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Date December 12, 1975

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

TO: The Honorable Clarence M. Kelley

Ref: Hearing on Controls of the

Director, Federal Bureau of

F.B.I.

Investigation

Washington, D.C. 20535

Date December 10, 1975

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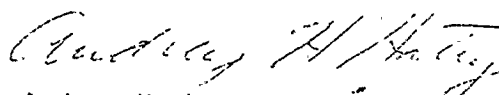
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The United States Senate

Report of Proceedings

Hearing held before

Select Committee to Study Governmental Operations

With Respect to Intelligence Activities

INTELLIGENCE INVESTIGATION

Wednesday, December 10, 1975

Washington, D. C.

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STATEMENT OF:

PAGE

The Honorable Clarence M. Kelley,
Director, Federal Bureau of Investigation

2451

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INTELLIGENCE INVESTIGATION

Wednesday, December 10, 1975

United States Senate,
Select Committee to Study Governmental
Operations with Respect to
Intelligence Activities,
Washington, D. C.

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

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

Also present: William G. Miller, Staff Director; Frederick
A. O. Schwarz, Jr., Chief Counsel; Curtis R. Smothers, Minority
Counsel; Paul Michel, Joseph diGenova, Barbara Banoff, Frederick
Baron, Mark Gitenstein, Loch Johnson, David Bushong, Charles
Lombard, John Bayly, Charles Kirbow, Michael Madigan, Bob
Kelley, John Elliff, Elliot Maxwell, Andy Postal, Pat Shea,
Michael Epstein and Burt Wides, Professional Staff Members.

The Chairman. The Committee's witness this morning is

1 the Honorable Clarence M. Kelley, the Director of the Federal
2 Bureau of Investigation.

3 Mr. Kelley was appointed Director in July of 1973 in a
4 troubled time for the FBI. His experience as an innovative
5 law enforcement administrator in charge of the Kansas City
6 Police Department for over ten years, and his previous work as
7 a Special Agent of the FBI have made him uniquely qualified
8 to lead the Bureau.

9 The Select Committee is grateful for the cooperation
10 extended by Director Kelley in the course of its inquiry over
11 the past months. The Committee is also impressed by the
12 openness of the FBI's witnesses before this Committee, and
13 their willingness to consider the need for legislation to
14 clarify the Bureau's intelligence responsibility.

15 It is important to remember from the outset that this
16 Committee is examining only a small portion of the FBI's
17 activities. Our hearings have concentrated on FBI domestic
18 intelligence operations. We have consistently expressed our
19 admiration and support for the Bureau's criminal investigative
20 and law enforcement work, and we recognize the vital importance
21 of counterespionage in the modern world. But domestic
22 intelligence has raised many difficult questions.

23 The Committee has also concentrated on the past rather
24 than on present FBI activities. The abuses brought to light
25 in our hearings occurred years and even decades before Director

1 Kelley took charge.

2 The Staff has advised the Committee that under Director
3 Kelley the FBI has taken significant steps to rethink previous
4 policies and to establish new safeguards against abuse. The
5 FBI is now placing greater emphasis on foreign related intelli-
6 gence operations, and less on purely domestic surveillance.
7 The FBI is working more closely with the Justice Department in
8 developing policies and standards for intelligence. These
9 are welcome developments.

10 Nevertheless, many important issues remain unresolved.
11 Therefore, we have invited Director Kelley to share with the
12 Committee his views on some of the considerations the Congress
13 should take into account in thinking about the future of
14 FBI intelligence. Among these issues are whether FBI surveil-
15 lance should extend beyond the investigation of persons
16 likely to commit specific crimes; whether there should be
17 outside supervision or approval before the FBI conducts certain
18 types of investigations or uses certain surveillance techniques;
19 whether foreign related intelligence activities should be
20 strictly separated from the FBI's domestic law enforcement
21 functions, and what should be done to the information already
22 in the FBI files and that which may go into those files in
23 the future.

24 The Committee looks forward to a constructive exchange
25 of views with Director Kelley this morning, with Attorney

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

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

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1 STATEMENT OF THE HONORABLE CLARENCE M. KELLEY,
2 DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

3 Mr. Kelley. Thank you very much, Senator Church and
4 gentlemen.

5 I welcome the interest which this Committee has shown in
6 the FBI and most particularly in our operations in the intelli-
7 gence and internal security fields.

