your records.

Enclosures (2)

62-116395

1 - The Deputy Attorney General
Attention: Michael E. Shaheen, Jr.
Special Counsel for
Intelligence Coordination

HWP:en 2/1
(9)

ENCL. RETURN FILE
3-ENCLOSURE

SEE NOTE PAGE 2

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
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Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____

MAIL ROOM ☐ 2989560

TELETYPE UNIT ☐ Page 159

GPO 954-546

The Attorney General

NOTE:

16

SSC letter of December ~~21~~, 1975, requested delivery of documents concerning authorization and purpose of certain electronic surveillances during the period 1973 - 1975. In a December 19, 1975 conference with John T. Elliff, Domestic Intelligence Task Force Director, Mr. Elliff advised Section Chief W. O. Cregar and Supervisor H. W. Porter III that our response would be sufficient if limited to American citizens only, as opposed to citizens and resident aliens. Attached to yellow is a copy of the December 21 SSC request.

16

Mr. J. A. Mintz
(1 - Mr. J. B. Hotis)
1 - Mr. W. R. Wannall
1 - Mr. W. O. Cregar
1 - Mr. H. W. Porter

62-116395

January 7, 1976

UNITED STATES SENATE SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES (SSC)

RE: REQUEST PERTAINING TO AUTHORIZATION AND
PURPOSE OF TELEPHONE AND MICROPHONE
SURVEILLANCES DIRECTED AT AMERICAN CITIZENS
OR RESIDENT ALIENS DURING THE PERIOD
1973 - 1975

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP8ALM/RW

Reference is made to the SSC letter of December 16, 1975, with attachment, requesting delivery of materials pertaining to the authorization and purpose of certain electronic surveillances directed at American citizens or resident aliens during the period 1973 through 1975.

In a meeting with FBI Intelligence Division representatives on December 19, 1975, Mr. John T. Elliff, Director, Domestic Intelligence Task Force, advised that in response to Items 1 through 4 of the attachment to the December 16 letter it would be sufficient to furnish materials dealing only with individuals who had been identified, by current review of records, as being United States citizens.

Paragraph 3 of your December 16 letter requests all materials pertaining to any surreptitious entry conducted by the FBI over the past five years which "was not directed at a non-resident alien in the service of a foreign power." We interpret this to mean entries directed at resident aliens and/or United States citizens not in the service of a foreign power. There were five individual targets of such entries. Three have been included in delivery of materials effected by this memorandum. Documents concerning authorization and purpose of surveillances

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
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Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

HWP:en
(8)

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 the content may not be disclosed to unauthorized personnel without the express approval of the FBI.

MAIL ROOM ☐ TELETYPE UNIT ☐

RE: REQUEST PERTAINING TO AUTHORIZATION AND
PURPOSE OF TELEPHONE AND MICROPHONE
SURVEILLANCES DIRECTED AT AMERICAN CITIZENS
OR RESIDENT ALIENS DURING THE PERIOD
1973 - 1975

regarding the two remaining targets have been furnished in earlier memoranda. One target was identified as Huey P. Newton (Item 8, Bureau memorandum of December 8, 1975, responding to SSC letter of November 21, 1975), and the second target was the Black Panther Party (Item 8, Bureau memorandum of December 29, 1975, responding to SSC letter of November 21, 1975).

This memorandum effects delivery¹⁶ of documents responsive to Paragraph 3 of the December ~~21~~ SSC letter, and to Items 1 through 4 of the attachment to the December ~~21~~ letter.
16

1 - The Attorney General



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

12-28-75

TO: John A. Mintz, Assistant Director
Legal Counsel Division
Federal Bureau of Investigation

FROM: Steven K. Blackhurst
Asst. Special Counsel for Intelligence
Coordination

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2HMP/ku

SUBJECT: Senate Select Committee letter dated December 16, 1975

Attached is a letter from the Senate Select Committee requesting delivery of certain materials concerning electronic surveillance and surreptitious entries. Please arrange for an appropriate response.

My initial view is that the Senate Select Committee should be given the same excised versions of the authorizing documents that the House Select Committee was given in response to its request. I would oppose giving the Senate Select Committee access to the unexcised version of these documents for security reasons.

With regard to the November 21 letter referenced in John Elliff's letter, we propose to give John Elliff access to the unexcised versions of the documents but would prefer that the Senate Select Committee be given delivery of excised versions only. Elliff's letter appears to accept this arrangement.

