

File #:

62-NY-15065

Serial Scope:

17 thru 29A, 31 thru 36

37B thru 55

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1100PM NITEL 12/10/75 GHS

TO ALL SACS

FROM DIRECTOR

cc: [unclear]
DIRECTOR'S APPEARANCE BEFORE SENATE SELECT COMMITTEE
ON INTELLIGENCE ACTIVITIES, DECEMBER 10, 1975

A COPY OF THE STATEMENT I DELIVERED BEFORE THE SENATE
SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES TODAY HAS BEEN
SENT ALL OFFICES. FOR YOUR INFORMATION, THERE FOLLOWS A
SYNOPSIS ACCOUNT OF THE MAJOR AREAS OF THE COMMITTEE'S
QUESTIONS TO ME, TOGETHER WITH MY RESPONSES:

(1) REGARDING FBI INFORMANTS, QUESTIONS WERE ASKED
WHETHER COURT APPROVAL SHOULD BE REQUIRED FOR FBI USE OF
INFORMANTS IN INVESTIGATIONS OF ORGANIZATIONS (MY RESPONSE
WAS THAT THE CONTROLS WHICH EXIST TODAY OVER USE OF INFORMANTS
ARE SATISFACTORY); HOW CAN FBI KEEP INFORMANTS OPERATING
WITHIN PROPER LIMITS SO THEY DO NOT INVADE RIGHTS OF OTHER
PERSONS (MY RESPONSE WAS THAT RELIANCE MUST BE PLACED ON THE
INDIVIDUAL AGENTS HANDLING INFORMANTS AND THOSE SUPERVISING
THE AGENTS' WORK, THAT INFORMANTS WHO VIOLATE THE LAW CAN BE

*Read to SRA's
at conference
Pm
12-11-75*

62-15065-31

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FBI - NEW YORK	

[Signature]

*ADIC furnished
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PAGE TWO

PROSECUTED -- AS CAN ANY AGENT WHO COUNSELS AN INFORMANT TO COMMIT VIOLATIONS); AND DID FORMER KLAN INFORMANT GARY ROWE TESTIFY ACCURATELY WHEN HE TOLD THE COMMITTEE ON DECEMBER 2 THAT HE INFORMED FBI OF PLANNED ACTS OF VIOLENCE BUT FBI DID NOT ACT TO PREVENT THEM (MY RESPONSE WAS THAT ROWE'S TESTIMONY WAS NOT ACCURATE).

(2) IN RESPONSE TO QUESTIONS REGARDING IMPROPER CONDUCT BY FBI EMPLOYEES, I STATED THAT ALLEGED VIOLATIONS OF LAW BY FBI PERSONNEL SHOULD BE INVESTIGATED BY THE FBI OR OTHER APPROPRIATE AGENCY; THAT THE INSPECTION DIVISION HAS CONDUCTED INQUIRIES REGARDING ALLEGATIONS OF MISCONDUCT; THAT AN OFFICE OF PROFESSIONAL RESPONSIBILITY HAS JUST BEEN ESTABLISHED IN THE JUSTICE DEPARTMENT, AND WE WILL ADVISE THAT OFFICE OF OUR MAJOR INVESTIGATIONS OF DEPARTMENTAL PERSONNEL, INCLUDING FBI EMPLOYEES, FOR ALLEGED VIOLATIONS OF LAW, REGULATIONS, OR STANDARDS OF CONDUCT; THAT I WOULD RESERVE COMMENT REGARDING POSSIBLE CREATION OF A NATIONAL INSPECTOR GENERAL TO CONSIDER MATTERS OF MISCONDUCT BY EMPLOYEES OF ANY FEDERAL AGENCY.

PAGE THREE

(3) IN RESPONSE TO QUESTIONS CONCERNING HARASSMENT OF MARTIN LUTHER KING, JR., I STATED THAT THE PERSONS WHO ISSUED THE ORDERS WHICH RESULTED IN SUCH HARASSMENT SHOULD FACE THE RESPONSIBILITY FOR IT, RATHER THAN THOSE UNDER THEM WHO CARRIED OUT SUCH ORDERS IN GOOD FAITH; THAT THE FBI STILL HAS RECORDINGS RESULTING FROM ELECTRONIC SURVEILLANCES OF KING; THAT WE RETAIN RECORDINGS FOR TEN YEARS BUT WE ALSO HAVE AGREED TO A REQUEST FROM THE SENATE NOT TO DESTROY INFORMATION IN OUR FILES WHILE CONGRESSIONAL INQUIRIES ARE BEING CONDUCTED; THAT I HAVE NOT REVIEWED THE KING TAPES; THAT IF THE COMMITTEE REQUESTED TO REVIEW THE KING TAPES, THE REQUEST WOULD BE REFERRED TO THE ATTORNEY GENERAL.

(4) IN RESPONSE TO QUESTIONS REGARDING WHETHER IT WOULD BE ADVANTAGEOUS TO SEPARATE THE FBI CRIMINAL INVESTIGATIVE RESPONSIBILITIES AND OUR INTELLIGENCE FUNCTIONS, I STATED THAT WE HAVE FOUND THE TWO AREAS TO BE COMPATIBLE, AND I FEEL THE FBI IS DOING A SPLENDID JOB IN BOTH AREAS.

(5) IN RESPONSE TO QUESTIONS CONCERNING THE ADEQUACY OF CONTROLS ON REQUESTS FROM THE WHITE HOUSE AND FROM OTHER GOVERNMENT AGENCIES FOR FBI INVESTIGATIONS OR FOR INFORMATION

PAGE FOUR

FROM OUR FILES, I STATED THAT WHEN SUCH REQUESTS ARE MADE ORALLY, THEY SHOULD BE CONFIRMED IN WRITING; THAT WE WOULD WELCOME ANY LEGISLATIVE GUIDELINES THE CONGRESS FEELS WOULD PROTECT THE FBI FROM THE POSSIBILITY OF PARTISAN MISUSE.

A FULL TRANSCRIPT OF THE QUESTIONS AND ANSWERS WILL BE FURNISHED TO EACH OFFICE AS SOON AS IT IS AVAILABLE.

ALL LEGATS ADVISED SEPARATELY.

END

HOLD

NR080 WA CODE

5:30PM IMMEDIATE 1-13-75 DLA

TO NEW YORK

WASHINGTON FIELD

FROM DIRECTOR (62-116395)

C O N F I D E N T I A L

~~JUNE~~

SENSTUDY 75.

IN RESPONSE TO A REQUEST OF THE SENATE SELECT COMMITTEE (SSC) YOU ARE REQUESTED TO FURNISH THE RESULTS OF THE FOLLOWING ELECTRONIC SURVEILLANCES. A REVIEW OF ELSUR INDICES AT FBIHQ INDICATES THAT THE LISTED INDIVIDUALS WERE EITHER A PARTY TO OR WERE MENTIONED ON THE SPECIFIC DATES SET FORTH:

INDIVIDUAL	DATE	TECHNICAL COVERAGE
WARREN, EARL CHIEF JUSTICE	MARCH 9, 1964	NY2950-S (ASTERISK)
WARREN, EARL, JR.	MARCH 2, 1964	EMB CHILE-WFO
RUSSELL, RICHARD	APRIL 25, 1967	CHINA-WFO
RUSSELL, RICHARD SENATOR FROM GEORGIA	NOVEMBER 8, 1963	NY4171-S (ASTERISK)
BOGGS, HALE	NOVEMBER 23, 1964	ALG EMB-WFO
MC CLOY, JOHN J.	APRIL 14, 1964	GREEK-WFO

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PAGE TWO C O N F I D E N T I A L

O'BRIEN, JOHN

MARCH 31, 1964

NY1137-S (ASTERISK)

REDLICH, NORMAN

JANUARY 29, 1964

NY3401-S (ASTERISK)

NEW YORK AND WFO SHOULD FURNISH THE TEXT OF THE OVERHEAR,
IF AVAILABLE, AND ANY OTHER IDENTIFYING INFORMATION AS TO THE
INDIVIDUAL INVOLVED.

SUTEL RESULTS OF YOUR REVIEW EXPEDITIOUSLY.

CLASSIFIED BY 3676, XGDS 2, INDEFINITE.

END

HOLD

1/14/76

CONFIDENTIAL

AIRTEL

TO: DIRECTOR, FBI (62-116395)
FROM: SAC, NEW YORK (62-15065)
SUBJECT: JUNE
SENSTUDY 75

ReButel to NY and WFO dated 1/13/76.

Enclosed for the Bureau are 14 copies of NYO FD-297's which reflect the text of the overhear of the following individuals:

<u>Individual</u>	<u>Date</u>	<u>Technical Coverage</u>
WARREN, EARL	3/9/64	NY 2950-S*
RUSSELL, RICHARD	11/8/63	NY 4171-S*
O'BRIEN, JOHN	3/31/64	NY 1137-S*
REDLICH, NORMAN	1/29/64	NY 3401-S*

A review of NYO JUNE indices shows additional references for above individuals. Copies of these logs are enclosed:

RUSSELL, RICHARD	4/23/66	NY 3810-S*
O'BRIEN, J. J.	8/5/63	NY 1806-S*
O'BRIEN, JOHN G.	10/2/68	NY 1678-S*

CONFIDENTIAL
CLASSIFIED BY 2828
EXEMPT FROM GDS, CATEGORY 2
DATE OF DECLASSIFICATION

- 2 - Bureau (Encs. 14)(RM)
- 1 - New York (JUNE)
- ① - New York

RJL:ecs
(5)

- 1 - Supervisor #48

*- copy of logs sent to
in attach to JUNE copy*

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62-15065-32A

CONFIDENTIAL

NY 62-15065

NYO JUNE indices also show the following references for JOHN McCLOY. Copies of logs are enclosed.

<u>Date</u>	<u>Technical Coverage</u>
1/14/73	NY 2561-S*
12/18/73	NY 6655-S*
10/20/67	NY 3726-S*
10/20/67	NY 2233-S*
10/4/65	NY 3726-S*
8/26/61	NY 536-S*
7/23/68	NY 1137-S*

CONFIDENTIAL

TO: SAC:

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RE: HEARINGS BEFORE THE SENATE
SELECT COMMITTEE

Date December 4, 1975

- ☐ For information ☐ Retention optional ☐ For appropriate action ☐ Surep, by _____
- ☐ The enclosed is for your information. If used in a future report, ☐ conceal all sources, ☐ paraphrase contents.
- ☐ Enclosed are corrected pages from report of SA _____ dated _____

Remarks:

For your assistance in responding to local press inquiries, attached is a copy of unedited excerpted remarks by Assistant to the Director--Deputy Associate Director James B. Adams while testifying before the Senate Select Committee on 12/2/75, concerning anti-FBI allegations made by Gary Rowe, former FBI informant.

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EXCERPTS OF REMARKS MADE BY

ASSISTANT TO THE DIRECTOR --

DEPUTY ASSOCIATE DIRECTOR JAMES B. ADAMS

TESTIFYING BEFORE THE

SENATE SELECT COMMITTEE

PERTAINING TO THE KU KLUX KLAN,

GARY ROWE, FORMER FBI INFORMANT, AND

PREVIOUS ATTEMPTS OF THE FBI

TO PREVENT VIOLENCE

DECEMBER 2, 1975

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QUESTION:You do use informants and do instruct them to spread dissent among certain groups that they are informing on, do you not?

MR. ADAMS: We did when we had the COINTEL programs which were discontinued in 1971, and I think the Klan is probably one of the best examples of a situation where the law was ineffective at the time. We heard the term, State's Rights used much more than we hear today. We saw with the Little Rock situation the President of the United States sending in the troops pointing out the necessity to use local law enforcement. We must have local law enforcement use the troops only as a last resort. When you have a situation like this where you do try to preserve the respective roles in law enforcement, you have historical problems.

With the Klan coming along, we had situations where the FBI and the Federal Government was almost powerless to act. We had local law enforcement officers in some areas participating in Klan violence. The incidents mentioned by Mr. Rowe--everyone of those he saw them from the lowest level--the informant. He didn't see what action was taken with that information as he pointed out during his testimony. Our files show that this information was reported to the police departments in every instance.

