JFK ASSASSINATION SYSTEM

IDENTIFICATION FORM

AGENCY INFORMATION

AGENCY : FBI
RECORD NUMBER : 124-10185-10201

RECORDS SERIES :
SV

AGENCY FILE NUMBER : 66-1480-11TH NR THRU 24TH NR

DOCUMENT INFORMATION

ORIGINATOR :
FROM :
TO :

TITLE :

DATE : 00/00/00
PAGES : 0

SUBJECTS :

NAR

DOCUMENT TYPE :
CLASSIFICATION : U
RESTRICTIONS : NOT ASSASSINATION RELATED
CURRENT STATUS : P
DATE OF LAST REVIEW : 07/29/94

OPENING CRITERIA :
INDEFINITE

COMMENTS :

[R] - ITEM IS RESTRICTED

Date: August 2, 2021

From: National Archives and Records Administration

Subject: Reconstructed FBI File SV 66-1480, 11th NR-24th NR

To: The File

This memorandum briefly summarizes the status of missing original Federal Bureau of Investigation (FBI) case files or portions of case files in the President John F. Kennedy Assassination Records Collection (JFK Collection) and documents the National Archives and Records Administration's (NARA) efforts to reconstruct these records, where possible, from duplicate copies of documents located in other FBI files.

As the JFK Collection was first compiled and reviewed in the 1990s, the Assassination Records Review Board and the FBI designated some records as "not believed relevant" (NBR) or "not assassination related" (NAR). The FBI retained custody of the NBR/NAR records and postponed their transfer to NARA until a later date. Every document or group of documents ("serials"), however, received an indexed Record Identification Form (RIF) and FBI inventory sheet for insertion into the JFK Collection.

In September 2011, several years prior to the 2017 re-review and transfer of the NBR/NAR material to the National Archives, a flood severely damaged thousands of feet of records at the FBI's Alexandria Records Center in Alexandria, Virginia. In June 2012, NARA approved the FBI's request for emergency destruction of 10,000 cubic feet of records that posed significant airborne health hazards. Among the damaged records were FBI field office files that contained postponed JFK Collection material designated as "pertaining to a matter unrelated to the JFK Assassination Investigation" or "not assassination related."

This compilation represents NARA's efforts to reconstruct the original file or portions of the file, as completely as possible, with duplicate copies of documents located in the FBI field office and headquarters files within the JFK Collection. Each reconstructed file or compilation contains a Record Identification Form, an explanatory cover memo, existing administrative documents available within the JFK Collection, and copies of identified duplicate documents. The table below summarizes the status of FBI file SV 66-1480, 11th NR through 24th NR.

RIF Number	FBI File Number	List of Serials From Inventory Sheet	List of Identified Serials at NARA	Reconstructed Status (None, Partial, Complete)
124-10185-10201	SV 66-1480	11th NR-24th NR	11th NR-17th NR, 21st-22nd NR	Partial

FEDERAL BUREAU OF INVESTIGATION
POSTPONEMENT INFORMATION SHEET (JFK MATERIALS)

173 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion (these deletions).

[] Deletions were made pursuant to the postponement rationale indicated below with no segregable material available for disclosure. All references relate to Section 6 of the "President John F. Kennedy Assassination Records Collection Act of 1992."

- [] Subsection 1A (intelligence agent's identity)
- [] Subsection 1B (intelligence source or method)
- [] Subsection 1C (other matter relating to military defense, intelligence operations or the conduct of foreign relations)
- [] Subsection 2 (living person who provided confidential information)
- [] Subsection 3 (unwarranted invasion of privacy)
- [] Subsection 4 (cooperating individual or foreign government, currently requiring protection)
- [] Subsection 5 (security or protective procedure, currently or expected to be utilized)

[X] Information pertained to a matter unrelated to the JFK Assassination investigation.

[] For your information: _____

_____

[X] The following number is to be used for reference regarding this page (these pages):

SV 66-1480

XXXXXXXXXX
XXXXXXXXXX
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XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

JFK Inventory Sheet
(COMMITTEE FILES)

File #: SV 66-1480 - - **Section #:** 1 **Re:** CHURCH COMM.

Serial Number	Document Date	Document Type	Document From	Document To	3rd Agy	Other	Direct Dupes	ACTUAL	PERT.	Rev.	Rel.	With-held	FBI Ref 3rd Agy	Duplicate Location	Postponements
	03/24/75	TT	HQ	ALL SACS		1		1	0						NAR
	03/25/75	TT	SV	HQ		1		1	0						NAR
	05/02/75	TT	HQ	ALL SACS		2		2	0						NAR
	05/20/75	TT	HQ	ALL SACS		1		1	0						NAR
	05/28/75	MEMO	HQ	ALL EMPLOY		8		8	0						NAR
	09/04/75	TT	HQ	ALL SACS		3	3	6	0						NAR
	09/05/75	TT	HQ	AX		7	7	14	0						NAR
	09/07/75	TT	SV	HQ		1	1	2	0						NAR
	10/09/75	TT	HQ	ALL SACS		2		2	0						NAR
	10/21/75	STATEMENT	HQ			22		22	22	22	22				NONE
	11/21/75	RS	HQ	SV		1		1	0						NAR
	11/20/75	NEWS ARTIC	NY			1		1	0						NAR
	12/05/75	RS	HQ	SV		1		1	0						NAR
	12/02/75	TRANSCRIPT	CHURCH COM			61		61	0						NAR
	12/04/75	RS	HQ	SV		1		1	0						NAR
	12/02/75	TESTIMONY	CHURCH COM			14		14	0						NAR

Serial Number	Document Date	Document Type	Document From	Document To	3rd Agy	Other	Direct Dupes	ACTUAL	PERT.	Rev.	Rel.	With-held	FBI Ref 3rd Agy	Duplicate Location	Postponements
	12/10/75	TT	HQ	ALL SACS		4		4	0						NAR
	12/05/75	RS	HQ	SV		1		1	0						NAR
	12/09/75	NEWS ARTIC	SV			1		1	0						NAR
	12/06/75	NEWS ARTIC	SV			1		1	0						NAR
	12/30/75	RS	HQ	SV		1		1	0						NAR
	12/10/75	TRANSCRIPT	CHURCH COM			77		77	0						NAR
	12/05/75	LET	THIRD PART	ALL SACS		1		1	0						NAR
	12/05/75	LET	THIRD PART			8		8	0						NAR

Grand Totals.....	0	221	11	232	22	22	22	0

End of Report....