8 I share your high regard for the rights guaranteed by the
9 Constitution and laws of the United States. Throughout my
10 35-year career in law enforcement you will find the same insis-
11 tence, as has been expressed by this Committee, ~~upon~~ programs
12 of law enforcement that are themselves fully consistent with
13 law.

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

19 This Committee has completed the most exhaustive study
20 of our intelligence and security operations that has ever been
21 undertaken by anyone outside the FBI other than the present
22 Attorney General. At the outset, we pledged our fullest
23 cooperation and promised to be as candid and forthright as
24 possible in responding to your questions and complying with your
25 requests.

1 I believe we have lived up to those promises.

2 The members and staff of this Committee have had unprece-
3 dented access to FBI information.

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

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

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

14 As this Committee has stated, these hearings have, of
15 necessity, fo~~f~~ocused largely on certain errors and abuses. I
16 credit this Committee for its forthright recognition that the
17 hearings do not give a full or balanced account of the FBI's
18 record of performance.

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

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

25 A Justice Department Committee which was formed last year

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to conduct a thorough study of the FBI's Counterintelligence Programs has reported that in the five basic ones it found 3,247 Counterintelligence Programs 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 seige to military, industrial, and educational facilities; and killings, maimings, and other atrocities accompanied such acts of violence from New England to California.

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

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

11 FBI employees recognized the danger; felt they had a
12 responsibility to respond; and in good faith initiated actions
13 designed to counter conspiratorial efforts of self-proclaimed
14 revolutionary groups, and to neutralize violent activities.

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

17 Our concern over whatever abuses occurred in the Counter-
18 intelligence Programs, and there were some substantial ones,
19 should not obscure the underlying purpose of those programs.

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

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

7 Where there exists the potential to penetrate and disrupt,
8 the Congress must consider the question of whether or not such
9 preventive action should be available to the FBI.

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

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

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

23 Today we place a high premium on openness, openness
24 both within and without the service.

25 I have instituted a program of open, frank discussion

1 in the decision-making process which insures that no future
2 program or major policy decision will ever be adopted without a
3 full and critical review of its propriety.

4 Participatory management has become a fact in the FBI.

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

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

14 The results of this program have been most beneficial~~X~~ to
15 me personally, to the FBI's disciplined performance, and to
16 the morale of our employees.

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

22 Within days after taking office, Attorney General Levi
23 instructed that I immediately report to him any requests
24 or practices which, in my judgment, were improper or which,
25 considering the context of the request, I believed presented

1 the appearances of impropriety.

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

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

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

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

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

23 I am proud of the 19,000 men and women with whom it is
24 my honor to serve today. Their dedication, their professionalism,
25 their standards, and the self-discipline which they personally

1 demand of themselves and expect of their associates are the
2 nation's ultimate assurance of proper and responsible conduct
3 at all times by the FBI.

4 The Congress and the members of this Committee in
5 particular have gained a great insight into the problems
6 confronting the FBI in the security and intelligence fields ~~X~~
7 problems which all too often we have ^{BEEN} left to resolve without
8 sufficient guidance from the Executive Branch or the Congress
9 itself.

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

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

16 An initial step was taken in the Senate in 1973 when the
17 Committee on the Judiciary established a Subcommittee on FBI
18 Oversight. Hearings had been commenced, and we were fully
19 committed to maximum participation with the members of that
20 Subcommittee.

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

23 One of the greatest benefits of the study this Committee
24 has made is the expert knowledge you have gained of the complex
25 problems confronting the FBI. But I respectfully submit that

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1 those benefits are wasted if they do not lead to the next step,
2 a step that I believe is absolutely essential, a legislative
3 charter, expressing Congressional determination of intelligence
4 jurisdiction for the FBI.

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

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

14 I would caution against a too-ready reliance upon the
15 courts to do our tough thinking for us. Some proposals that
16 have been advanced during these hearings would extend the role
17 of the courts into the early stages of the investigative
18 process and, thereby, would take over what historically have
19 been Executive Branch decisions.

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

25 The FBI urgently needs a clear and workable determination

1 of our jurisdiction in the intelligence field, a jurisdictional
2 statement that the Congress finds to be responsive to both
3 the will and the needs of the American people.