We also know that in certain instances the information upon being received was not being acted upon. We also disseminated simultaneously through letterhead

memorandum to the Department of Justice the problem. And here we were--the FBI--in a position where we had no authority in the absence of an instruction from the Department of Justice to make an arrest. Section 241 and 242 don't cover it because you don't have evidence of a conspiracy. It ultimately resulted in a situation where the Department called in U. S. Marshals who do have authority similar to local law enforcement officials.

So historically, in those days, we were just as frustrated as anyone else was, that when we got information from someone like Mr. Rowe--good information, reliable information--and it was passed on to those who had the responsibility to do something about it, it was not always acted upon as he indicated.

QUESTION: In none of these cases, then, there was adequate evidence of conspiracy to give you jurisdiction to act.

MR. ADAMS: The Departmental rules at that time, and still do, require Departmental approval where you have a conspiracy. Under 241, it takes two or more persons acting together. You can have a mob scene and you can have blacks and whites belting each other, but unless you can show that those that initiated the action acted in concert, in a conspiracy, you have no violation.

Congress recognized this and it wasn't until 1968 that they came along and added Section 245 to the Civil Rights Statute which added punitive measures against an

individual. There didn't have to be a conspiracy. This was a problem that the whole country was grappling with--the President of the United States, Attorneys General--we were in a situation where we had rank lawlessness taking place. As you know from the memorandum we sent you that we sent to the Attorney General the accomplishments we were able to obtain in preventing violence and in neutralizing the Klan and that was one of the reasons.

QUESTION:A local town meeting on a controversial social issue might result in disruption. It might be by hecklers rather than by those holding the meeting. Does this mean that the Bureau should investigate all groups organizing or participating in such meetings because they may result in violent government disruption?

MR ADAMS: No sir, and we don't....

QUESTION: Isn't that how you justify spying on almost every aspect of the peace movement?

MR. ADAMS: No sir. When we monitor demonstrations, we monitor demonstrations where we have an indication that the demonstration itself is sponsored by a group that we have an investigative interest in, a valid investigative interest in, or where members of one of these groups are participating where there is a potential that they might change the peaceful nature of the demonstration.

This is our closest question of trying to draw guidelines to avoid getting into an area of infringing on the 1st Amendment right, yet at the same time, being

aware of groups such as we have had in greater numbers in the past than we do at the present time. We have had periods where the demonstrations have been rather severe and the courts have said that the FBI has the right, and indeed the duty, to keep itself informed with respect to the possible commission of crime. It is not obliged to wear blinders until it may be too late for prevention. Now that's a good statement if applied in a clear-cut case.

Our problem is where we have a demonstration and we have to make a judgment call as to whether it is one that clearly fits the criteria of enabling us to monitor the activities. That's where I think most of our disagreements fall.

QUESTION: In the Rowe Case, in the Rowe testimony that we just heard, what was the rationale again for not intervening when violence was known about. I know we have asked this several times--I'm still having trouble understanding what the rationale, Mr. Wannall, was in not intervening in the Rowe situation when violence was known.

MR. WANNALL: Senator Schweiker, Mr. Adams did address himself to that and if you have no objections, I'll ask that he be the one to answer the question.

MR. ADAMS: The problem we had at the time, and it is the problem today, we are an investigative agency; we do not have police powers even like the U. S. Marshals do. The Marshals

since about 1795 I guess, or some period like that, had authorities that almost border on what a sheriff has. We are the investigative agency of the Department of Justice, and during these times the Department of Justice had us maintain the role of an investigative agency.

We were to report on activities. We furnished the information to the local police who had an obligation to act. We furnished it to the Department of Justice in those areas where the local police did not act. It resulted finally in the Attorney General sending 500 U. S. Marshals down to guarantee the safety of people who were trying to march in protest of their civil rights.

This was an extraordinary measure because it came at a time of Civil Rights versus Federal Rights and yet there was a breakdown in law enforcement in certain areas of the country. This doesn't mean to indict all law enforcement agencies in the South at the time either, because many of them did act upon the information that was furnished to them. But we have no authority to make an arrest on the spot because we would not have had evidence that was a conspiracy available. We could do absolutely nothing in that regard. In Little Rock the decision was made, for instance, that if any arrests need to be made, the Army should make them. And next to the Army, the U. S. Marshals should make them--not the FBI, even though we developed the violations. We have over the years as you know at the

Time there were many questions raised. Why doesn't the FBI stop this? Why don't you do something about it? Well, we took the other route and effectively destroyed the Klan as far as committing acts of violence and, of course, we exceeded statutory guidelines in that area.

QUESTION: What would be wrong, just following up on your point there, Mr. Adams, with setting up a program since it is obvious to me that a lot of our informers are going to have preknowledge of violence of using U. S. Marshals on some kind of long-range basis to prevent violence?

MR. ADAMS: We do. We have them in Boston in connection with the busing incident. We are investigating the violations under the Civil Rights Act, but the Marshals are in Boston. They are in Louisville, I believe, at the same time and this is the approach that the Federal Government finally recognized.

QUESTION: On an immediate and fairly contemporary basis that kind of help can be sought instantly as opposed to waiting till it gets to a Boston state. I realize a departure from the past and not saying it isn't, but it seems to me we need a better remedy than we have.

MR ADAMS: Well, fortunately we are at a time where conditions have subsided in the country even from the 60's and the 70's, or 50's and 60's. We report to the Department of Justice on potential trouble spots around the country as we learn of them so that the Department will be aware of them. The planning

for Boston, for instance, took place a year in advance, with state officials, city officials, the Department of Justice and the FBI sitting down together saying "How are we going to protect the situation in Boston"? I think we have learned a lot from the days back in the early 60's. But, the Government had no mechanics which protected people at that time.

QUESTION: Next I would like to ask, back in 1965, I guess during the height of the effort to destroy the Klans as you put it a few moments ago, I believe the FBI has released figures that we had something like 2,000 informers of some kind or another infiltrating the Klan out of roughly 10,000 estimated membership.

MR. ADAMS: That's right.

QUESTION: I believe these are FBI figures or estimates. That would mean that 1 out of every 5 members of the Klan at that point was an informant paid by the Government and I believe the figure goes on to indicate that 70 percent of the new members in the Klan that year were FBI informants. Isn't that an awful overwhelming quantity of people to put in an effort such as that? I'm not criticizing that we shouldn't have informants in the Klan and know what is going on to revert violence but it just seems to me that the tail is sort of wagging the dog. For example today we supposedly have only 1594 total informants, both domestic informants and potential informants. Yet, here we have 2,000 in just the Klan alone.

MR. ADAMS: Well, this number of 2,000 did include all racial matters and informants at that particular time and I think the figures

we tried to reconstruct as to the actual number of Klan informants in relation to Klan members was around 6 percent, I think after we had read some of the testimony on it. Isn't that right, Bill? Now the problem we had on the Klan is the Klan had a group called the Action Group. This was the group if you remember from Mr. Rowe's testimony that he was left out of in the beginning. He attended the open meetings and heard all the hoorahs and this type of information but he never knew what was going on because each one had an Action Group that went out and considered themselves in the missionary field. Theirs was the violence. In order to penetrate those you have to direct as many informants as you possibly can against it. Bear in mind that I think the newspapers, the President, Congress, everyone, was concerned about the murder of the three civil rights workers, the Lemuel Penn case, the Violet Liuzzo case, the bombings of the church in Birmingham. We were faced with one tremendous problem at that time.

QUESTION: I acknowledge that.

MR. ADAMS: Our only approach was through informants. Through the use of informants we solved these cases. The ones that were solved. There were some of the bombing cases we never solved. They're extremely difficult, but, these informants as we told the Attorney General and as we told the President, we moved informants like Mr. Rowe up to the top leadership. He was the bodyguard to the head man. He was in a position where he could see that this could continue forever unless we could

create enough disruption that these members will realize that if I go out and murder three civil rights, even though the Sheriff and other law enforcement officers are in on it, if that were the case, and in some of that was the case, that I will be caught, and that's what we did, and that's why violence stopped because the Klan was insecure and just like you say 20 percent, they thought 50 percent of their members ultimately were Klan members, and they didn't dare engage in these acts of violence because they knew they couldn't control the conspiracy any longer.

QUESTION: I just have one quick question. Is it correct that in 1971 we were using around 6500 informers for a black ghetto situation?

MR ADAMS: I'm not sure if that's the year. We did have a year where we had a number like that of around 6000 and that was the time when the cities were being burned. Detroit, Washington, areas like this, we were given a mandate to know what the situation is, where is violence going to break out next. They weren't informants like an individual that is penetrating an organization. They were listening posts in the community that would help tell us that we have another group here that is getting ready to start another fire fight or something.

QUESTION: ... Without going into that subject further of course we have had considerable evidence this morning where no attempt was made to prevent crime when you had information that it was going to occur. I am sure there were instances where you have.

MR. ADAMS: We disseminated every single item which he reported to us.

QUESTION: To a police department which you knew was an accomplice to the crime.

MR. ADAMS: Not necessarily knew.

QUESTION: Your informant told you that, hadn't he?

MR. ADAMS: The informant is on one level. We have other informants and we have other information.

QUESTION: You were aware that he had worked with certain members of the Birmingham Police in order...

MR. ADAMS: That's right. He furnished many other instances also.

QUESTION: So you really weren't doing a whole lot to prevent that incident by telling the people who were already a part of it.

MR. ADAMS: We were doing everything we could lawfully do at the time and finally the situation was corrected when the Department agreeing that we had no further jurisdiction, sent the U.S. Marshals down to perform certain law enforcement functions.

QUESTION: ...This brings up the point as to what kind of control you can exercise over this kind of informant and to this kind of organization and to what extent an effort is made to prevent these informants from engaging in the kind of thing that you were supposedly trying to prevent.

MR. ADAMS: A good example of this was Mr. Rowe who became active in an Action Group and we told him to get out or we were no longer using him as an informant in spite of the information he had furnished in the past. We have cases, Senator where we have had

QUESTION: But you also told him to participate in violent activities

MR. ADAMS: We did not tell him to participate in violent activities.

QUESTION: That's what he said.

MR. ADAMS: I know that's what he says, but that's what lawsuits are all about is that there are two sides to issues and our Agent handlers have advised us, and I believe have advised your staff members, that at no time did they advise him to engage in violence.

QUESTION: Just to do what was necessary to get the information.

MR. ADAMS: I do not think they made any such statement to him along that line either and we have informants who have gotten involved in the violation of a law and we have immediately converted their status from an informant to the subject and have prosecuted I would say off hand, I can think of around 20 informants that we have prosecuted for violating the laws once it came to our attention and even to show you our policy of disseminating information on violence in this case during the review of the matter the Agents have told me that they found one case where an Agent had been working 24 hours a day and he was a little late in disseminating the information to the police department. No violence occurred but it showed up in a file review and he was censured for his delay in properly notifying local authorities. So we not only have a policy, I feel that we do follow reasonable safeguards in order to carry it out, including periodic review of all informant files.

QUESTION: Mr. Rowe's statement is substantiated to some extent with an acknowledgment by the Agent in Charge that if he were going

to be a Klansman and he happened to be with someone and they decided to do something, he couldn't be an angel. These are words of the Agent. And be a good informant. He wouldn't take the lead but the implication is that he would have to go along or would have to be involved if he was going to maintain his liability as a ---

MR. ADAMS: There is no question that an informant at times will have to be present during demonstrations, riots, fistfights that take place but I believe his statement was to the effect that, and I was sitting in the back of the room and I do not recall it exactly, but that some of them were beat with chains and I did not hear whether he said he beat someone with a chain or not but I rather doubt that he did, because it is one thing being present, it is another thing taking an active part in a criminal action.

QUESTION: It's true. He was close enough to get his throat cut apparently.

QUESTION: How does the collection of information about an individual's personal life, social, sex life and becoming involved in that sex life or social life is a requirement for law enforcement or crime prevention.

MR. ADAMS: Our Agent handlers have advised us on Mr. Rowe that they gave him no such instruction, they had no such knowledge concerning it and I can't see where it would be of any value whatsoever.

QUESTION: You don't know of any such case where these instructions
 were given to an Agent or an informant?

MR. ADAMS: To get involved in sexual activity? No Sir.