Routing Slip (Copies to Offices Checked)
0-7 (Rev. 12-17-73)

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RE: SENATE SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES

Date 11/21/75

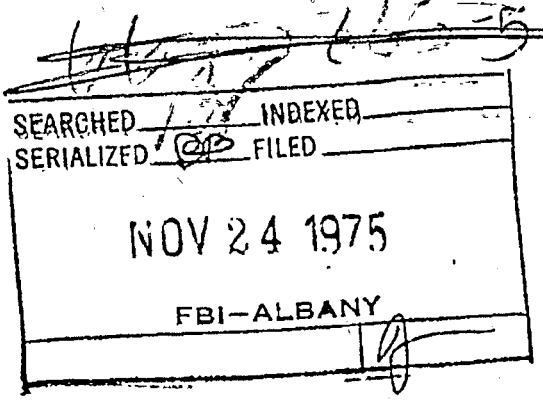
☐ For information ☐ Retention optional ☐ For appropriate action ☐ Surep, by _____

☐ 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:

Enclosed for your information is a copy of an article by Mr. William Safire entitled "Mr. Church's Cover-Up" that appeared in the November 20, 1975, issue of "The New York Times."



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62-236F-11B

Mr. Church's Cover-Up

By William Safire

ESSAY

WASHINGON, Nov. 19—On Oct. 10, 1963, the then-Attorney General of the United States put his personal signature on a document that launched and legitimatized one of the most horrendous abuses of Federal police power in this century.

In Senator Frank Church's subcommittee hearing room this week, the authorized wiretapping and subsequent unauthorized bugging and attempted blackmailing of Martin Luther King Jr. is being gingerly examined, with the "investigation" conducted in such a way as not to unduly embarrass officials of the Kennedy or Johnson Administrations.

With great care, the committee has focused on the F.B.I. Yesterday, when the committee counsel first set forth the result of shuffling through press clips, it seemed as if no Justice Department had existed in 1962; today, an F.B.I. witness pointed out that it was Robert Kennedy who authorized the wiretap of Dr. King, and that "the President of the United States and the Attorney General specifically discussed their concern of Communist influence with Dr. King."

But the Church committee showed no zest for getting further to the Kennedy root of this precedent to Watergate eavesdropping. If Senator Church were willing to let the chips fall where they may, he would call some knowledgeable witnesses into the glare of the camera lights and ask them some questions that have gone unasked for thirteen years.

For example, he could call Nicholas Katzenbach, Attorney General Kennedy's deputy and successor, and ask what he knows of the Kennedy decision to wiretap Dr. King. Who at Justice concurred in the recommendation? How does the F.B.I. know the President was consulted or informed?

After Mr. Katzenbach assumed office, and the wiretapping continued, he was told by angry newsmen that the F.B.I. was leaking scurrilous information about Dr. King. Why did he wait for four months, and for a thousand telephonic interceptions, to discontinue the officially approved tap?

Of course, this sort of testimony would erode Senator Church's political base. That is why we do not see former Assistant F.B.I. director Cartha (Deke) Deloach, Lyndon Johnson's personal contact with the F.B.I. in the witness chair. What did President Johnson know about the character-assassination plot and when did he know it? What conversations took place between Mr. Deloach and President Johnson on the tapping of Dr. King, or about the use of the F.B.I. in any other intrusions into the lives of political figures?

The committee is not asking embarrassing questions even when answers are readily available. A couple of weeks ago, at an open hearing, an F.B.I. man inadvertently started to blurt out an episode about newsmen who were wiretapping in 1962 with the apparent knowledge of Attorney General Kennedy. The too-willing witness was promptly shooshed into silence, and told that such information would be developed only in executive session. Nobody raised an eyebrow.

That pattern of containment by the Church committee is vividly shown by the handling of the buggings at the 1964 Republican and Democratic conventions which were ordered by Lyndon Johnson. Such invasions of political headquarters were worse than the crime committed at Watergate, since they involved the use of the F.B.I., but the Church investigators seem to be determined not to probe too deeply.

If F.B.I. documents say that reports were made to specific Johnson aides, why are those men not given the same opportunity to publicly tell their story so avidly given the next President's men? If Lyndon Johnson committed this impeachable high crime of using the F.B.I. to spy on political opponents, who can be brought forward to tell us all about it?

But that would cause embarrassment to Democrats, and Senator Church wants to embarrass professional employees of investigatory agencies only. A new sense of Congressional decorum exists, far from the sense of outrage expressed in the Senate Watergate committee's hearing room. When it is revealed that the management of NBC News gave press credentials to L.B.J.'s spies at the 1964 convention, everybody blushes demurely—and nobody demands to know which network executive made what decision under what pressure.

I have been haranguing patient readers for years about the double standard applied to Democratic and Republican political crimes, and had hoped the day would come when the hardball precedents set by the Kennedy and Johnson men would be laid before the public in damning detail.

Obviously, Democrat Frank Church is not the man to do it. His jowl-shaking indignation is all too selective: the trail of high-level responsibility for the crimes committed against Dr. King and others is evidently going to be allowed to cool.

Pity. You'd think that after all the nation has been through in the past few years our political leaders would have learned that the one thing that brings you down is the act of covering up.

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FILE in SECURITY FILE RK

62-2368-11A

(62-2885-11)

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____

NOV 24 1975

FBI—ALBANY

THE NEW YORK TIMES
THURSDAY, NOVEMBER 20th, 1975
PAGE C-41

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0-7 (Rev. 7-11-75)

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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

☐ For information ☐ Retention optional ☐ For appropriate action ☐ Surep, by _____

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☐ Enclosed are corrected pages from report of SA _____ dated _____

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.