With regard to the request for materials concerning any surreptitious entries, the Senate Select Committee is referring to what was described as a surreptitious entry not related to a microphone surveillance in 1972 against an "Arab Terrorist Activist". This surreptitious entry was listed on an FBI memorandum dated November 5, 1975 which was in response to a request from the House Select Committee. This memorandum was delivered initially to the Senate Select Committee by mistake. Because I have not

cc: Paul Daly

REC-51
ST 115

62-116395-1236X
5 JAN 23 1976





OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

-2-

seen the materials requested I do not know what an appropriate response to this request would be.



FRANK CHAP CH. IDAHO, CHAIRMAN
JOHN S. TOWNE, TEXAS, VICE CHAIRMAN
PHILIP M. HART, MICH.
WALTER F. MONDALE, MINN.
WALTER D. HUDDLESTON, KY.
ROBERT MORGAN, N.C.
GARY HART, COLO.
HOWARD H. BAKER, JR.
BARRY GOLDWATER, AR.
CHARLES MC C. MATHIAS, JR., MD.
RICHARD S. SCHWEIKER, PA.

WILLIAM G. MILLER, STAFF DIRECTOR
FREDERICK A. O. SCHWARZ, JR., CHIEF COUNSEL
CURTIS R. SMOTHERS, MINORITY COUNSEL

United States Senate

SELECT COMMITTEE TO
STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES

(PURSUANT TO S. RES. 21, 94TH CONGRESS)

WASHINGTON, D.C. 20510

December 16, 1975

Michael E. Shaheen, Jr., Esq.
Special Counsel for Intelligence Coordination
Office of the Deputy Attorney General
U. S. Department of Justice
Washington, D. C. 20530

Dear Mike:

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2AAMP/KW

The Select Committee requests delivery of the materials in the attached list pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens during the period 1973-1975.

In the case of surveillances directed at groups or meetings which included both non-resident aliens in the service of a foreign power and American citizens or resident aliens, delivery of the materials is also requested.

In addition to the materials listed in the attachment, the Committee requests all materials pertaining to any surreptitious entry conducted by the FBI over the past five years which was not directed at a non-resident alien in the service of a foreign power.

With respect to this request and the request for similar materials made in my letter of November 21, 1975, the names of the targets may be excised. Unexcised versions of the documents should be made available for access.

Sincerely,

John T. Elliff

John T. Elliff, Director
Domestic Intelligence Task Force

Attachment

1-10662
12-17-75

62-116395-1236X

~~SECRET~~

Request for Access to FBI Materials

1. For the period 1973-1975, materials pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens falling in the following categories:
 - a. foreign intelligence agents;
 - b. foreign intelligence contacts;*
 - c. foreign intelligence agent suspects;
 - d. foreign diplomatic officials contact;
 - e. foreign intelligence agent's business office.
2. For the year 1973, materials pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens falling in the following categories:
 - a. headquarters basic revolutionary group;*
 - b. pro-Palestine group;
 - c. Arab terrorist activist;
 - d. propaganda outlet League of Arab States;
 - e. West Coast fund-raising for Arab terrorist groups.
3. For the year 1974, materials pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens falling in the following categories:
 - a. headquarters basic revolutionary group;*
 - b. Arab terrorist affiliate;
 - c. pro-Palestine group;

DECLASSIFIED BY SP2AM/KW
ON 11-3-00

~~SECRET~~

62-116383-1236X

~~SECRET~~

- d. Arab terrorist activist;*
 - e. propaganda outlet League of Arab States;*
 - f. Arab terrorist activist affiliate.**
4. For the year 1975, materials pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens falling in the following categories:
- a. Arab terrorist affiliate;*
 - b. pro-Palestine group;
 - c. Arab terrorist activist;
 - d. propaganda outlet League of Arab States;*
 - e. coverage of Arab terrorist activist meeting;**
 - f. pro-Chicom propaganda outlet.*

* Summary chart reveals telephone surveillance only.