TO: SAC:

☐ Albany ☐ Houston
☐ Albuquerque ☐ Indianapolis
☐ Alexandria ☐ Jackson
☐ Anchorage ☐ Jacksonville
☐ Atlanta ☐ Kansas City
☐ Baltimore ☐ Knoxville
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☐ Boston ☐ Little Rock
☐ Buffalo ☐ Los Angeles
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☐ Charlotte ☐ Memphis
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☐ Cincinnati ☐ Milwaukee
☐ Cleveland ☐ Minneapolis
☐ Columbia ☐ Mobile
☐ Dallas ☐ Newark
☐ Denver ☐ New Haven
☐ Detroit ☐ New Orleans
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TO LEGAT:

☐ Bern
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☐ Tel Aviv
☐ Tokyo

Date December 5, 1975

RE: TESTIMONY OF ASSISTANT TO THE DIRECTOR--
 DEPUTY ASSOCIATE DIRECTOR JAMES B. ADAMS
 BEFORE THE SENATE SELECT COMMITTEE ON
 12/2/75

ASST. DIR.

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SAC 1
 SAC 2
 SAC 3
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 SAC 5

Remarks:

Re Bureau R/S of 12/4/75 which provided excerpts of Mr. Adams' testimony.

Attached for your information and assistance, is the complete transcript of above-referenced testimony.

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 62-15065-33A

Vol. 15

The United States Senate

Report of Proceedings

Hearing held before

Select Committee to Study Governmental Operations
With Respect to Intelligence Activities

INTELLIGENCE INVESTIGATION

Tuesday, December 2, 1975

Washington, D. C.

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410 FIRST STREET, S. E.
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11 Senator Tower. The next witnesses to appear before the
12 Committee are Mr. James Adams, Assistant to the Director-
13 Deputy Associate Director, Investigation, responsible for all
14 investigative operations; Mr. W. Raymond Wannall, Assistant
15 Director, Intelligence Division, responsible for internal
16 security and foreign counterintelligence investigations; Mr.
17 John A. Mintz, Assistant Director, Legal Counsel Division;
18 Joseph G. Deegan, Section Chief, extremist investigations;
19 Mr. Robert L. Schackelford, Section Chief, subversive
20 investigations; Mr. Homer A. Newman, Jr., Assistant to Section
21 Chief, supervises extremist informants; Mr. Edward P. Grigal,
22 Unit Chief, supervises subversive informants; Joseph G. Kelley,
23 Assistant Section Chief, Civil Rights Section, General Investi-
24 gative Division.

25 Gentlemen, will you all rise and be sworn.,

1 Do you solemnly swear the testimony you are about to give
2 before this Committee is the truth, the whole truth, and nothing
3 but the truth, so help you God?

4 Mr. Adams. I do.

5 Mr. Wannall. I do.

6 Mr. Mintz. I do.

7 Mr. Deegan. I do.

8 Mr. Schackelford. I do.

9 Mr. Newman. I do.

10 Mr. Grigalus. I do.

11 Mr. Kelley. I do.

12 Senator Tower. It is intended that Mr. Wannall will be
13 the principal witness, and we will call on others as questioning
14 might require, and I would direct each of you when you do
15 respond, to identify yourselves, please, for the record.

16 I think that we will spend just a few more minutes to allow
17 the members of the Committee to return from the floor.

18 (A brief recess was taken.)

19 Senator Tower. The Committee will come to order.

20 Mr. Wannall, according to data, informants provide 83
21 percent of your intelligence information.

22 Now, will you provide the Committee with some information
23 on the criteria for the selection of informants?
24
25

1 TESTIMONY OF W. RAYMOND WANNALL, ASSISTANT DIRECTOR,
2 INTELLIGENCE DIVISION, FEDERAL BUREAU OF INVESTIGATION
3 ACCOMPANIED BY: JAMES B. ADAMS, ASSISTANT TO THE
4 DIRECTOR-DEPUTY ASSOCIATE DIRECTOR (INVESTIGATION);
5 JOHN A. MINTZ, ASSISTANT DIRECTOR, LEGAL COUNSEL
6 DIVISION; JOSEPH G. DEEGAN, SECTION CHIEF; ROBERT L.
7 SCHACKELFORD, SECTION CHIEF; HOMER A. NEWMAN, JR.,
8 ASSISTANT TO SECTION CHIEF; EDWARD P. GRIGALUS, UNIT
9 CHIEF; AND JOSEPH G. KELLEY, ASSISTANT SECTION CHIEF,
10 CIVIL RIGHTS SECTION, GENERAL INVESTIGATIVE DIVISION
11 Mr. Wannall. Mr. Chairman, that is not FBI data that you
12 have quoted. That was prepared by the General Accounting
13 Office.

14 Senator Tower. That is GAO.

15 Mr. Wannall. Based on a sampling of about 93 cases.

16 Senator Tower. Would that appear to be a fairly accurate
17 figure.

18 Mr. Wannall. I have not seen any survey which the FBI
19 itself has conducted that would confirm that, but I think that
20 we do get the principal portion of our information from live
21 sources.

22 Senator Tower. It would be a relatively high percent
23 then?

24 Mr. Wannall. I would say yes. And your ques
25 criteria?

1 Senator Tower. What criteria do you use in the selection
2 of informants?

3 Mr. Wannall. Well, the criteria vary with the needs. In
4 our cases relating to extremist matters, surely in order to get
5 an informant who can meld into a group which is engaged in a
6 criminal type activity, you're going to have a different set
7 of criteria. If you're talking about our internal security
8 matters, I think we set rather high standards. We do require
9 that a preliminary inquiry be conducted which would consist
10 principally of checks of our headquarters indices, our field
11 office indices, checks with other informants who are operating
12 in the same area, and in various established sources such as
13 local police departments.

14 Following this, if it appears that the person is the type
15 who has credibility, can be depended upon to be reliable, we
16 would interview the individual in order to make a determination
17 as to whether or not he will be willing to assist the FBI
18 in discharging its responsibilities in that field.

19 Following that, assuming that the answer is positive, we
20 would conduct a rather in depth investigation for the purpose
21 of further attempting to establish credibility and reliability.

22 Senator Tower. How does the Bureau distinguish between
23 the use of informants for law enforcement as opposed to
24 intelligence collection?

25 Is the guidance different, or is it the same, or what?

1 Mr. Wannall. Well, Mr. Adams can probably best address
2 the use of informants on criminal matters since he is over
3 the operational division on that.

4 Mr. Adams. You do have somewhat of a difference in the fact
5 that a criminal informant in a law enforcement function, you
6 are trying to develop evidence which will be admissible in
7 court for prosecution, whereas with intelligence, the informant
8 alone, your purpose could either be prosecution or it could be
9 just for purposes of pure intelligence.

10 The difficulty in both is retaining the confidentiality
11 of the individual and protecting the individual, and trying to,
12 through use of the informant, obtain evidence which could be
13 used independently of the testimony of the informant so that
14 he can continue operating as a criminal informant.

15 Senator Tower. Are these informants ever authorized to
16 function as provocateurs?

17 Mr. Adams. No, sir, they're not. We have strict regula-
18 tions against using informants as provocateurs. This gets
19 into that delicate area of entrapment which has been addressed
20 by the courts on many occasions and has been concluded by the
21 courts that providing an individual has a willingness to engage
22 in an activity, the government has the right to provide him the
23 opportunity. This does not mean, of course, that mistakes don't
24 occur in this area, but we take whatever steps we can to
25 avoid this. Even the law has recognized that informants can

1 engage in criminal activity, and the courts have held that,
2 especially the Supreme Court in the Newark County Case, that
3 the very difficulty of penetrating an ongoing operation, that
4 an informant himself can engage in criminal activity, but
5 because there is lacking this criminal intent to violate a
6 law, we stay away from that. Our regulations fall short of that.

7 If we have a situation where we felt that an informant
8 has to become involved in some activity in order to protect
9 or conceal his use as an informant, we go right to the United
10 States Attorney or to the Attorney General to try to make sure
11 we are not stepping out of bounds insofar as the use of our
12 informants.

13 Senator Tower. But you do use these informants and do
14 instruct them to spread dissension among certain groups that
15 they are informing on, do you not?

16 Mr. Adams. We did when we had the COINTELPRO programs,
17 which were discontinued in 1971, and I think the Klan is probably
18 one of the best examples of a situation where the law was
19 in effect at the time. We heard the term States Rights used
20 much more then than we hear it today. We saw in the Little
21 Rock situation the President of the United States, in sending
22 in the troops, pointing out the necessity to use local law
23 enforcement. We must have local law enforcement, to use the
24 troops only as a last resort.

25 And then you have a situation like this where you do try

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1 to preserve the respective roles in law enforcement. You have
2 historical problems with the Klan coming along. We had
3 situations where the FBI and the Federal Government was almost
4 powerless to act. We had local law enforcement officers in
5 some areas participating in Klan violence.

6 The instances mentioned by Mr. Rowe, every one of those,
7 he saw them from the lowest level of the informant. He didn't
8 see what action was taken with that information, as he pointed
9 out in his testimony. Our files show that this information was
10 reported to the police departments in every instance. We
11 also knew that in certain instances the information, upon being
12 received, was not being acted upon. We also disseminated
13 simultaneously through letterhead memoranda to the Department
14 of Justice the problem, and here, here we were, the FBI, in a
15 position where we had no authority in the absence of instruction
16 from the Department of Justice, to make an arrest.

17 Sections 241 and 242 don't cover it because you don't have
18 evidence of a conspiracy, and it ultimately resulted in
19 a situation where the Department called in United States
20 Marshals who do have authority similar to local law enforcement
21 officials.

22 So, historically, in those days, we were just as frus-
23 trated as anyone else was, and when we got information from
24 someone like Mr. Rowe, good information, reliable information,
25 and it was passed on to those who had the responsibility to

1 do something about it, it was not always acted upon, as he
2 indicated.

3 Senator Tower. None of these cases, then, there was
4 adequate evidence of conspiracy to give you jurisdiction to
5 act?

6 Mr. Adams. The Departmental rules at that time, and still
7 require Departmental approval where you have a conspiracy.
8 Under 241, it takes two or more persons acting together. You
9 can have a mob scene, and you can have blacks and whites
10 belting each other, but unless you can show that those that
11 initiated the action acted in concert in a conspiracy, you have
12 no violation.

13 Congress recognized this, and it wasn't until 1968
14 that they came along and added Section 245 to the civil rights
15 statute, which added punitive measures against an individual
16 that didn't have to be a conspiracy. But this was a problem
17 that the whole country was grappling with: the President of
18 the United States, Attorney General. We were in a situation
19 where we had rank lawlessness taking place, as you know from
20 a memorandum we sent you that we sent to the Attorney General.
21 The accomplishments we were able to obtain in preventing
22 violence, and in neutralizing the Klan -- and that was one
23 of the reasons.

24 Senator Tower. What was the Bureau's purpose in con-
25 tinuing or urging the continued surveillance of the Vietnam

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1 Veterans Against the War?

2 Was there a legitimate law enforcement purpose, or was the
3 intent to halter political expression?

4 Mr. Adams. We had information on the Vietnam Veterans
5 Against the War that indicated that there were subversive
6 groups involved. They were going to North Vietnam and meeting
7 with the Communist forces. They were going to Paris, attending
8 meetings paid for and sponsored by the Communist Party, the
9 International Communist Party. We feel that we had a very valid
10 basis to direct our attention to the VVAW.

11 It started out, of course, with Gus Hall in 1967, who was
12 head of the Communist Party, USA, and the comments he made,
13 and what it finally boiled down to was a situation where it
14 split off into the Revolutionary Union, which was a Maoist
15 group, and the hard-line Communist group, and at that point
16 factionalism developed in many of the chapters, and they closed
17 those chapters because there was no longer any intent to follow
18 the national organization.

19 But we had a valid basis for investigating it, and we
20 investigated chapters to determine if there was affiliation
21 and subservience to the national office.

22 Senator Tower. Mr. Hart?

23 Senator Hart of Michigan. But in the process of chasing
24 after the Veterans Against the War, you got a lot of information
25 that clearly has no relationship to any Federal criminal

1 statute.

2 Mr. Adams. I agree, Senator.

3 Senator Hart of Michigan. Why don't you try to shut that
4 stuff off by simply telling the agent, or your informant?

5 Mr. Adams. Here is the problem that you have with that.
6 When you're looking at an organization, do you report only the
7 violent statements made by the group or do you also show that
8 you may have one or two violent individuals, but you have
9 some of these church groups that were mentioned, and others,
10 that the whole intent of the group is not in violation of the
11 statutes. You have to report the good, the favorable along
12 with the unfavorable, and this is a problem. We wind up with
13 information in our files. We are accused of being vacuum
14 cleaners, and you are a vacuum cleaner. If you want to know the
15 real purpose of an organization, do you only report the
16 violent statements made and the fact that it is by a small
17 minority, or do you also show the broad base of the organization
18 and what it really is?