Enc. (1)
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UNEDITED TRANSCRIPT

WFO 2-2368-16

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

UNEDITED TRANSCRIPT

Tuesday, December 2, 1975

Washington, D. C.

62-23688-16

66-2882

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

(202) 544-6000

Senator Tower.. The next witnesses to appear before the Committee are Mr. James Adams, Assistant to the Director-Deputy Associate Director, Investigation, responsible for all investigative operations; Mr. W. Raymond Wannall, Assistant Director, Intelligence Division, responsible for internal security and foreign counterintelligence investigations; Mr. John A. Mintz, Assistant Director, Legal Counsel Division; Joseph G. Deegan, Section Chief, extremist investigations; Mr. Robert L. Schackelford, Section Chief, subversive investigations; Mr. Homer A. Newman, Jr., Assistant to Section Chief, supervises extremist informants; Mr. Edward P. Grigalus, Unit Chief, supervises subversive informants; Joseph G. Kelley, Assistant Section Chief, Civil Rights Section, General Investigative Division.

Gentlemen, will you all rise and be sworn.

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

Mr. Adams. I do.

Mr. Wannall. I do.

Mr. Mintz. I do.

Mr. Deegan. I do.

Mr. Schackelford. I do.

Mr. Newman. I do.

Mr. Grigalus. I do.

Mr. Kelley. I do.

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

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

(A brief recess was taken.)

Senator Tower. The Committee will come to order.

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

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

TESTIMONY OF W. RAYMOND WANNALL, ASSISTANT DIRECTOR, INTELLIGENCE DIVISION, FEDERAL BUREAU OF INVESTIGATION

ACCOMPANIED BY: JAMES B. ADAMS, ASSISTANT TO THE DIRECTOR-DEPUTY ASSOCIATE DIRECTOR (INVESTIGATION); JOHN A. MINTZ, ASSISTANT DIRECTOR, LEGAL COUNSEL DIVISION; JOSEPH G. DEEGAN, SECTION CHIEF; ROBERT L. SCHACKELFORD, SECTION CHIEF; HOMER A. NEWMAN, JR., ASSISTANT TO SECTION CHIEF; EDWARD P. GRIGALUS, UNIT CHIEF; AND JOSEPH G. KELLEY, ASSISTANT SECTION CHIEF, CIVIL RIGHTS SECTION, GENERAL INVESTIGATIVE DIVISION

Mr. Wannall. Mr. Chairman, that is not FBI data that you have quoted. That was prepared by the General Accounting Office.

Senator Tower. That is GAO.

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

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

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

Senator Tower. It would be a relatively high percent[illegible] then?

Mr. Wannall. I would say yes. And your ques[illegible] criteria?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Adams. We did when we had the COINTELPRO 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 in effect at the time. We heard the term States Rights used much more then than we hear it today. We saw in the Little Rock situation the President of the United States, in sending in the troops, pointing out the necessity to use local law enforcement. We must have local law enforcement, to use the troops only as a last resort.

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

Sections 241 and 242 don't cover it because you don't have evidence of a conspiracy, and it ultimately resulted in a situation where the Department called in United States 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, and 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.

Senator Tower. 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 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 that didn't have to be a conspiracy. But this was a problem that the whole country was grappling with: the President of the United States, Attorney General. We were in a situation where we had rank lawlessness taking place, as you know from a 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.

Senator Tower. What was the Bureau's purpose in continuing or urging the continued surveillance of the Vietnam

Veterans Against the War?

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

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

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

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

Senator Tower. Mr. Hart?

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

statute.

Mr. Adams. I agree, Senator.

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

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

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

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

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

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

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

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

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

Mr. Adams. This is a problem.

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

Mr. Adams. Absolutely.

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

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

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

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

the meeting.

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

Mr. Adams. No, sir.

Senator Hart of Michigan. 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.

But this is our closest question of trying to draw guidelines to avoid getting into an area of infringing on the First Amendment rights of people, 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. But we have had periods where the demonstrations have been rather severe, and the courts have said that the FBI has a right, and indeed a 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.

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

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, and that's where I think most of our disagreements fall.

end 5

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

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

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

The informants reported on the planning for the meeting, the distribution of materials to churches and schools, participation by local clergy, plans to seek resolution on the ABM from nearby town councils. There was also informa[illegible] on

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

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

How do we get into all of that?

Mr. Adams. Well --

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

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

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

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

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

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

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

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

Mr. Adams. That's right.

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

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

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

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

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

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

Bureau files.

Is this what we want?

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

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

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

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

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

Mr. Wannall. Well, of course, we did not rely entirely on the Buffalo informant, but even there we did recei-

from that informant information which I considered to be significant.

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

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

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

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

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

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

Senator Hart of Michigan. Would the same logic follow?

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

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

And as soon as we got the report of the outcome of the meeting and the fact that in the period of some [illegible] we

discontinued any further interest.

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

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

Senator Mondale, pursue that question.

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

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

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

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

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

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

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

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

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

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

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

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

warrant. It seems to beg the question.

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

End Tape 6

Begin Tape 7

This is an option available to Congress.

Senator Tower. Senator Schweiker.

Senator Schweiker. Thank you very much.

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

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

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

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

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

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

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

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

I know we asked you several times but 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. If you have no objection, I'll ask him to answer that.

Senator Schweiker. All right.

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

problem today, we are an investigative agency. We do not have police powers like the United States marshalls do. About 1795, I guess, or some period like that, marshalls have had the authority that almost borders 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 to furnish 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 United States marshalls 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 righs 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 itself 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 there was a conspiracy available. We can 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 United States marshalls should make them, not the FBI, even though we developed the violations. And 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.

Senator Schweiker. What would be wrong, just following up your point there, Mr. Adams, with setting up a program since it's obvious to me that a lot of informers are going to have pre-knowledge of violence of using U.S. marshalls on some kind of a 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 marshalls are in Boston, they are in Louisville, I believe at the same time, and this is the approach, that the Federal government finally recognized, was the solution to the problem where you had to have added Federal import.