** Summary chart reveals microphone surveillance only.

~~SECRET~~

TO: Intelligence Community Staff
ATTN: Central IndexFROM:
FBI

SUBJECT: Abstract of Information Provided to Select Committees

1. HOW PROVIDED (check appropriate term. If a document was made available
for review but not transmitted, so note.)

2. DATE PROVIDED

☒ DOCUMENT ☐ BRIEFING ☐ INTERVIEW ☐ TESTIMONY ☐ OTHER

1/7/76

3. TO WHOM PROVIDED (check appropriate term; add specific names if appropriate)

☒ SSC☐ HSC4. IDENTIFICATION (provide descriptive data for documents; give name or identification number of briefer,
interviewee, testifier and subject)

Memorandum and enclosures

5. IN RESPONSE TO (list date and item number if in response to formal request, other-
wise state verbal request of (name), initiative, subpoena, etc.)

SSC letter 12/16/75

6. CLASSIFICATION OF
INFORMATION (enter
U, C, S, TS or
Codeword)

U

7. KEY WORDS (enter the appropriate key words from the list provided separately; if key words not listed are
used underline for emphasis)

Surveillance, electronic

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 11-3-00 BY SP2 ALM/RW

8. SUMMARY (see reverse side before completing this item)

Materials furnished pertaining to any surreptitious entry conducted by the FBI over the past five years directed at resident aliens and/or U.S. Citizens not in the service of a foreign power. There were five individual targets of such entries. Also documents concerning authorization and purpose of surveillances furnished.

62-116395

FMK:fmk

(4)

ORIGINAL VIA LIAISON TO CENTRAL COMMUNITY INDEX
IN CONNECTION WITH SENSTUDY 75

TREAT AS YELLOW

5-140 (Rev. 1-21-74) FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

Addressee: SENATE SELECT COMMITTEE

☐ LTR ☒ LHM ☐ Memo ☐ Report dated 1/8/75

U.S. SENATE SELECT COMMITTEE.

Caption of Document:

12/16/75 request - electronic surveillance

Originating Office: FBI

Delivered by: *Paul V. Kelly* Date: 1-12-76

Received by: *Patricia H. Sheaf*

Title: *Staff*

Return this receipt to the Intelligence Division, FBI

DATE 11-3-00 BY *SP2AUM/R*

62-116395-1236X

Mr. J. B. Hodges
(1 - Mr. J. B. Hodges)
Mr. W. R. Wannall
1 - Mr. W. O. Cregar
1 - Mr. H. W. Porter

The Attorney General

January 7, 1976

Director, FBI

SI 115 REC-5W

62-116395-12361
UNITED STATES SENATE SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES (SSC)

Reference is made to a letter, with attachments, from the SSC dated December 16, 1975, requesting delivery of certain materials dealing with authorization and purpose of telephone and microphone surveillances directed at American citizens or resident aliens during the period 1973 through 1975.

Enclosed for your approval and forwarding to the SSC is the original of a memorandum which responds to Paragraph 3 of the December 16 letter, and Items 1 through 4 of the attachment.

A copy of this memorandum is being furnished for your records.

Enclosures (2)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP5/MLP

62-116395

1 - The Deputy Attorney General
Attention: Michael E. Shaheen, Jr.
Special Counsel for
Intelligence Coordination

HWP:en
(9)

SEE NOTE PAGE 2

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir. _____
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
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Legal Coun. _____
Telephone Rm. _____

MAIL ROOM ☐

TELETYPE UNIT ☐

JAN 28 1976

The Attorney General

NOTE:

SSC letter of December 21, 1975, requested delivery of documents concerning authorization and purpose of certain electronic surveillances during the period 1973 - 1975. In a December 19, 1975 conference with John T. Elliff, Domestic Intelligence Task Force Director, Mr. Elliff advised Section Chief W. O. Cregar and Supervisor H. W. Porter III that our response would be sufficient if limited to American citizens only, as opposed to citizens and resident aliens. Attached to yellow is a copy of the December 21 SSC request.

16

- Mr. J. A. Mintz
(1 - Mr. J. B. Hotis)
1 - Mr. W. R. Wannall
1 - Mr. W. O. Cregar
1 - Mr. H. W. Porter

62-116395

January 7, 1976

UNITED STATES SENATE SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES (SSC)

RE: REQUEST PERTAINING TO AUTHORIZATION AND
PURPOSE OF TELEPHONE AND MICROPHONE
SURVEILLANCES DIRECTED AT AMERICAN CITIZENS
OR RESIDENT ALIENS DURING THE PERIOD
1973 - 1975

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP5ACJ/KW

Reference is made to the SSC letter of December 16, 1975, with attachment, requesting delivery of materials pertaining to the authorization and purpose of certain electronic surveillances directed at American citizens or resident aliens during the period 1973 through 1975.