19 And within that is where we have to have the guidelines
20 we have talked about before. We have to narrow down, because
21 we recognize that we do wind up with too much information in
22 our files.

23 Senator Hart of Michigan. But in that vacuuming process,
24 you are feeding into Departmental files the names of people
25 who are, who have been engaged in basic First Amendment

1 exercises, and this is what hangs some of us up.

2 Mr. Adams. It hangs me up. But in the same files I
3 imagine every one of you has been interviewed by the FBI, either
4 asking you about the qualifications of some other Senator
5 being considered for a Presidential appointment, being inter-
6 viewed concerning some friend who is applying for a job.

7 Were you embarrassed to have that in the files of the
8 FBI?

9 Now, someone can say, as reported at our last session, that
10 this is an indication, the mere fact that we have a name in our
11 files has an onerous impression, a chilling effect. I agree.
12 It can have, if someone wants to distort what we have in our
13 files, but if they recognize that we interviewed you because
14 of considering a man for the Supreme Court of the United
15 States, and that isn't distorted or improperly used, I don't
16 see where any harm is served by having that in our files.

17 Senator Hart of Michigan. But if I am Reverend Smith
18 and the vacuum cleaner picked up the fact that I was helping
19 the veterans, Vietnam Veterans Against the War, and two years
20 later a name check is asked on Reverend Smith and all your
21 file shows is that he was associated two years ago with a group
22 that was sufficient enough, held sufficient doubtful patriotism
23 to justify turning loose a lot of your energy in pursuit on
24 them --

25 Mr. Adams. This is a problem.

1 Senator Hart of Michigan. This is what should require
2 us to rethink this whole business.

3 Mr. Adams. Absolutely.

4 And this is what I hope the guidelines committees as well
5 as the Congressional input are going to address themselves to.

6 Senator Hart of Michigan. We've talked about a wide range
7 of groups which the Bureau can and has had informant penetration
8 and report on. Your manual, the Bureau manual's definition
9 of when an extremist or security investigation may be under-
10 taken refers to groups whose activity either involves violation
11 of certain specified laws, or which may result in the violation
12 of such law, and when such an investigation is opened, then
13 informants may be used.

14 Another guideline says that domestic intelligence
15 investigations now must be predicated on criminal violations.
16 The agent need only cite a statute suggesting an investigation
17 relevant to a potential violation. Even now, with an improved,
18 upgraded effort to avoid some of these problems, we are back
19 again in a world of possible violations or activities which
20 may result in illegal acts.

21 Now, any constitutionally protected exercise of the
22 right to demonstrate, to assemble, to protest, to petition,
23 conceivably may result in violence or disruption of a local
24 town meeting, when a controversial social issue might result
25 in disruption. It might be by hecklers rather than those holding

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1 the meeting.

2 Does this mean that the Bureau should investigate all
3 groups organizing or participating in such a meeting because
4 they may result in violence, disruption?

5 Mr. Adams. No, sir.

6 Senator Hart of Michigan. Isn't that how you justify
7 spying on almost every aspect of the peace movement?

8 Mr. Adams. No, sir. When we monitor demonstrations, we
9 monitor demonstrations where we have an indication that the
10 demonstration itself is sponsored by a group that we have an
11 investigative interest in, a valid investigative interest in,
12 or where members of one of these groups are participating where
13 there is a potential that they might change the peaceful
14 nature of the demonstration.

15 But this is our closest question of trying to draw
16 guidelines to avoid getting into an area of infringing on the
17 First Amendment rights of people, yet at the same time being
18 aware of groups such as we have had in greater numbers in the
19 past than we do at the present time. But we have had periods
20 where the demonstrations have been rather severe, and the
21 courts have said that the FBI has a right, and indeed a duty,
22 to keep itself informed with respect to the possible commission
23 of crime. It is not obliged to wear blinders until it may be
24 too late for prevention.

25 And that's a good statement if applied in a clearcut

1 case. Our problem is where we have a demonstration and we have
2 to make a judgment call as to whether it is one that clearly
3 fits the criteria of enabling us to monitor the activities, and
4 that's where I think most of our disagreements fall.

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1 Senator Hart of Michigan. Let's assume that the rule
2 for opening an investigation on a group is narrowly drawn. The
3 Bureau manual states that informants investigating a subversive
4 organization should not only report on what that group is
5 doing but should look at and report on activities in which
6 the group is participating.

7 There is a Section 87B3 dealing with reporting on
8 connections with other groups. That section says that the
9 field office shall "determine and report on any significant
10 connection or cooperation with non-subversive groups." Any
11 significant connection or cooperation with non-subversive
12 groups.

13 Now let's look at this in practice. In the spring of
14 1969 there was a rather heated national debate over the
15 installation of the anti-ballistic missile system. Some of us
16 remember that. An FBI informant and two FBI confidential
17 sources reported on the plan's participants and activities
18 of the Washington Area Citizens Coalition Against the ABM,
19 particularly in open public debate in a high school auditorium,
20 which included speakers from the Defense Department for the
21 ABM and a scientist and defense analyst against the ABM.

22 The informants reported on the planning for the meeting,
23 the distribution of materials to churches and schools,
24 participation by local clergy, plans to seek resolution on the
25 ABM from nearby town councils. There was also information on

1 plans for a subsequent town meeting in Washington with the
2 names of local political leaders who would attend.

3 Now the information, the informant information came as
4 part of an investigation of an allegedly subversive group
5 participating in that coalition. Yet the information dealt
6 with all aspects and all participants. The reports on the
7 plans for the meeting and on the meeting itself were disseminated
8 to the State Department, to military intelligence, and to the
9 White House.

10 How do we get into all of that?

11 Mr. Adams. Well --

12 Senator Hart of Michigan. Or if you were to rerun it,
13 would you do it again?

14 Mr. Adams. Well, not in 1975, compared to what 1969
15 was. The problem we had at the time was where we had an
16 informant who had reported that this group, this meeting was
17 going to take place and it was going to be the Daily World,
18 which was the east coast communist newspaper that made comments
19 about it. They formed an organizational meeting. We took
20 a quick look at it. The case apparently was opened in May 28,
21 1969 and closed June 5 saying there was no problem with this
22 organization.

23 Now the problem we get into is if we take a quick look
24 and get out, fine. We've had cases, though, where we have
25 stayed in too long. When you're dealing with security it is like

1 Soviet espionage where they can put one person in this country
2 and they supported him with total resources of the Soviet
3 Union, false identification, all the money he needs, communi-
4 cations networks, satellite assistance, and everything, and
5 you're working with a paucity of information.

6 The same problem exists to a certain extent in domestic
7 security. You don't have a lot of black and white situations.
8 So someone reports something to you which you feel, you take
9 a quick look at and there's nothing to it, and I think that's
10 what they did.

11 Senator Hart of Michigan. You said that was '69. Let
12 me bring you up to date, closer to current, a current place
13 on the calendar.

14 This one is the fall of last year, 1975. President
15 Ford announced his new program with respect to amnesty, as
16 he described it, for draft resisters. Following that there
17 were several national conferences involving all the groups
18 and individuals interested in unconditional amnesty.

19 Now parenthetically, while unconditional amnesty is
20 not against -- while unconditional amnesty is not yet the law,
21 we agreed that advocating it is not against the law either.

22 Mr. Adams. That's right.

23 Senator Hart of Michigan. Some of the sponsors were
24 umbrella organizations involving about 50 diverse groups around
25 the country. FBI informants provided advance information on

1 plans for the meeting and apparently attended and reported on
2 the conference. The Bureau's own reports described the
3 participants as having represented diverse perspectives on
4 the issue of amnesty, including civil liberties and human
5 rights groups, G.I. rights spokesmen, parents of men killed
6 in Vietnam, wives of ex-patriates in Canada, experts on draft
7 counselling, religious groups interested in peace issues,
8 delegates from student organizations, and aides of House and
9 Senate members, drafting legislation on amnesty.

10 The informant apparently was attending in his role as
11 a member of a group under investigation as allegedly subversive
12 and it described the topics of the workshop.

13 Ironically, the Bureau office report before them noted
14 that in view of the location of the conference at a theological
15 seminary, the FBI would use restraint and limit its coverage
16 to informant reports.

17 Now this isn't five or ten years ago. This is last
18 fall. And this is a conference of people who have the point
19 of view that I share, that the sooner we have unconditional
20 amnesty, the better for the soul of the country.

21 Now what reason is it for a vacuum cleaner approach on
22 a thing like that? Don't these instances illustrate how broad
23 informant intelligence really is, that would cause these groups
24 in that setting having contact with other groups, all and
25 everybody is drawn into the vacuum and many names go into the

1 Bureau files.

2 Is this what we want?

3 Mr. Adams. I'll let Mr. Wannall address himself to this.
4 He is particular knowledgeable as to this operation.

5 Mr. Wannall. Senator Hart, that was a case that was
6 opened on November 14 and closed November 20, and the information
7 which caused us to be interested in it were really two particular
8 items. One was that a member of the steering committee there,
9 was a three man steering committee, and one of those members
10 of the national conference was in fact a national officer
11 of the VVAW in whom we had suggested before we did have a
12 legitimate investigative interest.

13 Senator Hart of Michigan. Well, I would almost say so what
14 at that point.

15 Mr. Wannall. The second report we had was that the
16 VVAW would actively participate in an attempt to pack the
17 conference to take it over. And the third report we had --

18 Senator Hart of Michigan. And incidentally, all of the
19 information that your Buffalo informant had given you with
20 respect to the goals and aims of the VVAW gave you a list of
21 goals which were completely within Constitutionally protected
22 objectives. There wasn't a single item out of that VVAW that
23 jeopardizes the security of this country at all.

24 Mr. Wannall. Well, of course, we did not rely entirely
25 on the Buffalo informant, but even there we did receive

1 from that informant information which I considered to be
2 significant.

3 The Buffalo chapter of the VVAW was the regional office
4 covering New York and northern New Jersey. It was one of the
5 five most active VVAW chapters in the country and at a
6 national conference, or at the regional conference, this
7 informant reported information back to us that an attendee
8 at the conference announced that he had run guns into Cuba
9 prior to the Castro take-over. He himself said that he during
10 the Cuban crisis had been under 24 hour surveillance. There
11 was also discussion at the conference of subjugating the
12 VVAW to the revolutionary union. There were some individuals
13 in the chapter or the regional conference who were not in
14 agreement with us, but Mr. Adams has addressed himself to the
15 interest of the revolutionary union.

16 So all of the information that we had on the VVAW did
17 not come from that source but even that particular source did
18 give us information which we considered to be of some
19 significance in our appraisal of the need for continuing the
20 investigation of that particular chapter of the VVAW.

21 Senator Hart of Michigan. But does it give you the
22 right or does it create the need to go to a conference, even
23 if it is a conference that might be taken over by the VVAW
24 when the subject matter is how and by what means shall we
25 seek to achieve unconditional amnesty? What threat?

1 Mr. Wannall. Our interest, of course, was the VVAW
2 influence on a particular meeting, if you ever happened to be
3 holding a meeting, or whatever subject it was.

4 Senator Hart of Michigan. What if it was a meeting to
5 seek to make more effective the food stamp system in this
6 country?

7 Mr. Wannall. Well, of course there had been some
8 organizations.

9 Senator Hart of Michigan. Would the same logic follow?

10 Mr. Wannall. I think that if we found that if the
11 Communist Party USA was going to take over the meeting and
12 use it as a front for its own purposes, there would be a logic
13 in doing that. You have a whole scope here and it's a matter
14 of where you do and where you don't, and hopefully, as we've
15 said before, we will have some guidance, not only from this
16 committee but from the guidelines that are being developed.
17 But within the rationale of what we're doing today, I was
18 explaining to you our interest not in going to this thing and
19 not gathering everything there was about it.

20 In fact, only one individual attended and reported to us,
21 and that was the person who had, who was not developed for
22 this reason, an informant who had been reporting on other
23 matters for some period of time.

24 And as soon as we got the report of the outcome of the
25 meeting and the fact that in the period of some time, we

1 discontinued any further interest.