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

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

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

Mr. Adams. Well, fortunately, we're at a time where conditions have subsided in the country, even from the '60s and the '70s and periods -- or '50s and '60s. We report to the Department of Justice on potential troublespots 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've learned a lot from the days back in the early '60s. But the government had no mechanics which protected people at that time.

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

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

Why, Mr. Wannall, was this true?

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

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

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

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

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

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

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

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

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

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

Mr. Adams. Guy Goodwin was the Department official.

Senator Schweiker. Next I'd like to ask back in 1965, during the height of the effort to destroy the Klan, 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.

I believe these are either FBI figures or estimates. That would mean that one out of every five 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 of the Klan that year were FBI informants.

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

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

Mr. Adams. Well, this number 2,000 did include all racial matters, 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.

Now the problem we had on the Klan is the Klan had a group called the Action Group. This was the group that you remember from Mr. Rowe's testimony, that he was left after the meeting. He attended the open meetings and heard all of the hurrahs and this type of thing from 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, it takes, you have to direct as many informants as you possibly can against it. Bear in mind that I think the newspapers, the President and Congress and

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

Senator Schweiker. I acknowledge that.

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

These informants, as we told the Attorney General, and as we told the President, that we had 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 forewarn us of violence, could help us on cases that had transpired, and yet we knew and conceived that this could continue forever unless we can create enough disruption that these members will realize that if I go out and murder three civil rights workers, even though the sheriff and other law enforcement officers are in on it, if that were the case and with some of them it was the case, that I would be caught. And that's what we did and that's why violence stopped, was 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.

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

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

Mr. Adams. I'm not sure if that's the year. We did have one year where we had a number like that which probably had been 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, what next?

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

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

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

Senator Mondale?

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

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

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

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

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

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

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

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

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

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

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

Isn't sabotage a crime?

Mr. Adams. Sabotage is a crime.

Senator Mondale. Could you have investigated that?

Mr. Adams. After it happened.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

End Tape 7

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

Mr. Adams. Yes, I agree with that.

Senator Tower. Senator Huddleston.

Senator Huddleston. Thank you, Mr. Chairman.

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

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

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

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

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

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

Mr. Adams. That memorandum was not on Dr. King. That was on another individual that I thi[illegible] somehow got mixed up in the discussion, one where the issue was can we make people

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

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

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

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

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

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

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

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

Mr. Adams. Not necessarily.

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

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

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

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

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

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

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

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

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

This is Joe Deegan.

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

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

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

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

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

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

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

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

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

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

control you exercised over this kind of informant in this kind of an organization and to what extent an effort is made to prevent these informants from engaging in the kind of thing that you are 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 would no longer use him as an informant, in spite of the information he had furnished in the past.

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

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

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

Senator Huddleston. That's what he said.

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

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

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

and we have immediately converted their status from an informant to the subject, and have prosecuted I would say, offhand, 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 told me that they found one case where their 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.

Senator Huddleston. Well, Mr. Rowe's statement is substantiated to some extent with the acknowledgement by the agent in charge that if you're going to be a Klansman and you happen to be with someone and they decide to do something, that he couldn't be an angel. These were the 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 and would have to be involved if he was going to maintain his credibility.

Mr. Adams. There's no question but 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 don't recall it exactly, but some of them were beat with chains, and I didn't hear whether he said he beat someone with a chain or not, but I rather doubt that he did because it's one thing being present, and it's another thing taking an active part in criminal actions.

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

How does the gathering of information --

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

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

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

Senator Tower. Go ahead.

Senator Huddleston. I wanted to ask how the selection 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.

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

these instructions were given to an agent or an informant?

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

Senator Huddleston. Thank you, Mr. Chairman.

Senator Tower. Senator Mathias.

Senator Mathias. Thank you, Mr. Chairman.

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

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

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

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

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

Mr. Adams. Yes, sir.

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

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

Senator Mathias. And during the period that the relationship continues, they are rather closely controlled by the handling agents.

Mr. Adams. That's true.

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

Mr. Adams. They can do nothing --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Do you feel that this would be too restrictive?

Mr. Adams. Yes, sir, I do.

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

am I carrying out this?

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

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

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

Senator Tower. Without objection, so ordered.

(The material referred to follows:)

Senator Tower. Any more questions?

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

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

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

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

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RE: HEARINGS BEFORE THE SENATE SELECT COMMITTEE

Date December 4, 1975

- [ ] For information
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- [ ] Surep, by _____
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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.

"Responses by" file

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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

HANDLE AS SAC LETTER - FOR ALL AGENTS; done 12/16

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QUESTION: ....You do use informants and do instruct them to spread dissention 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 relaton 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 Lemul 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 enought 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.

NR050 WA PLAIN

10:34PM NITEL 12/10/75 GHS

TO ALL SACS

FROM DIRECTOR

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 SYNOPSIZED 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

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✓ KEEFE

✓ LONERGAN

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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.

(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

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

PLS ACK FOR 2 TELS

LVV FBI ALBANY

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RE:

Date 12/30/75

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

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☐ The enclosed is for your information. If used in a future report, ☐ conceal all sources, ☐ paraphrase contents.

☐ Enclosed are corrected pages from report of SA _____ dated _____

Remarks:

ReButel to all SACs and Legats, 12/10/75.

Enclosed for each Office and Legat is one copy of the transcript of questions which were asked Mr. Kelley during captioned appearance, along with Mr. Kelley's answers to those questions.

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Vol. 20

The United States Senate

Report of Proceedings

Hearing held before

Select Committee to Study Governmental Operations

With Respect to Intelligence Activities

INTELLIGENCE INVESTIGATION

Wednesday, December 10, 1975

Washington, D. C.

62-2368-47

WARD & PAUL
410 FIRST STREET, S. E.
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C O N T E N T

INTELLIGENCE INVESTIGATION

- - -

Wednesday, December 10, 1975

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

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

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

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

- - -

The Chairman. The Committee's witness this morning is

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

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

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

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

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

Kelley took charge.

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

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

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

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

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

STATEMENT OF THE HONORABLE CLARENCE M. KELLEY,

DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

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

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

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

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

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

Phone (Area 202) 544-6000

I believe we have lived up to those promises.