In a meeting with FBI Intelligence Division representatives on December 19, 1975, Mr. John T. Elliff, Director, Domestic Intelligence Task Force, advised that in response to Items 1 through 4 of the attachment to the December 16 letter it would be sufficient to furnish materials dealing only with individuals who had been identified, by current review of records, as being United States citizens.

Paragraph 3 of your December 16 letter requests all materials pertaining to any surreptitious entry conducted by the FBI over the past five years which "was not directed at a non-resident alien in the service of a foreign power." We interpret this to mean entries directed at resident aliens and/or United States citizens not in the service of a foreign power. There were five individual targets of such entries. Three have been included in delivery of materials effected by this memorandum. Documents concerning authorization and purpose of surveillances

Assoc. Dir. _____
Asst. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

HWP:en
(8)

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 the content may not be disclosed to unauthorized personnel without the express approval of the FBI.

MAIL ROOM ☒ TELETYPE UNIT ☐

GPO 34-546

RE: REQUEST PERTAINING TO AUTHORIZATION AND
PURPOSE OF TELEPHONE AND MICROPHONE
SURVEILLANCES DIRECTED AT AMERICAN CITIZENS
OR RESIDENT ALIENS DURING THE PERIOD
1973 - 1975

regarding the two remaining targets have been furnished in earlier memoranda. One target was identified as Huey P. Newton (Item 8, Bureau memorandum of December 8, 1975, responding to SSC letter of November 21, 1975), and the second target was the Black Panther Party (Item 8, Bureau memorandum of December 29, 1975, responding to SSC letter of November 21, 1975).

This memorandum effects delivery¹⁶ of documents responsive to Paragraph 3 of the December 21¹⁶ SSC letter, and to Items 1 through 4 of the attachment to the December 21¹⁶ letter.

1 - The Attorney General



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

12-28-75

TO: John A. Mintz, Assistant Director
Legal Counsel Division
Federal Bureau of Investigation

FROM: Steven K. Blackhurst
Asst. Special Counsel for Intelligence
Coordination

FBI
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP2 ALM/RW

SUBJECT: Senate Select Committee letter dated December 16, 1975

Attached is a letter from the Senate Select Committee requesting delivery of certain materials concerning electronic surveillance and surreptitious entries. Please arrange for an appropriate response.

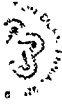
My initial view is that the Senate Select Committee should be given the same excised versions of the authorizing documents that the House Select Committee was given in response to its request. I would oppose giving the Senate Select Committee access to the unexcised version of these documents for security reasons.

With regard to the November 21 letter referenced in John Elliff's letter, we propose to give John Elliff access to the unexcised versions of the documents but would prefer that the Senate Select Committee be given delivery of excised versions only. Elliff's letter appears to accept this arrangement.

With regard to the request for materials concerning any surreptitious entries, the Senate Select Committee is referring to what was described as a surreptitious entry not related to a microphone surveillance in 1972 against an "Arab Terrorist Activist". This surreptitious entry was listed on an FBI memorandum dated November 5, 1975 which was in response to a request from the House Select Committee. This memorandum was delivered initially to the Senate Select Committee by mistake. Because I have not

cc: Paul Daly

REC-51
SI 115





OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

-2-

seen the materials requested I do not know what an appropriate response to this request would be.



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United States Senate

SELECT COMMITTEE TO
STUDY GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES

(PURSUANT TO S. RES. 21, 94TH CONGRESS)

WASHINGTON, D.C. 20510

December 16, 1975

Michael E. Shaheen, Jr., Esq.
Special Counsel for Intelligence Coordination
Office of the Deputy Attorney General
U. S. Department of Justice
Washington, D. C. 20530

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HEREIN IS UNCLASSIFIED
DATE 11-3-00 BY SP5ALM/PER

Dear Mike:

The Select Committee requests delivery of the materials in the attached list pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens during the period 1973-1975.

In the case of surveillances directed at groups or meetings which included both non-resident aliens in the service of a foreign power and American citizens or resident aliens, delivery of the materials is also requested.