2 Senator Hart of Michigan. Well, my time has expired
3 but even this brief exchange, I think, indicates that if we
4 really want to control the dangers to our society of using
5 informants to gather domestic political intelligence, we have
6 to restrict sharply domestic intelligence investigations. And
7 that gets us into what I would like to raise with you when
8 my turn comes around again, and that's the use of warrants,
9 obliging the Bureau to obtain a warrant before a full-fledged
10 informant can be directed by the Bureau against a group or
11 individuals.

12 I know you have objections to that and I would like to
13 review that with you.

14 Senator Mondale. pursue that question.

15 Senator Hart of Michigan. I am talking now about an
16 obligation to obtain a warrant before you turn loose a full-
17 fledged informant. I'm not talking about tipsters that run
18 into you or you run into, or who walk in as information sources.
19 The Bureau has raised some objections in this memorandum to the
20 Committee. The Bureau argues that such a warrant requirement
21 might be unconstitutional because it would violate the First
22 Amendment rights of FBI informants to communicate with their
23 government.

24 Now that's a concern for First Amendment rights that
25 ought to hearten all the civil libertarians.

1 But why would that vary, why would a warrant requirement
2 raise a serious constitutional question?

3 Mr. Adams. Well, for one thing it's the practicability
4 of it or the impactability of getting a warrant which
5 ordinarily involves probable cause to show that a crime has
6 been or is about to be committed.

7 In the intelligence field we are not dealing necessarily
8 with an imminent criminal action. We're dealing with activities
9 such as with the Socialist Workers Party, which we have
10 discussed before, where they say publicly we're not to engage
11 in any violent activity today, but we guarantee you we still
12 subscribe to the tenets of communism and that when the time
13 is ripe, we're going to rise up and help overthrow the United
14 States.

15 Well, now, you can't show probable cause if they're about
16 to do it because they're telling you they're not going to do it
17 and you know they're not going to do it at this particular
18 moment.

19 It's just the mixture somewhat of trying to mix in a
20 criminal procedure with an intelligence gathering function, and
21 we can't find any practical way of doing it. We have a particular
22 organization. We may have an informant that not only belongs
23 to the Communist Party, but belongs to several other organizations
24 and as part of his function he may be sent out by the Communist
25 Party to try to infiltrate one of these clean organizations.

1 We don't have probable cause for him to target against
2 that organization, but yet we should be able to receive informa-
3 tion from him that he as a Communist Party member, even
4 though in an informant status, is going to that organization
5 and don't worry about it. We're making no headway on it.
6 It's just from our standpoint the possibility of informants,
7 the Supreme Court has held that informants per se do not
8 violate the First, Fourth, or Fifth Amendments. They have
9 recognized the necessity that the government has to have
10 individuals who will assist them in carrying out their
11 governmental duties.

12 Senator Hart of Michigan. I'm not sure I've heard anything
13 yet in response to the constitutional question, the very
14 practical question that you addressed.

15 Quickly, you are right that the court has said that the
16 use of the informant per se is not a violation of constitutional
17 rights of the subject under investigation. But Congress
18 can prescribe some safeguards, some rules and some standards,
19 just as we have with respect to your use of electronic
20 surveillance, and could do it with respect to informants.

21 That's quite different from saying that the warrant
22 procedure itself would be unconstitutional.

23 But with respect to the fact that you couldn't show
24 probable cause, and therefore, you couldn't get a warrant,
25 therefore you oppose the proposal to require you to get a

End Tape 6 14

Begin Tape 15

1 warrant. It seems to beg the question.

2 Assuming that you say that since we use informants and
3 investigate groups which may only engage in lawful activities
4 but which might engage in activities that can result in
5 violence or illegal acts, and you can't use the warrant, but
6 Congress could say that the use of informants is subject to
7 such abuse and poses such a threat to legitimate activity,
8 including the willingness of people to assemble and discuss
9 the anti-ballistic missile system, and we don't want you to
10 use them unless you have indication of criminal activity or
11 unless you present your request to a magistrate in the same
12 fashion as you are required to do with respect to, in most
13 cases, to wiretap.

14 This is an option available to Congress.

15 Senator Tower. Senator Schweiker.

16 Senator Schweiker. Thank you very much.

17 Mr. Wannall, what's the difference between a potential
18 security informant and a security informant?

19 Mr. Wannall. I mentioned earlier, Senator Schweiker,
20 that in developing an informant we do a preliminary check on
21 him before talking with him and then we do a further in-depth
22 background check.

23 A potential security informant is someone who is under
24 consideration before he is approved by headquarters for use as
25 an informant. He is someone who is under current consideration.

1 On some occasions that person will have been developed to a
2 point where he is in fact furnishing information and we are
3 engaged in checking upon his reliability.

4 In some instances he may be paid for information furnished,
5 but it has not gotten to the point yet where we have satisfied
6 ourselves that he meets all of our criteria. When he does,
7 the field must submit its recommendations to headquarters, and
8 headquarters will pass upon whether that individual is an
9 approved FBI informant.

10 Senator Schweiker. So it's really the first step of
11 being an informant, I guess.

12 Mr. Wannall. It is a preliminary step, one of the
13 preliminary steps.

14 Senator Schweiker. In the Rowe case, in the Rowe
15 testimony that we just heard, what was the rationale again
16 for not intervening when violence was known?

17 I know we asked you several times but I'm still having
18 trouble understanding what the rationale, Mr. Wannall, was
19 in not intervening in the Rowe situation when violence was
20 known.

21 Mr. Wannall. Senator Schweiker, Mr. Adams did address
22 himself to that. If you have no objection, I'll ask him to
23 answer that.

24 Senator Schweiker. All right.

25 Mr. Adams. The problem we had at the time, and it's the

1 problem today, we are an investigative agency. We do not
2 have police powers like the United States marshalls do.
3 About 1995, I guess, or some period like that, marshalls have
4 had the authority that almost borders on what a sheriff has.
5 We are the investigative agency of the Department of Justice
6 and during these times the Department of Justice had us maintain
7 the role of an investigative agency. We were to report on
8 activities to furnish the information to the local police,
9 who had an obligation to act. We furnished it to the Department
10 of Justice.

11 In those areas where the local police did not act, it
12 resulted finally in the Attorney General sending 500 United
13 States marshalls down to guarantee the safety of people who
14 were trying to march in protest of their civil rights.

15 This was an extraordinary measure because it came at a
16 time of civil rights versus federal rights, and yet there was
17 a breakdown in law enforcement in certain areas of the country.

18 This doesn't mean to indict all law enforcement agencies
19 in itself at the time either because many of them did act
20 upon the information that was furnished to them. But we
21 have no authority to make an arrest on the spot because we
22 would not have had evidence that there was a conspiracy
23 available. We can do absolutely nothing in that regard.

24 In Little Rock, the decision was made, for instance, that
25 if any arrests need to be made, the Army should make them and

1 next to the Army, the United States marshalls should make them,
2 not the FBI, even though we developed the violations.
3 And over the years, as you know, at the time there were many
4 questions raised. Why doesn't the FBI stop this? Why don't
5 you do something about it?

6 Well, we took the other route and effectively destroyed
7 the Klan as far as committing acts of violence, and of course
8 we exceeded statutory guidelines in that area.

9 Senator Schweiker. What would be wrong, just following
10 up your point there, Mr. Adams, with setting up a program
11 since it's obvious to me that a lot of informers are going to
12 have pre-knowledge of violence of using U.S. marshalls on some
13 kind of a long-range basis to prevent violence?

14 Mr. Adams. We do. We have them in Boston in connection
15 with the busing incident. We are investigating the violations
16 under the Civil Rights Act. But the marshalls are in Boston,
17 they are in Louisville, I believe at the same time, and this
18 is the approach, that the Federal government finally recognized,
19 was the solution to the problem where you had to have added
20 Federal import.

21 Senator Schweiker. But instead of waiting until it
22 gets to a Boston state, which is obviously a pretty advanced
23 confrontation, shouldn't we have somewhere a coordinated program
24 that when you go up the ladder of command in the FBI, that
25 on an immediate and fairly contemporary basis, that kind of

1 help can be sought instantly as opposed to waiting until it
2 gets to a Boston state?

3 I realize it's a departture from the past. I'm not
4 saying it isn't. But it seems to me we need a better remedy
5 than we have.

6 Mr. Adams. Well, fortunately, we're at a time where
7 conditions have subsided in the country, even from the '60s
8 and the '70s and periods -- or '50s and '60s. We report to the
9 Department of Justice on potential troublespots around the
10 country as we learn of them so that the Department will be
11 aware of them. The planning for Boston, for instance, took
12 place a year in advance with state officials, city officials,
13 the Department of Justice and the FBI sitting down together
14 saying, how are we going to protect the situation in Boston?

15 I think we've learned a lot from the days back in the
16 early '60s. But the government had no mechanics which protected
17 people at that time.

18 Senator Schweiker. I'd like to go, if I may, to the
19 Robert Hardy case. I know he is not a witness but he
20 was a witness before the House. But since this affects my
21 state, I'd like to ask Mr. Wannall. Mr. Hardy, of course, was
22 the FBI informer who ultimately led and planned and organized
23 a raid on the Camden draft board. And according to Mr. Hardy's
24 testimony before our Committee, he said that in advance of the
25 raid someone in the Department had even acknowledged the fact

1 that they had all the information they needed to clamp down
2 on the conspiracy and could arrest people at that point in time,
3 and yet no arrests were made.

4 Why, Mr. Wannall, was this true?

5 Mr. Wannall. Well, I can answer that based only on the
6 material that I have reviewed, Senator Schweiker. It was not
7 a case handled in my division but I think I can answer your
8 question.

9 There was, in fact, a representative of the Department
10 of Justice on the spot counselling and advising continuously
11 as that case progressed as to what point the arrest should be
12 made and we were being guided by those to our mentors, the
13 ones who are responsible for making decisions of that sort.

14 So I think that Mr. Hardy's statement to the effect that
15 there was someone in the Department there is perfectly true.

16 Senator Schweiker. That responsibility rests with who
17 under your procedures?

18 Mr. Wannall. We investigate decisions on making arrests,
19 when they should be made, and decisions with regard to
20 prosecutions are made either by the United States attorneys
21 or by Federals in the Department.

22 Mr. Adams. At this time that particular case did have
23 a departmental attorney on the scene because there are questions
24 of conspiracy. Conspiracy is a tough violation to prove and
25 sometimes a question of do you have the added value of catching

1 someone in the commission of the crime as further proof,
2 rather than relying on one informant and some circumstantial
3 evidence to prove the violation.

4 Senator Schweiker. Well, in this case, though, they
5 even had a dry run. They could have arrested them on the
6 dry run.

7 That's getting pretty close to conspiracy, it seems to
8 me. They had a dry run and they could have arrested them on
9 the dry run.

10 I'd like to know why they didn't arrest them on the dry
11 run. Who was this Department of Justice official who made
12 that decision?

13 Mr. Adams. Guy Goodwin was the Department official.

14 Senator Schweiker. Next I'd like to ask back in 1965,
15 during the height of the effort to destroy the Klan, as you
16 put it a few moments ago, I believe the FBI has released
17 figures that we had something like 2,000 informers of some
18 kind or another infiltrating the Klan out of roughly 10,000
19 estimated membership.

20 I believe these are either FBI figures or estimates.
21 That would mean that one out of every five members of the Klan
22 at that point was an informant paid by the government.

23 And I believe the figure goes on to indicate that 70
24 percent of the new members of the Klan that year were FBI
25 informants.

1 Isn't this an awfully overwhelming quantity of people
2 to put in an effort such as that? I'm not criticizing that
3 you shouldn't have informants in the Klan and know what's
4 going on for violence, but it seems to me that this is the
5 tail wagging the dog.

6 For example, today we supposedly have only 1594 total
7 informants for both domestic informants and potential informants
8 and that here we had 2,000 just in the Klan alone.

9 Mr. Adams. Well, this number 2,000 did include all
10 racial matters, informants at that particular time, and I
11 think the figures we tried to reconstruct as to the actual
12 number of Klan informants in relation to Klan members was around
13 6 percent, I think, after we had read some of the testimony.

14 Now the problem we had on the Klan is the Klan had a
15 group called the Action Group. This was the group that you
16 remember from Mr. Rowe's testimony, that he was left af-
17 ter the meeting. He attended the open meetings and heard
18 all of the hurrahs and this type of thing from information,
19 but he never knew what was going on because each one had an
20 action group that went out and considered themselves in the
21 missionary field.