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

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

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

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

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

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

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

A Justice Department Committee which was formed last year

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to conduct a thorough study of the FBI's Counterintelligence Programs has reported that in the five basic ones it found 3,247 Counterintelligence Programs were submitted to FBI Headquarters from 1956 to 1971. Of this total, 2,370, less than three fourths, were approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I have instituted a program of open, frank discussion

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

Participatory management has become a fact in the FBI.

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

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

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

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

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

the appearances of impropriety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The FBI urgently needs a clear and workable determination

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

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

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

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

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

In this regard, I am troubled by some proposals which

question the need for intelligence gathering, suggesting that information needed for the prevention of violence can be acquired in the normal course of criminal investigations.

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

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

in turn, is dependent on advance information, that is, intelligence.

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

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

That is the substance of my prepared statement.

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

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

During the time I was with the FBI, during the time I was with the police department, I continued throughout that period a close acquaintance with and a strong affection for the FBI.

I only want to point out that based on those years, based on those observations, we have here a very fine and very sensitive and a very capable organization. I feel that there is much that can still be done. I know that we are not without fault. I know that from those experiences I have had. We will not be completely without fault in the future. But I assure you that we look upon this inquiry, we look upon any mandate which you may feel you have, that you should look at -- this is good and proper, and we do not intend -- I only want to place in your thinking the fact that you have here a matchless organization, one which I continue to say was not motivated in some of these instances, and in most of them, and I cannot justify some, that the motivation was of the

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

Thank you very much.

The Chairman. Thank you, Director Kelley.

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

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Senator Hart of Michigan. Thank you, Mr. Chairman. Senator Mathias and I have Judiciary Committee hearings at 10:30.

Iahve several questions, and I'm sure they'll be covered by others, but the ones that I have is a result of reading your testimony and listening to it this morning, and it relates to your comment at the foot of page 10 and at the top of 11.

There you are indicating that you caution us about extending the court's role in the early stages of investigations suggesting that this might take us beyound the role comtemplated for the courts under the Constutution.

Now as you have said, aside from the so-called national security wiretap problem, the main focus of our discussions and concern has been on the possibility requiring court approval for the use of informants, informants directed to penetrate and report on some group.

And one of the witnesses yesterday, Professor Dorsen, pointed our that really those informants are the most pervasive type of an eavesdropping device. It is a human device. It's really, an informant is really more intrusive on my privacy than a bug or a tap because he can follow me anywhere. He can ask me questions to get information the government would like to have.

Now we certainly involve the courts in approval of the wiretaps for physical searches with the intent of the drafters

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of the Constitution to have a neutral third party magistrate screen use of certain investigative techniques. And the informant is such a technique. He functions sort of like a general warrant, and I don't see why requiring court approval would violate the role envisaged for the courts.

And as I leave, I would like to get your reactions to my feelings.

Mr. Kelley. I do not feel that there is any use of the informant in intrusion, which is to this extent objectionable. It has of course been approved, the concept of the informant, by numerous court decisions.

Let us go down not to the moral connotation of the use of the informant.

I think, as in many cases, that is a matter of balance. You have only very few ways of solving crimes. You have basically in the use of the informant, I think, the protection of the right of the victim to be victimized. You have within the Constitution certain grants that are under ordinary circumstances abrogation of rights. The right of search and seizure, which, of course, can't be unreasonable, but nonetheless, you have the right.

I think that were we to lose the right of the informant, we would lose to a great measure our capability of doing our job.

Now I'm not arguing with you, Senator, that it is not an

unusual procedure. I'm not even going to say that it is not an intrusion, because it is. But it has to be one I think that is by virtue of the benefits must be counted.

We don't like to use it. We don't like the problems that are attendant. We take great care.

Now you say about the court having possibility taking jurisdiction over them and guiding. I think that possibly we could present the matter to the court but what are they going to do insofar as monitoring their effort? Are they going to have to follow it all the way through?

Also, there is, of course, urgency in the other contacts. Must the court be contacted for each and approval of the court given for each contact?

There are a great many problems insofar as administration of it.

I frankly feel, and again, all I can do is give you my idea -- I frankly feel that there is a satisfactory control over the informants as we now exercise it today. Yes, there are going to be some who will get beyond our control, but this is going to happen no matter what you do.

Senator Hart of Michigan. Well, I appreciate your reaction.

I was not suggesting that there is consideration here to prohibit informants. I was reflecting a view that I felt and hold that the use of an informant does require some balance, as

you yourself said, and I would be more comfortable with a third party making a judgment as to whether the intrusion is warranted by the particular circumstance. But I do understand your position.

Thank you, Mr. Chairman.

The Chairman. Thank you, Senator Hart.

(Senator Hart leaves the hearing room.)

The Chairman. Senator Baker, do you have questions?

Senator Baker. Mr. Chairman, thank you very much.

Mr. Kelley, I have a great respect for you and your organization and I personally regret that the organization is in political distress, but we've both got to recognize that it is, along with other agencies and departments of the government.

I think you probably would agree with me that even though that is extraordinarily unpleasant and in many respects unfortunate, that it also has a plus side. That is, it gives us an indication of our future direction and the opportunity, at least, to improve the level of competency and service of the government itself.

With that hopeful note, would you be agreeable then to volunteering for me any suggestions you have on how to improve the responsiveness of the Federal Bureau of Investigation, or indeed, for any other law enforcement agencies of the government, to the Congress, to the Attorney General, to the President, and

beyond that, would you give me any suggestions you have on how you would provide the methods, the access, the documents, the records, the authority, for the Congress to perform its essential, I believe, essential oversight responsibility to see that these functions, these delicate functions are being undertaken properly?

And before you answer, let me tell you two or three things I am concerned about.

It hasn't been long ago that the FBI Director was not even confirmed by the Senate of the United States. I believe you are the first one to be confirmed by the Senate of the United States. I think that is a movement in the right direction. I think the FBI has taken on a stature that, an additional importance that requires it to have closer supervision and scrutiny by us.

At the same time I rather doubt that we can become involved in the daily relationship between you and the Attorney General.