4 Senators, first and foremost, I am a police officer, a
5 career police officer. In my police experience, the most
6 frustrating of all problems that I have discovered facing
7 law enforcement in this country, Federal, state, and local, ~~is~~ ~~is~~
8 ^{ARE WHEN} when demands are made of them to perform their traditional
9 role as protector of life and property without ^a clear and
10 understandable legal bases to do so.

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

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

20 The fact that the Department of Justice has commenced
21 the formulation of operational guidelines governing our
22 intelligence activities does not in any manner diminish the need
23 for legislation. The responsibility for conferring juris-
24 diction resides with the Congress.

25 In this regard, I am troubled by some proposals which

1 question the need for intelligence gathering ^{AND} ~~suggesting~~ that
2 information needed for the prevention of violence can be
3 acquired in the normal course of criminal investigations.

4 As a practical matter, the line between intelligence
5 work and regular criminal investigations is often difficult
6 to describe. What begins as an intelligence investigation may
7 well end in arrest and prosecution of the subject. But there
8 are some fundamental differences between these investigations
9 that should be recognized, differences in scope, in objective
10 and in the time of initiation. In the usual criminal case, a
11 crime has occurred and it remains only for the Government to
12 identify the perpetrator and to collect sufficient evidence
13 for prosecution. Since the investigation normally follows
14 the elements of the crime, the scope of the inquiry is
15 limited and fairly well defined.

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

1 in turn, is dependent on advance information, that is, intelli-
2 gence.

3 Certainly, reasonable people can differ on these issues.
4 Given the opportunity, I am confident that the continuing need
5 for intelligence work can be documented to the full satisfaction
6 of the Congress. We recognize that what is at stake here is not
7 the interests of the FBI, but rather the interests of every
8 citizen of this country. We recognize also that the resolution
9 of these matters will demand extensive and thoughtful
10 deliberation by the Congress. To this end, I pledge the
11 complete cooperation of the Bureau with this Committee or
12 its successors in this important task.

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

16 That is the substance of my prepared statement.

17 I would also like to say extemporaneously that I note
18 that on this panel are some gentlemen who were on the Judiciary
19 Committee which heard my testimony at the time I was presented
20 to them for candidacy as Director of the FBI. At that time,
21 I took very seriously the charge which may possibly result
22 in the deliberation of this Committee and of the full Senate.
23 I have been well aware of the problems of the FBI since that
24 time. I have also been well aware of the capabilities of
25 the FBI to discharge those responsibilities. I don't take

1 them lightly. I am of sufficient experience and age that I
2 have pledged myself to do what is good and proper. I say this
3 not as a self-serving statement but in order that we might
4 place in context my position within the FBI. I could seek
5 sanctuary and, perhaps a safe sanctuary, by saying during the
6 period these things occurred, I was with the local police
7 department in Kansas City, Missouri. Prior to that time,
8 however, I was in the FBI.

9 During the time I was with the FBI, ^{and} during the time I
10 was with the police department, I continued throughout that
11 period a close acquaintance with, and a strong affection for,
12 the FBI.

13 I only want to point out that based on those years, based
14 on those observations, we have here a very fine and very
15 sensitive and a very capable organization. I feel that there
16 is much that can still be done. I know that we are not without
17 fault. I know that from ^{the} these experiences I have had. We
18 will not be completely without fault in the future. But I
19 assure you that we look upon this inquiry, we look upon any
20 mandate which you may feel you have, ~~that you should look at~~
21 ^{AS} ~~this is~~ good and proper, ~~and we do not intend~~ I only want
22 to place in your thinking the fact that you have here a
23 matchless organization, ~~one which~~ I continue to say ^{IT} was
24 ~~not~~ motivated in ^{most} some of these instances, ~~and in most of~~
25 ~~them~~ and I cannot justify some, ^{BUT} ~~that~~ the motivation was of the

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1 best. I am not pleading, as does a defense attorney. I am
 2 only putting in your thinking my objective observations as
 3 a citizen who is somewhat concerned about the future of this
 4 organization. It is too precious for us to have it in
 5 a condition of jeopardy.

6 Thank you very much.

7 The Chairman. Thank you, Director Kelley.

8 I want to turn first to Senator Hart who won't be able
 9 to remain through the whole morning. I think he has one
 10 question he would like to ask.

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