22 Theirs was the violence.

23 In order to penetrate those, it takes, you have to direct
24 as many informants as you possibly can against it. Bear in
25 mind that I think the newspapers, the President and Congress and

1 everyone is concerned about the murder of the civil rights
2 workers, the Linio Kent case, the Viola Liuzzo case, the
3 bombings of the church in Birmingham. We were faced with one
4 tremendous problem at that time.

5 Senator Schweiker. I acknowledge that.

6 Mr. Adams. Our only approach was through informants
7 and through the use of informants we solved these cases, the
8 ones that were solved. Some of the bombing cases we have
9 never solved. They are extremely difficult.

10 These informants, as we told the Attorney General, and
11 as we told the President, that we had moved informants like
12 Mr. Rowe up to the top leadership. He was the bodyguard to the
13 head man. He was in a position where he could forewarn us
14 of violence, could help us on cases that had transpired, and
15 yet we knew and conceived that this could continue forever
16 unless we can create enough disruption that these members will
17 realize that if I go out and murder three civil rights workers,
18 even though the sheriff and other law enforcement officers are
19 in on it, if that were the case and with some of them it was
20 the case, that I would be caught. And that's what we did and
21 that's why violence stopped, was because the Klan was insecure
22 and just like you say, 20 percent, they thought 50 percent of
23 their members ultimately were Klan members and they didn't
24 dare engage in these acts of violence because they knew they
25 couldn't control the conspiracy any longer.

1 Senator Schweiker. My time is expired. I just have
2 one quick question.

3 Is it correct that in 1971 we're using around 6500
4 informers for black ghetto situations?

5 Mr. Adams. I'm not sure if that's the year. We did
6 have one year where we had a number like that which probably
7 had been around 6000, and that was the time when the cities
8 were being burned, Detroit, Washington, areas like this. We
9 were given a mandate to know what the situation is, where is
10 violence going to break out, what next?

11 They weren't informants like an individual penetrating
12 an organization. They were listening posts in the community
13 that would help tell us that we have a group here that's getting
14 ready to start another fire-fight or something.

15 Senator Tower. At this point, there are three more
16 Senators remaining for questioning. If we can try to get
17 everything in in the first round, we will not have a second
18 round and I think we can finish around 1:00, and we can go
19 on and terminate the proceedings.

20 However, If anyone feels that they have another question
21 that they want to return to, we can come back here by 2:00.

22 Senator Mondale?

23 Senator Mondale. Mr. Adams, it seems to me that the
24 record is now fairly clear that when the FBI operates in the
25 field of crime investigating, it may be the best professional

1 organization of its kind in the world. And when the FBI acts
2 in the field of political ideas, it has bungled its job, it
3 has interfered with the civil liberties, and finally, in the
4 last month or two, through its public disclosures, heaped
5 shame upon itself and really led toward an undermining of
6 the crucial public confidence in an essential law enforcement
7 agency of this country.

8 In a real sense, history has repeated itself because it
9 was precisely that problem that led to the creation of the FBI
10 in 1924.

11 In World War I, the Bureau of Investigation strayed from
12 its law enforcement functions and became an arbiter and
13 protector of political ideas. And through the interference
14 of civil liberties and Palmer Raids and the rest, the public
15 became so offended that later through Mr. Justice Stone and
16 Mr. Hoover, the FBI was created. And the first statement
17 by Mr. Stone was that never again will this Justice Department
18 get involved in political ideas.

19 And yet here we are again looking at a record where with
20 Martin Luther King, with anti-war resistors, with -- we even
21 had testimony this morning of meetings with the Council of
22 Churches. Secretly we are investigating this vague, ill-defined,
23 impossible to define idea of investigating dangerous ideas.

24 It seems to be the basis of the strategy that people
25 can't protect themselves, that you somehow need to use the

1 tools of law enforcement to protect people from subversive
2 or dangerous ideas, which I find strange and quite profoundly
3 at odds with the philosophy of American government.

4 I started in politics years ago and the first thing we
5 had to do was to get the communists out of our parts and out
6 of the union. We did a very fine job. As far as I know, and
7 I'm beginning to wonder, but as far as I know, we had no help
8 from the FBI or the CIA. We just rammed them out of the meetings
9 on the grounds that they weren't Democrats and they weren't
10 good union leaders when we didn't want anything to do with them.
11 And yet, we see time and time again that we're going to
12 protect the blacks from Martin Luther King because he's
13 dangerous, that we've going to protect veterans from whatever
14 it is, and we're going to protect the Council of Churches
15 from the veterans, and so on, and it just gets so gummy and
16 confused and ill-defined and dangerous, that don't you agree
17 with me that we have to control this, to restrain it, so that
18 precisely what is expected of the FBI is known by you, by the
19 public, and that you can justify your actions when we ask
20 you?

21 Mr. Adams. I agree with that, Senator, and I would like
22 to point out that when the Attorney General made his statement
23 Mr. Hoover subscribes to it, we followed that policy for about
24 ten years until the President of the United States said that
25 we should investigate the Nazi Party.

1 I for one feel that we should investigate the Nazi Party.
2 I feel that our investigation of the Nazi Party resulted in
3 the fact that in World War II, as contrasted with World War I,
4 there wasn't one single incident of foreign directed sabotage
5 which took place in the United States.

6 Senator Mondale. And under the criminal law you could
7 have investigated these issues of sabotage.

8 Isn't sabotage a crime?

9 Mr. Adams. Sabotage is a crime.

10 Senator Mondale. Could you have investigated that?

11 Mr. Adams. After it happened.

12 Senator Mondale. You see, every time we get involved
13 in political ideas, you defend yourself on the basis of
14 crimes that could have been committed. It's very interesting.

15 In my opinion, you have to stand here if you're going to
16 continue what you're now doing and as I understand it, you
17 still insist that you did the right thing with the Vietnam
18 Veterans Against the War, and investigating the Council of
19 Churches, and this can still go on. This can still go on under
20 your interpretation of your present powers, what you try to
21 justify on the grounds of your law enforcement activities
22 in terms of criminal matters.

23 Mr. Adams. The law does not say we have to wait until
24 we have been murdered before we can --

25 Senator Mondale. Absolutely, but that's the field of

1 law again. You're trying to defend apples with oranges. That's
2 the law. You can do that.

3 Mr. Adams. That's right, but how do you find out which
4 of the 20,000 Bund members might have been a saboteur. You
5 don't have probable cause to investigate anyone, but you can
6 direct an intelligence operation against the German-American
7 Bund, the same thing we did after Congress said --

8 Senator Mondale. Couldn't you get a warrant for that?
9 Why did you object to going to court for authority for that?

10 Mr. Adams. Because we don't have probable cause to
11 go against an individual and the law doesn't provide for
12 probable cause to investigate an organization.

13 There were activities which did take place, like one time
14 they outlined the Communist Party --

15 Senator Mondale. What I don't understand is why it
16 wouldn't be better for the FBI for us to define authority
17 that you could use in the kind of Bonn situation where under
18 court authority you can investigate where there is probable
19 cause or reasonable cause to suspect sabotage and the rest.

20 Wouldn't that make a lot more sense than just making these
21 decisions on your own?

22 Mr. Adams. We have expressed complete concurrence in
23 that. We feel that we're going to go beat to death in the
24 next 100 years, you're damned if you do, and damned if you
25 don't if we don't have a delineation of our responsibility

1 in this area. But I won't agree with you, Senator, that we
2 have bungled the intelligence operations in the United States.
3 I agree with you that we have made some mistakes. Mr. Kelley
4 has set a pattern of being as forthright as any Director of the
5 FBI in acknowledging mistakes that had been made, but I think
6 that as you said, and I believe Senator Tower said, and
7 Senator Church, that we have to watch these hearings because
8 of the necessity that we must concentrate on these areas of
9 abuse. We must not lose sight of the
10 overall law enforcement and intelligence community, and I
11 still feel that this is the freest country in the world.
12 I've travelled much, as I'm sure you have, and I know we have
13 made some mistakes, but I feel that the people in the United
14 States are less chilled by the mistakes we have made than they
15 are by the fact that there are 20,000 murders a year in the
16 United States and they can't walk out of their houses at night
17 and feel safe.

18 Senator Mondale. That's correct, and isn't that an
19 argument then, Mr. Adams, for strengthening our powers to go
20 after those who commit crimes rather than strengthening or
21 continuing a policy which we now see undermines the public
22 confidence you need to do your job.

23 Mr. Adams. Absolutely. The mistakes we have made are
24 what have brought on this embarrassment to us.

25 I'm not blaming the Committee. I'm saying we made some

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1 mistakes and in doing so this is what has hurt the FBI. But
2 at the same time I don't feel that a balanced picture comes
3 out, as you have said yourselves, because of the necessity
4 of zeroing in on abuses.

5 I think that we have done one tremendous job. I think
6 the accomplishments in the Klan was the finest hour of the
7 FBI and yet, I'm sure in dealing with the Klan that we made
End Tape 7 8 some mistakes. But I just don't agree with bungling.

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1 Senator Mondale. I don't want to argue over terms, but
2 I think I sense an agreement that the FBI has gotten into trouble
3 over it in the political idea trouble, and that that's where we
4 need to have new legal standards.

5 Mr. Adams. Yes, I agree with that.

6 Senator Tower. Senator Huddleston.

7 Senator Huddleston. Thank you, Mr. Chairman.

8 Mr. Adams, these two instances we have studied at some
9 length seems to have been an inclination on the part of
10 the Bureau to establish a notion about an individual or a group
11 which seems to be very hard to ever change or dislodge. In
12 the case of Dr. King, where the supposition was that he was
13 being influenced by Communist individuals, extensive investi-
14 gation was made, surveillance, reports came back indicating that
15 this in fact was untrue, and directions continued to go out
16 to intensify the investigation. There never seemed to be a
17 willingness on the part of the Bureau to accept its own facts.

18 Ms. Cook testified this morning that something similar
19 to that happened with the Vietnam Veterans Against the War, that
20 every piece of information that she supplied to the Bureau
21 seemed to indicate that the Bureau was not correct in its
22 assumption that this organization planned to commit violence,
23 or that it was being manipulated, and yet you seemed to insist
24 that this investigation go on, and this information was used
25 against the individuals.

1 Now, are there instances where the Bureau has admitted that
2 its first assumptions were wrong and they have changed their
3 course?

4 Mr. Adams. We have admitted that. We have also shown
5 from one of the cases that Senator Hart brought up, that after
6 five days we closed the case. We were told something by an
7 individual that there was a concern of an adverse influence
8 in it, and we looked into it. On the Martin Luther King
9 situation there was no testimony to the effect that we just
10 dragged on and on, or admitted that we dragged on and on and
11 on, ad infinitum. The wiretaps on Martin Luther King were
12 all approved by the Attorney General. Microphones on Martin
13 Luther King were approved by another Attorney General. This
14 wasn't the FBI, and the reason they were approved was that
15 there was a basis to continue the investigation up to a point.

16 What I testified to was that we were improper in discrediting
17 Dr. King, but it's just like --

18 Senator Huddleston. The Committee has before it memoranda
19 written by high officials of the Bureau indicating that the
20 information they were receiving from the field, from these
21 surveillance methods, did not confirm what their supposition
22 was.

23 Mr. Adams. That memorandum was not on Dr. King. That
24 was on another individual that I think somehow got mixed up
25 in the discussion, one where the issue was can we make people

1 prove they aren't a Communist before we will agree not to
2 investigate them.

3 But the young lady appearing this morning making the
4 comment that she never knew of anything she told us that
5 she considers herself a true member of the VVAW-WSO inasmuch
6 as she feels in general agreement of the principles of it, and
7 agreed to cooperate with the FBI in providing information regard-
8 ing the organization to aid in preventing violent individuals
9 from associating themselves with the VVAW-WSO. She is most
10 concerned about efforts by the Revolutionary Union to take over
11 the VVAW-WSO, and she is working actively to prevent this..

12 I think that we have a basis for investigating the VVAW-
13 WSO in certain areas today. In other areas we have stopped
14 the investigation. They don't agree with these principles
15 laid down by the --

16 Senator Huddleston. That report was the basis of your
17 continuing to pay informants and continuing to utilize that
18 information against members who certainly had not been involved
19 in violence, and apparently to get them fired from their job
20 or whatever?