Therefore, I tend to believe that the Attorney General needs to be more directly involved in the operations of the FBI.

I would appreciate any comments on that.

Second, I rather believe that major decisions of the intelligence community and the FBI ought to be in writing, so that the Congress can, if it needs to in the future, take a

look at these decisions and the process by which they were made to decide that you are or you are not performing your services diligently.

I don't think you can have oversight unless you have access to records, and in many cases records don't exist and in some cases the people who made those decisions are now departed and in other cases you have conflicts.

How would you suggest then that you improve the quality of service of your agency? How would you propose that you increase the opportunity for oversight of the Congress of the United States? What other suggestions do you have for improving the level of law enforcement in the essential activity that is required?

Mr. Kelley. I would possibly be repetitious in answering this Senator, but I get a great deal of pleasure from telling what I think is necessary and what I hope that I have followed, one which is beyond my control, but which I think is very important is that the position of Director, the one to which great attention should be paid in choosing the man who will properly acquit himself.

I feel that the Judiciary Committee, at least in going over me, did a pretty good job. I feel that it is most necessary that care be taken that his philosophy, his means of management, his facility to adapt to change, his tendency toward consulting with other members of the official family,

that he be willing to, for example, go through oversight with no reticence, and that I think that he should be chosen very carefully.

I think further that he should be responsible for those matters which indicate impropriety or illegality.

Senator Baker. Could you stop for just a second? Who does he work for? Does the Director, in your view, work for the President of the United States, for the Attorney General, for the Justice Department, for the Executive Branch?

Who does the executive of the FBI, the Director of the FBI, be responsible to, who should he be responsible to?

Mr. Kelley. Jurisdictionally, to the Attorney General, but I think this is such an important field of influence that it is not at all unlikely that we can expand it to the judiciary, the legislative, and of course, we are under the Attorney General.

Senator Baker. Do you have any problems with the idea of the President of the United States calling the Director of the FBI and asking for performance of a particular task?

Does that give you any difficulty? Or do you think that the relationship between the FBI Director and the President is such that that is desirable, or should it be conduited through the Attorney General?

Mr. Kelley. I think it should be in the great majority of the cases conduited through the Attorney General. There

has been traditionally some acceptance of the fact that if the President wants to see and talk with the Director, he may do so, call him directly.

It has been my practice in such an event to thereafter report to the Attorney General, whoever it might be, that I have been called over and I discussed and was told. And this was revealed in full to them.

Senator Baker. I suppose we could pass a statute that says the President has to go through the Attorney General, although I rather suspect it would be a little presumptuous.

But to go the next step, do you think it is necessary for the pursuit of effective oversight on the part of the Congress, to have some sort of document written, or at least some sort of account of a Presidential order or an order of the Attorney General given to a Director of the FBI?

Do you think that these things need to be handled in a more formal way?

Mr. Kelley. Personally, it would be my practice in the event I receive such an order, to request that it be documented. This is a protection as well as a clarification as to whether or not it should be placed as part of legislation. I frankly would like to reserve that for some more consideration.

I don't know whether it would be, but I think that it can be worked very easily.

Senator Baker. Mr. Kelley, Attorney General Levi, I believe, has already established some sort of agency or function within the Department that is serving as the equivalent, I suppose, of an Inspector General of the Justice Department, including the FBI.

Are you familiar with the steps that Mr. Levi has taken in that respect? I think he calls it the Office of Professional Responsibility.

Mr. Kelley. Yes, sir, I'm familiar with it.

Senator Baker. Do you have any comment on that? Will you give us any observations as to whether you think that will be useful, helpful, or whether it will not be useful or helpful, how it affects the FBI, how you visualize your relationship to it in the future?

Mr. Kelley. I don't object to this, which is to some extent an oversight within the Department of Justice under the Attorney General.

Frankly, it just came out. I have not considered it completely, but to the general concept, yes, I very definitely subscribe.

Senator Baker. How would you feel about extending that concept of government-wide operation, a national Inspector General who is involved with an oversight of all of the agencies of government as they interface with the Constitutionally protected rights of the individual citizen? Would you care

to comment on that, or would you rather save that for a while?

Mr. Kelley. I would like to reserve that one.

Senator Baker. I'm not surprised. Would you think about it and let us know what you think about it?

Mr. Kelley. I will.

Senator Baker. All right. Mr. Chairman, thank you very much.

The Chairman. Senator Huddleston.

Senator Huddleston. Thank you, Mr. Chairman.

Mr. Kelley, you describe on page 4 the conditions that existed when much of the abuse that we have talked about during this inquiry occurred, indicating that the people within the Bureau felt like they were doing what was expected of them by the President, by the Attorney General, the Congress and the people of the United States.

Does not this suggest that there has been a reaction there to prevailing attitudes that might have existed in the country because of certain circumstances rather than any clear and specific direct instructions that might have been received from proper authorities? And if that is the case, is it possible in developing this charter, this guideline, to provide for that kind of specific instruction?

Mr. Kelley. I think so, yes. I think that they can logically be incorporated and that --

Senator Huddleston. You can see there would be a continuing

danger if any agency is left to simply react to whatever the attitudes may be at a specific time in this country because --

Mr. Kelley. Senator, I don't contemplate it might be a continuing danger, but it certainly would be a very acceptable guidepost whereby we can, in the event such a need seems to arise, know what we can do.

Senator Huddleston. Well, in pursuing the area which Senator Hart was discussing, that is whether or not we can provide sufficient guidelines would replace a decision by the court in determining what action might be proper and specifically in protecting individual's rights, can't we also provide the restrictions and guidelines and the various techniques that might be used?

For instance, supposing we do establish the fact, as has already been done, that informants are necessary and desirable. How do we keep that informant operating within the proper limits so that he in fact is not violating individual rights?

Mr. Kelley. Well, of course, much of the reliance must be placed on the agent and the supervision of the FBI to assure that there is no infringement of rights.

Senator Huddleston. But this is an aware we've gotten into some difficulty in the past. We have assumed that the particular action was necessary, that there was a present threat that some intelligence programs should be initiated, but

in many cases it has gone beyond what would appear to have been necessary to have addressed the original threat.