In addition to the materials listed in the attachment, the Committee requests all materials pertaining to any surreptitious entry conducted by the FBI over the past five years which was not directed at a non-resident alien in the service of a foreign power.

With respect to this request and the request for similar materials made in my letter of November 21, 1975, the names of the targets may be excised. Unexcised versions of the documents should be made available for access.

Sincerely,

John T. Elliff

John T. Elliff, Director
Domestic Intelligence Task Force

Attachment

~~SECRET~~

Request for Access to FBI Materials

1. For the period 1973-1975, materials pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens falling in the following categories: —
 - a. foreign intelligence agents;
 - b. foreign intelligence contacts;*
 - c. foreign intelligence agent suspects;
 - d. foreign diplomatic officials contact;
 - e. foreign intelligence agent's business office.
2. For the year 1973, materials pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens falling in the following categories:
 - a. headquarters basic revolutionary group;*
 - b. pro-Palestine group;
 - c. Arab terrorist activist;
 - d. propaganda outlet League of Arab States;
 - e. West Coast fund-raising for Arab terrorist groups.
3. For the year 1974, materials pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens falling in the following categories:
 - a. headquarters basic revolutionary group;*
 - b. Arab terrorist affiliate;
 - c. pro-Palestine group;

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ON 11-3-00

~~SECRET~~

~~SECRET~~

- 2 -

- d. Arab terrorist activist;*
 - e. propaganda outlet, League of Arab States;*
 - f. Arab terrorist activist affiliate.**
4. For the year 1975, materials pertaining to the authorization for and purpose of non-consensual telephone and microphone surveillances directed at American citizens or resident aliens falling in the following categories:
- a. Arab terrorist affiliate;*
 - b. pro-Palestine group;
 - c. Arab terrorist activist;
 - d. propaganda outlet, League of Arab States;*
 - e. coverage of Arab terrorist activist meeting;**
 - f. pro-Chicom propaganda outlet.*

* Summary chart reveals telephone surveillance only.

** Summary chart reveals microphone surveillance only.

~~SECRET~~

TO: Intelligence Community Staff
ATTN: Central IndexFROM:
FBI

SUBJECT: Abstract of Information Provided to Select Committees

1. HOW PROVIDED (check appropriate term. If a document was made available
for review but not transmitted, so note.)

2. DATE PROVIDED

☒ DOCUMENT ☐ BRIEFING ☐ INTERVIEW ☐ TESTIMONY ☐ OTHER

1/7/76

3. TO WHOM PROVIDED (check appropriate term; add specific names if appropriate)

☒ SSC
☐ ISC4. IDENTIFICATION (provide descriptive data for documents; give name or identification number of briefer,
interviewee, testifier and subject)

Memorandum and enclosures

5. IN RESPONSE TO (list date and item number if in response to formal request, other-
wise state verbal request of (name), initiative, subpoena, etc.)

SSC letter 12/16/75

6. CLASSIFICATION OF
INFORMATION (enter
U, C, S, TS or
Codeword)

U

7. KEY WORDS (enter the appropriate key words from the list provided separately; if key words not listed are
used underline for emphasis)

Surveillance, electronic

8. SUMMARY (see reverse side before completing this item)

Materials furnished pertaining to any surreptitious entry conducted by the FBI over the past five years directed at resident aliens and/or U.S. Citizens not in the service of a foreign power. There were five individual targets of such entries. Also documents concerning authorization and purpose of surveillances furnished.

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DATE 11-3-00 BY SP2ALM/K

62-116395

ENCLOSURE

(1)

RECEIVED BY THE INM TO CENTRAL COMMUNITY INDEX
IN CONNECTION WITH SENSTUDY 75

TREAT AS YELLOW

5-140 (Rev. 1-21-74) FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

Addressee: SENATE SELECT COMMITTEE

☐ LTR ☒ LHM ☐ Memo ☐ Report dated 1/8/75

U.S. SENATE SELECT COMMITTEE.
Caption of Document:

12/16/75 request - electronic surveillance

Originating Office: FBI Date: 1-13-76

Delivered by: Paul Kelly

Received by: Arthur H. [unclear]

Title: St. [unclear]

Return this receipt to the Intelligence Division, FBI

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-3-80 BY SR JAMP