21 Mr. Adams. It all gets back to the fact that even in the
22 criminal law field, you have to detect crime, and you have to
23 prevent crime, and you can't wait until something happens. The
24 Attorney General has clearly spoken in that area, and even our
25 statutory jurisdiction provides that we don't --

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1 Senator Huddleston. Well, of course we've had considerable
2 evidence this morning where no attempt was made to prevent
3 crime, when you had information that it was going to occur.
4 But I'm sure there are instances where you have.

5 Mr. Adams. We disseminated every single item which he
6 reported to us.

7 Senator Huddleston. To a police department which you
8 knew was an accomplice to the crime.

9 Mr. Adams. Not necessarily.

10 Senator Huddleston. Your informant had told you that,
11 hadn't he?

12 Mr. Adams. Well, the informant is on one level. We have
13 other informants, and we have other information.

14 Senator Huddleston. Yes, but you were aware that he
15 had worked with certain members of the Birmingham police in
16 order to --

17 Mr. Adams. Yes. He furnished many other instances also.

18 Senator Huddleston. So you weren't really doing a whole
19 lot to prevent that incident by telling the people who were
20 already part of it.

21 Mr. Adams. We were doing everything we could lawfully
22 do at the time, and finally the situation was corrected, so that
23 when the Department, agreeing that we had no further juris-
24 diction, could sent the United States Marshal down to perform
25 certain law enforcement functions.

1 Senator Huddleston. Now, the Committee has received
2 documents which indicated that in one situation the FBI assisted
3 an informant who had been established in a white hate group
4 to establish a rival white hate group, and that the Bureau paid
5 his expenses in setting up this rival organization.

6 Now, does this not put the Bureau in a position of being
7 responsible for what actions the rival white hate group might
8 have undertaken?

9 Mr. Adams. I'd like to see if one of the other gentlemen
10 knows that specific case, because I don't think we set up a
11 specific group.

12 This is Joe Deegan.

13 Mr. Deegan. Senator, it's my understanding that the
14 informant we're talking about decided to break off from the
15 group he was with. He was with the Macon Klan group of
16 the United Klans of America, and he decided to break off. This
17 was in compliance with our regulations. His breaking off,
18 we did not pay him to set up the organization. He did it
19 on his own. We paid him for the information he furnished
20 us concerning the operation. We did not sponsor the organiza-
21 tion.

22 Senator Huddleston. Concerning the new organization that
23 he set up, he continued to advise you of the activities of that
24 organization?

25 Mr. Deegan. He continued to advise us of that organization

1 and other organizations. He would advise us of planned
2 activities.

3 Senator Huddleston. The new organization that he formed,
4 did it operate in a very similar manner to the previous one?

5 Mr. Deegan. No, it did not, and it did not last that
6 long.

7 Senator Huddleston. There's also evidence of an FBI
8 informant in the Black Panther Party who had a position of
9 responsibility within the Party with the knowledge of his
10 FBI contact of supplying members with weapons and instructing
11 them in how to use those weapons. Presumably this was in the
12 knowledge of the Bureau, and he later became -- came in contact
13 with the group that was contracting for murder, and he partici-
14 pated in this group with the knowledge of the FBI agent, and
15 this group did in fact stalk a victim who was later killed with
16 the weapon supplied by this individual, presumably all in the
17 knowledge of the FBI.

18 How does this square with your enforcement and crime
19 prevention responsibilities.

20 Mr. Deegan. Senator, I'm not familiar with that particular
21 case. It does not square with our policy in all respects, and
22 I would have to look at that particular case you're talking
23 about to give you an answer.

24 Senator Huddleston. I don't have the documentation on that
25 particular case, but it brings up the point as to what kind of

1 control you exercised over this kind of informant in this kind
2 of an organization and to what extent an effort is made to
3 prevent these informants from engaging in the kind of thing
4 that you are supposedly trying to prevent.

5 Mr. Adams. A good example of this was Mr. Rowe, who became
6 active in an action group, and we told him to get out or
7 we would no longer use him as an informant, in spite of the
8 information he had furnished in the past.

9 We have had cases, Senator, where we have had --

10 Senator Huddleston. But you also told him to participate
11 in violent activities.

12 Mr. Adams. We did not tell him to participate in violent
13 activities.

14 Senator Huddleston. That's what he said.

15 Mr. Adams. I know that's what he said. But that's what
16 lawsuits are all about, is that there are two sides to the
17 issue, and our agents handling this have advised us, and I
18 believe have advised your staff, that at no time did they
19 advise him to engage in violence.

20 Senator Huddleston. Just to do what was necessary to
21 get the information, I believe maybe might have been his
22 instructions.

23 Mr. Adams. I don't think they made any such statement
24 to him along that line, and we have informants, we have
25 informants who have gotten involved in the violation of the law,

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1 and we have immediately converted their status from an informant
2 to the subject, and have prosecuted I would say, offhand, I
3 can think of around 20 informants that we have prosecuted for
4 violating the laws, once it came to our attention, and even
5 to show you our policy of disseminating information on violence
6 in this case, during the review of the matter, the agents told
7 me that they found one case where their agent had been working
8 24 hours a day, and he was a little late in disseminating the
9 information to the police department. No violence occurred,
10 but it showed up in a file review, and he was censured for
11 his delay in properly notifying local authorities.

12 So we not only have a policy, I feel that we do follow
13 reasonable safeguards in order to carry it out, including periodic
14 review of all informant files.

15 Senator Huddleston. Well, Mr. Rowe's statement is
16 substantiated to some extent with the acknowledgement by the
17 agent in charge that if you're going to be a Klansman and you
18 happen to be with someone and they decide to do something, that
19 he couldn't be an angel. These were the words of the agent,
20 and be a good informant. He wouldn't take the lead, but the
21 implication is that he would have to go along and would have
22 to be involved if he was going to maintain his credibility.

23 Mr. Adams. There's no question but that an informant at
24 times will have to be present during demonstrations, riots,
25 fistfights that take place, but I believe his statement was

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1 to the effect that -- and I was sitting in the back of the
2 room and I don't recall it exactly, but some of them were
3 beat with chains, and I didn't hear whether he said he beat
4 someone with a chain or not, but I rather doubt that he did
5 because it's one thing being present, and it's another thing
6 taking an active part in criminal actions.

7 Senator Huddleston. He was close enough to get his
8 throat cut.

9 How does the gathering of information --

10 Senator Tower. Senator Mathias is here, and I think that
11 we probably should recess a few minutes.

12 Could we have Senator Mathias' questions and then should
13 we convene this afternoon?

14 Senator Huddleston. I'm finished. I just had one more
15 question.

16 Senator Tower. Go ahead.

17 Senator Huddleston. I wanted to ask how the selection of
18 information about an individual's personal life, social, sex
19 life and becoming involved in that sex life or social life
20 is a requirement for law enforcement or crime prevention.

21 Mr. Adams. Our agent handlers have advised us on Mr.
22 Rowe, that they gave him no such instruction, they had no
23 such knowledge concerning it, and I can't see where it would
24 be of any value whatsoever.

25 Senator Huddleston. You aren't aware of any case where

1 these instructions were given to an agent or an informant?

2 Mr. Adams. To get involved in sexual activity? No, sir.

3 Senator Huddleston. Thank you, Mr. Chairman.

4 Senator Tower. Senator Mathias.

5 Senator Mathias. Thank you, Mr. Chairman.

6 I would like to come back very briefly to the Fourth
7 Amendment considerations in connection with the use of informants
8 and in posing these questions we're not thinking of the one
9 time volunteer who walks in to an FBI office and says I have
10 a story I want to tell you and that's the only time that you
11 may see him. I'm thinking of the kind of situations in which
12 there is a more extended relationship which could be of varying
13 degrees. It might be in one case that the same individual
14 will have some usefulness in a number of situations. But when
15 the FBI orders a regular agent to engage in a search, the first
16 test is a judicial warrant, and what I would like to explore
17 with you is the difference between a one time search which
18 requires a warrant, and which you get when you make that
19 search, and a continuous search which uses an informant, or
20 the case of a continuous search which uses a regular undercover
21 agent, someone who is totally under your control, and is in a
22 slightly different category than an informant.

23 Mr. Adams. Well, we get there into the fact that the
24 Supreme Court has still held that the use of informants does
25 not invade any of these constitutionally protected areas, and

1 if a person wants to tell an informant something that isn't
2 protected by the Supreme Court.

3 An actual search for legal evidence, that is a protected
4 item, but information and the use of informants have been
5 consistently held as not posing any constitutional problems.

6 Senator Mathias. I would agree, if you're talking about
7 the fellow who walks in off the street, as I said earlier,
8 but is it true that under existing procedures informants are
9 given background checks?

10 Mr. Adams. Yes, sir.

11 Senator Mathias. And they are subject to a testing period.

12 Mr. Adams. That's right, to verify and make sure they
13 are providing to us reliable information.

14 Senator Mathias. And during the period that the relation-
15 ship continues, they are rather closely controlled by the
16 handling agents.

17 Mr. Adams. That's true.

18 Senator Mathias. So in effect they can come in a very
19 practical way agents themselves to the FBI.

20 Mr. Adams. They can do nothing --

21 Senator Mathias. Certainly agents in the common law use
22 of the word.

23 Mr. Adams. That's right, they can do nothing, and we
24 instruct our agents that an informant can do nothing that the
25 agent himself cannot do, and if the agent can work himself into

1 an organization in an undercover capacity, he can sit there and
2 glean all the information that he wants, and that is not in the
3 Constitution as a protected area. But we do have this problem.

4 Senator Mathias. But if a regular agent who is a member
5 of the FBI attempted to enter these premises, he would require
6 a warrant?

7 Mr. Adams. No, sir, if a regular -- it depends on the
8 purpose for which he is entering. If a regular agent by
9 concealing his identity, by -- was admitted as a member of the
10 Communist Party, he can attend Communist Party meetings, and he
11 can enter the premises, he can enter the building, and there's
12 no constitutionally invaded area there.

13 Senator Mathias. And so you feel that anyone who has
14 a less formal relationship with the Bureau than a regular
15 agent, who can undertake a continuous surveillance operation
16 as an undercover agent or as an informant --

17 Mr. Adams. As long as he commits no illegal acts.

18 Senator Mathias. Let me ask you why you feel that it is
19 impractical to require a warrant since, as I understand it,
20 headquarters must approve the use of an informant. Is that
21 degree of formal action required?

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1 Mr. Adams. The main difficulty is the particularity
2 which has to be shown in obtaining a search warrant. You
3 have to go after particular evidence. You have to specify
4 what you're going after, and an informant operates in an
5 area that you just cannot specify. He doesn't know what's
6 going to be discussed at that meeting. It may be a plot to
7 blow up the Capitol again or it may be a plot to blow up the
8 State Department building.

9 Senator Mathias. If it were a criminal investigation,
10 you would have little difficulty with probable cause, wouldn't
11 you?

12 Mr. Adams. We would have difficulty in a warrant to
13 use someone as an informant in that area because the same
14 difficulty of particularity exists. We can't specify.

15 Senator Mathias. I understand the problem because it's
16 very similar to one that we discussed earlier in connection
17 say wiretaps on a national security problem.

18 Mr. Adams. That's it, and there we face the problem of
19 where the Soviet, an individual identified as a Soviet spy
20 in a friendly country and they tell us he's been a Soviet spy
21 there and now he's coming to the United States, and if we can't
22 show under a probable cause warrant, if we couldn't show that
23 he was actually engaging in espionage in the United States,
24 we couldn't get a wiretap under the probable cause requirements
25 which have been discussed. If the good fairy didn't drop the

1 evidence in our hands that this individual is here conducting
2 espionage, we again would fall short of this, and that's
3 why we're still groping with it.

4 Senator Mathias. When you say fall short, you really,
5 you would be falling short of the requirements of the Fourth
6 Amendment.

7 Mr. Adams. That's right, except for the fact that the
8 President, under this Constitutional powers, to protect this
9 nation and make sure that it survives first, first of all
10 national survival, and these are the areas that not only the
11 President but the Attorney General are concerned in and we're
12 all hoping that somehow we can reach a legislative middle
13 ground in here.

14 Senator Mathias. Which we discussed in the other national
15 security area as to curtailling a warrant to that particular
16 need.