How do we keep within the proper balance there?

Mr. Kelley. Well, actually, it's just about like any other offense. It is an invasion of the other individual's right and it is by an officer and an FBI agent is an officer. There's the possibility of criminal prosecution against him.

This is one which I think might flow if he counsels the informant.

Now insofar as his inability to control the informant, I don't suppose that would warrant prosecution, but there is still supervisory control over that agent and over that informant by insisting that control is exercised on a continuing basis.

Senator Huddleston. It brings up an interesting point as to whether or not a law enforcement agency ought to be very alert to any law violations of its own members or anyone else.

If a White House official asks the FBI or someone to do something unlawful, the question seems to me to occur as to whether or not that is not a violation that should be reported by the FBI.

Mr. Kelley. I think that any violation which comes to our attention should either be handled by us or the proper authority.

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Senator Huddleston. But that hasn't been the case in the past.

Mr. Kelley. Well, I don't know what you're referring to but I would think your statement is proper.

Senator Huddleston. Well, we certainly have evidence of unlawful activity taking place in various projects that have been undertaken, which certainly were not brought to light willingly by the FBI or by other law enforcement agencies.

The question that I'm really concerned about is as we attempt to draw a guideline and charters that would give the Agency the best flexibility that they may need, a wide range of threats, how do we control what happens within each of those actions to keep them from going beyond what was intended to begin with?

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Mr. Kelley. You're still speaking of informants.

Senator Huddleston. Not only informants but the agents themselves as they go into surveillance, wiretaps, or whatever intelligence gathering techniques.

The original thrust of my question was, even though we may be able to provide guidelines of a broad nature, how do we control the techniques that might be used, that in themselves might be used, that in themselves might be a serious violation of the rights.

Mr. Kelley. Well, first, I don't know whether it's germane to your question but I do feel that it should be pointed out that the association to, the relationship between the informant and his agent handler is a very confidential one, and I doubt very seriously whether we could have any guidelines, where there might be an extension of any monitors here because thereby you do have a destruction of that relationship. Insofar as the activities of agents, informants or others which may be illegal, we have on many occasions learned of violations of the law on the part of informants, and either prosecuted ourselves, through the reporting of it to the United States Attorney, or turned it over to the local authority. We have done this on many a time, many occasions. Insofar as our own personnel, we have an internal organization, the Inspection Division, which reviews this type of activity, and if there be any violation, yes, no question about it, we would

pursue it to the point of prosecution.

Senator Huddleston. But it could be helped by periodic review.

Mr. Kelley. We do, on an annual basis, review the activities of our 59 offices through that same Inspection Division, and they have a clear charge to go over this as well as other matters.

Senator Huddleston. Mr. Kelley, you pointed out the difference in the approaches when gathering intelligence, in gathering evidence after a crime has been committed.

Would there be any advantage, or would it be feasible to attempt to separate these functions within the Agency, in the departments, for instance, with not having a mixing of gathering intelligence and gathering evidence? Are the techniques definable and different?

Mr. Kelley. Senator, I think they are compatible. I see no objection to the way that they are now being handled on a management basis. I think, as a matter of fact, it is a very fine association whereby the intelligence, stemming as it does from a substantive violation, is a natural complement.

Senator Huddleston. Now, another area, the FBI furnishes information to numerous government agencies.

Is this properly restricted and controlled at the present time in your judgment as to just who can ask the FBI for information, what kind of information they can ask for, and

who might also be inclined to call the Director and ask him to do specific things?

Could there be some clearcut understanding as to whether or not the Director would be obligated to undertake any such project, that just anybody at the White House might suggest?

Mr. Kelley. It's very clear to me that any request must come from Mr. Buchen's office, and that it be, in any case, wherein it is a request for action, that it be followed with a letter so requesting.

This has come up before during the Watergate hearings, as I think it has been placed very vividly in our minds, in take care that you just don't follow the request of some underling who does not truly reflect the desire of the President.

Senator Huddleston. Just one more question about techniques, aside from the guidelines of authority on broad projects undertaken.

Would it be feasible from time to time in a Congressional oversight committee, would be able to discuss with the Department, with the Bureau various techniques so that they could have some input as to whether or not these actions are consistent with the overall guidelines, to start with, and consistent with the very protections?

Mr. Kelley. Senator, I have already said to the oversight committee of the Senate that so far as I can now see, the only thing that would be withheld is the identity of

probably even more importantly, what restrictions can be put on the use of that information once it has been supplied by the FBI?

Mr. Kelley. I think so, Senator.

Senator Huddleston. You think there are proper restrictions now?

Mr. Kelley. I don't know that we can ourselves judge in all cases whether or not there is good and sufficient reason for an Agency to inquiry. I think that there should be a very close delineation by the agencies as to what they're going to ask for, but I think that we do have sufficient rules that at least to us we are satisfied.

Senator Huddleston. You're confident that the information your agency supplies is not being misused, to the detriment of the rights of any individuals.

Mr. Kelley. Senator, I'm only confident in what I do myself. I would say that I am satisfied.

Senator Huddleston. I was wondering whether some inclusion ought to be made in whatever charter is made as to who specifically can request, what limits ought to be placed on what the request, and what they can do with it after they get it.

Mr. Kelley. Yes.

Senator Huddleston. I have some concern about the fact that in intelligence gathering, you gather, you are just

bound to gather a great deal of information about some individual that is useless as far as the intent of the intelligence gathering is concerned, but might be in some way embarrassing or harmful to the individual, whether or not there's any effort to separate this kind of information out of a person's file that is really initiated for a purpose, for a specific purpose unrelated to this information.

Is there any effort, or could any direction be given to doing that?

Mr. Kelley. We would be very happy to work under the guidelines or rules or anything else to purge material which is extraneous, irrelevant, or for any other reason objectionable.

Senator Huddleston. And how about the length of time that these files are kept in the agency?

Mr. Kelley. We are willing to work within that framework, too.

Senator Huddleston. I think that might be done.