17 Mr. Adams. And if you could get away from probable
18 cause and get some degree of reasonable cause and get some
19 method of sealing indefinitely your interest, say, in an
20 ongoing espionage case and can work out those difficulties,
21 we may get their yet.

22 Senator Mathias. And you don't despair of finding that
23 middle ground?

24 Mr. Adams. I don't because I think that today there's
25 more of an open mind between Congress and the Executive Branch

1 and the FBI and everyone concerning the need to get these
2 areas resolved.

3 Senator Mathias. And you believe that the Department,
4 if we could come together, would support, would agree to that
5 kind of a warrant requirement if we could agree on the language?

6 Mr. Adams. If we can work out problems and the Attorney
7 General is personally interested in that also.

8 Senator Mathias. Do you think that this agreement might
9 extend to some of those other areas that we talked about?

10 Mr. Adams. I think that that would be a much greater
11 difficulty in an area of domestic intelligence informant who
12 reports on many different operations and different types of
13 activities that might come up rather than say in a Soviet
14 espionage or a foreign espionage case where you do have a little
15 more degree of specificity to deal with.

16 Senator Mathias. I suggest that we arrange to get
17 together and try out some drafts with each other, but in the
18 meantime, of course, there's another alternative and that
19 would be the use of wiretap procedure by which the Attorney
20 General must approve a wiretap before it is placed, and the
21 same general process could be used for informants, since
22 you come to headquarters any way.

23 Mr. Adams. That could be an alternative. I think it
24 would be a very burdensome alternative and I think at some
25 point after we attack the major abuses, or what are considered

1 major abuses of Congress and get over this hurdle, I think
2 we're still going to have to recognize that heads of agencies
3 have to accept the responsibility for managing that agency
4 and we can't just keep pushing every operational problem up
5 to the top because there just aren't enough hours in the day.

6 Senator Mathias. But the reason that parallel suggests
7 itself is of course the fact that the wiretap deals generally
8 with one level of information in one sense of gathering
9 information. You hear what you hear from the tap.

10 Mr. Adams. But you're dealing in a much smaller number
11 also.

12 Senator Mathias. Smaller number, but that's all the
13 more reason. When an informant goes in, he has all of his
14 senses. He's gathering all of the information a human being
15 can acquire from a situation and has access to more information
16 than the average wiretap.

17 And it would seem to me that for that reason a parallel
18 process might be useful and in order.

19 Mr. Adams. Mr. Mintz pointed out one other main
20 distinction. to me which I had overlooked from our prior
21 discussions, which is the fact that with an informant he is
22 more in the position of being a central monitor in that one
23 of the two parties to the conversation agrees, such as like
24 central monitoring of telephones and microphones and
25 anything else versus the wiretap itself where the individual

1 whose telephone is being tapped is not aware and there is,
2 and neither of the two parties talking had agreed that their
3 conversation could be monitored.

4 Senator Mathias. I find that one difficult to accept.
5 If I'm the third party overhearing a conversation that is taking
6 place in a room where I am, and my true character isn't perceived
7 by the two people who are talking, in effect they haven't
8 consented to my overhearing my conversation. Then they consent
9 if they believe that I am their friend or their, a partisan
10 of theirs.

11 But if they knew in fact that I was an informant for
12 someone else, they wouldn't be consenting.

13 Mr. Adams. Well, that's like I believe Senator Hart
14 raised earlier, that the courts thus far have made this
15 distinction with no difficulty, but that doesn't mean that
16 there may not be some legislative compromise which might be
17 addressed.

18 Senator Mathias. Well, I particularly appreciate your
19 attitude in being willing to work on these problems because
20 I think that's the most important thing that can evolve from
21 these hearings, so that we can actually look at the Fourth
22 Amendment as the standard that we have to achieve. But the
23 way we get there is obviously going to be a lot easier if we
24 can work toward them together.

25 I just have one final question, Mr. Chairman, and that

1 deals with whether we shouldn't impose a standard of probable
2 cause that a crime has been committed as a means of controlling
3 the use of informants and the kind of information that they
4 collect.

5 Do you feel that this would be too restrictive?

6 Mr. Adams. Yes, sir, I do.

7 When I look at informants and I see that each year
8 informants provide us, locate 5000 dangerous fugitives, they
9 provide subjects in 2000 more cases, they recover \$86 million
10 in stolen property and contraband, and that's irrespective
11 of what we give the local law enforcement and other Federal
12 agencies, which is almost a comparable figure, we have almost
13 reached a point in the criminal law where we don't have much
14 left. And in the intelligence field we still, I think when
15 we carve all of the problems away, we still have to make sure
16 that we have the means to gather information which will permit
17 us to be aware of the identity of individuals and organizations
18 that are acting to overthrow the government of the United
19 States. And I think we still have some areas to look hard
20 at as we have discussed, but I think informants are here to
21 stay. They are absolutely essential to law enforcement.
22 Everyone uses informants. The press has informants, Congress
23 has informants, you have individuals in your community that
24 you rely on, not for ulterior purposes, but to let you know
25 what's the feel of the people, am I serving them properly,

1 am I carrying out this?

2 It's here to say. It's been here throughout history
3 and there will always be informants. And the thing we want to
4 avoid is abuses like provocateurs, criminal activities, and
5 to ensure that we have safeguards that will prevent that.
6 But we do need informants.

7 Senator Tower. Senator Hart, do you have any further
8 questions?

9 Senator Hart of Michigan. Yes. I ask unanimous request
10 perhaps with a view to giving balance to the record, the
11 groups that we have discussed this morning into which the
12 Bureau has put informants, in popular language, our liberal
13 groups -- I would ask unanimous consent that be printed in
14 the record, the summary of the opening of the headquarters
15 file by the Bureau of Dr. Carl McIntyre when he announced
16 that he was organizing a group to counter the American Civil
17 Liberties Union and other "liberal and communist groups,"
18 is not a left only pre-occupation.

19 Senator Tower. Without objection, so ordered.

20 (The material referred to follows:)

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1 Senator Tower. Any more questions?

2 Then the Committee will have an Executive Session this
3 afternoon in Room 3110 in the Dirksen Building at 3:00, and
4 I hope everyone will be in attendance.

5 Tomorrow morning we will hear from Courtney Evans,
6 Cartha DeLoach. Tomorrow afternoon, former Attorneys General
7 Ramsey Clark and Edward Katzenbach.

8 The Committee, the hearings are recessed until 10:00
9 a.m. tomorrow morning.

10 (Whereupon, at 1:10 o'clock p.m., the hearing in the
11 above mentioned matter was concluded, to reconvene on Wednesday
12 December 3rd, 1975, at 10:00 o'clock a.m.)

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(Mount Clipping in Space Below)

SAN DIEGO SEEKING INQUIRY INTO F.B.I.

Council Requests Hearings on Racial Incidents

By EVERETT R. HOLLES
Special to The New York Times

SAN DIEGO, Feb. 7—Aroused by reports that the Federal Bureau of Investigation incited violence among black militants and others here, the City Council has offered to help Senate investigators expose what one councilman called a "shameful conspiracy."

A resolution adopted by the council was forwarded Feb. 2 to the Senate Select Committee on Intelligence, urging its members to come to San Diego and conduct hearings.

The Council also ordered an independent local investigation into incidents that occurred between early 1969 and late 1972, including gunfights, kidnapping plots, bombings and at least two killings.

F.B.I. officials here said they had no comment on the council resolution. The council acted after consultations with three members of the Senate committee's staff who recently spent four days here looking into the bureau's acknowledged role in the strife between two rival factions of black activists. The agency has also been accused of providing money and weapons to a right-wing group for use in attacks on campus antiwar demonstrators.

The seven-member council, including Mayor Pete Wilson, has indicated that it is eager to determine to what extent the F.B.I. employed San Diego police officers in its covert activities, particularly members of the police "red squad" set up in the 1960's to infiltrate and disrupt dissident groups.

Information recently released by the Senate committee contained the texts of F.B.I. memos claiming responsibility for "a substantial share" of the San Diego disorders, as part of the bureau's nationwide domestic counterintelligence operation, known as Cointepro, that was begun in 1965.

Councilman Floyd Morrow, who introduced the resolution calling for a more penetrating inquiry into the bureau's activities here, said he had learned that San Diego police officers were used and paid by the F.B.I. to serve as informers and promote violence.

He said he also wanted to learn whether Federal agents had been responsible for anonymous death threats received by leaders of the black community, including a City Council member, Leon Williams, at a time when they were trying to pacify the rival factions, the Black Panthers and the U.S. Organization.

Mr. Morrow said that he felt the Senate committee had a duty to give full cooperation in "exposing this shameful conspiracy down to its deepest roots."

To assist the City Council, United States Attorney Terry J. Knoepp has asked the Department of Justice to make a "full disclosure" of the F.B.I.'s Cointepro activities here.

The local investigation of the racial disorders and the activities of the F.B.I.-sponsored right-wing terrorist group, known as the Secret Army Organization, will begin Feb. 28.

The warfare between the Black Panthers and the U.S. Organization, which the F.B.I. has admitted abetting in hopes that the two factions would destroy each other, took place in the spring and summer of 1969. Two members of the Pan-

ther Party were slain in the strife.

Later, in 1971 and 1972, according to evidence assembled by the Senate committee's investigators and supported by local court records, the F.B.I. sponsored the setting up of the Secret Army Organization and supplied it with money and weapons for attacks on campus leftists and antiwar demonstrators.

The F.B.I., according to subsequent court testimony, selected Howard B. Godfrey, a former San Diego fireman whom it had previously used as an informer in another militant right-wing organization, the Minutemen, to organize the Secret Army Organization.

Mr. Godfrey's attorney, Richard Turner, said after a Senate staff member's recent interview with his client in Sacramento that Mr. Godfrey was "taking the rap for the F.B.I."

Councilman Williams said he had told another Senate investigator of efforts by himself and several other black leaders to restore peace to the black community at a time when, unknown to them, the bureau was promoting further violence there.

"We were making progress in our efforts to cool things down, at a time when the F.B.I. was trying to increase the strife and bloodshed," he said.

Ron Karenga, now a professor of Afro-American Studies at San Diego State University, was national chairman of the U.S. Organization in 1969. He said that his group and the Panther had been trying to avoid bloodshed through negotiations, "then the F.B.I. stepped in and the shooting started."

(Indicate page, name of newspaper, city and state.)

N.Y. Times

P35

San Diego

Date: 2/8/76
Edition: Late City
Author:
Editor:
Title:

Character:
or
Classification:
Submitting Office:
☐ Being Investigated

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SENSTUDY 75

total
SA DANIEL A. FLYNN GAVE DEPOSITION ON SEPTEMBER 10,
1975, TO THE SENATE SELECT COMMITTEE. JAMES DICK, COMMITTEE
STAFF MEMBER, DESIRES TO HAVE SA FLYNN ATTEST TO THE ACCURACY
OF DEPOSITION BEFORE NOTARY PUBLIC. MR. DICK WILL CONTACT
SA FLYNN IN THE NEW YORK OFFICE AND MAKE ARRANGEMENTS IN
THIS REGARD. BUREAU APPROVAL IS GRANTED FOR SA FLYNN TO
ATTEST TO THE ACCURACY OF THE DEPOSITION.

END

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1- Hn. 2/12/76
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D. FLYNN - 41	
J. SULLIVAN - 48	

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FEB 18 1976

AIRTEL

TO: DIRECTOR, FBI (62-116395)
(ATTN: INTD - W.O. CREGAR)

FROM: ADIC, NEW YORK (62-15065)

SUBJECT: SENSTUDY 75

ReButeletype, 2/12/76.

Attached is one xerox copy of an affidavit signed by Special Agent DANIEL A. FLYNN on 2/13/76.

BEN MARSHALL, who identified himself as Chief of Security, Senate Select Committee, arrived at the New York Office on 2/13/76. He had in his possession the original of the transcript of Special Agent FLYNN's interview by Staff Counsel JAMES DICK. Each page of this transcript was classified "Top Secret". Two copies of the attached affidavit were attached to the transcript.

DOLORES O'BRIEN of the New York Office notarized Special Agent FLYNN's signature.

3 - Bureau (Enc. 1) (RM)
(1 - ATTN: INTD - W.O. CREGAR)

① - New York

DAF:tfb
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① - SUPERVISOR #41

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3/8/76

SAC DIV. IV

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