Now, I think in developing the chain of command, so to speak, it certainly would be very difficult to prevent the President of the United States from calling up the head of the FBI or anyone else and discussing any law enforcement problem he might so desire, and perhaps even give direction to the agency.

But how about that? What about White House personnel

informants. We'll discuss techniques, we'll discuss our present activities. I think this is the only way that we can exchange our opinions and get accomplished what you want to accomplish and what I want to accomplish.

Senator Huddleston. I feel that is an important aspect of it because even though you have a charter which gives broad direction for all the guidelines and to the types of projects that enter into it, if we don't get down to specifics, such things as how intelligence is to be collected, how evidence is to be collected, what is done after it is collected, this type of thing, it seems to me we are leaving a wide gap again for the Bureau to assume that it has total instruction and total permission to move in a certain direction and go beyond what is intended or what was authorized.

Thank you, Mr. Chairman, and Mr. Director.

The Chairman. Senator Goldwater?

Senator Goldwater. Mr. Kelley, as part of the FBI electronic surveillance of Dr. King, several tapes of specific conversations, and later a composite King tape were produced.

Are these tapes still in the possession of the FBI?

Mr. Kelley. Yes, sir.

Senator Goldwater. Have they been reviewed by you?

Mr. Kelley. No, sir.

Senator Goldwater. Have they been reviewed by any of your

staff, to your knowledge?

Mr. Kelley. Senator, I think that they have been reviewed. I know that at least some have reviewed it within the area of this particular section. There has been no review of them since I came to the FBI, I can tell you that.

Senator Goldwater. Would these tapes be available to the Committee if the Committee felt they would like to hear them?

Mr. Kelley. This, Senator Goldwater, is a matter which is of, as I said before, some delicacy, and there would have to be a discussion of this in an executive session.

The Chairman. I might say in that connection that the Committee staff gave some consideration to this matter and decided that it would compound the original error for the staff to review the tapes, because that would be a still further invasion of privacy, and so the staff refrained from insisting on obtaining the tapes, believing that it was unnecessary, and quite possibly improper, in order to get at what we needed to know about the King case.

So the staff did refrain, and for that reason the issue never came to a head. I just wanted to lay that information before the Senator.

Senator Goldwater. I realize that's a prerogative of the staff, but it's also the prerogative of the Committee if, and I'm not advocating it, if we wanted to hear them to

ourselves whether Mr. Hoover was off on a wild goose chase or whether there was, in effect, some reason. Again, I am not advocating it, I am merely asking a question. They would be available if the Committee took a vote to hear them and decided on it.

Mr. Kelley. I don't think it would be within my jurisdiction to respond to this, Senator. It would have to be the Attorney General.

Senator Goldwater. I see.

Now, are these tapes and other products of surveillance routinely retained even after an individual ceased to be a target of inquiry?

Mr. Kelley. They are retained usually for ten years.

Senator Goldwater. Ten years.

Mr. Kelley. Yes, sir.

Senator Goldwater. What is the future value, if any, to the Bureau of retaining such information?

Mr. Kelley. If there be guidelines that set out a destruction or erasure,we will abide by it. We will, on those occasions where we think that matters might come up within that period of time which may need the retention of them, we will express our opinion at that time, but other than that we would be guided by guidelines.

Senator Goldwater. Is it your view that legitimate law enforcement needs should outweigh privacy considerations

with respect to retention of such information, or do we need the clear guidelines on the destruction of these materials when the investigation purposes for which they were collected have been served?

Mr. Kelley. We feel that there should be a good close look at the retention of material, and we would of course like to have an input. But we welcome consideration of this.

Senator Goldwater. That is all I have, Mr. Chairman. Thank you very much.

The Chairman. Thank you, Senator.

Senator Mondale?

Senator Mondale. Mr. Director, it seems to me that the most crucial question before the Congress is to accept the invitation of the FBI to draw Congressionally imposed lines, limits of authority so the FBI will know clearly what you can and cannot do, so you will not be subject to later judgments, and the question is, where should that line be drawn?

As you know, in 1924 when the FBI was created, and Mr. Stone later became the Chief Justice, he drew the line at criminal law enforcement. He said that never again will we go beyond the authority imposed upon us to get into political ideas. We will stay in the area of law enforcement.

Would you not think it makes a good deal of sense to draw the guidelines in a way that your activities are restricted to the enforcement of the law, investigations of

crime, investigations of conspiracies to commit crime rather than to leave this very difficult to define and control area of political ideas?

Mr. Kelley. I don't know whether I understand your last statement of involving the area of political ideas. I say that I feel that certainly we should be vested and should continue in the field of criminal investigations as an investigatory objective. These are conclusions, of course, which are based on statutes in the so-called security field, national or foreign.

These are criminal violations. I feel that they should be in tandem. I feel, having worked many years in this atmosphere, that you have more ears and eyes and you have more personnel working together, covering the same fields. I do not think there should be a separation of the intelligence matters, because it is a concomitant. It naturally flows from the investigation of the security matters and the criminal.

Senator Mondale. Mr. Kelley, what Mr. Stone said was this, that the Bureau of investigation is not concerned with political or other opinions of individuals. It is concerned only with such conduct as is forbidden by the laws of the United States. When the police system goes beyond these limits, it is dangerous to proper administration of justice and human liberty.

Do you object to that definition?

Mr. Kelley. I think that life has become much more sophisticated and we have added to the so-called policeman's area of concern some matters which were probably not as important at that time. I think that the fact that the FBI has been in touch with the security investigations and the gathering of intelligence is something which has proved to be at times troublesome and given us great concern, but it is a viable, productive procedure.

I don't know what Mr. Stone was thinking of entirely of this course, but I can tell you about the procedure today.

Senator Mondale. You see, I think you recognize, if that further step is taken, as you're recommending here, that at that point it becomes so difficult to guarantee, and in fact, in my opinion, impossible to guarantee that we won't see a recurrence of some of the abuses that we've seen in the past, and I don't know how you establish any kind of meaningful oversight on a function as nebulous as the one you've just defined.

If the FBI possesses the authority to investigate ideas that they consider to be threats to this nation's security, particularly in the light of the record that we have seen how that definition can be stretched to include practically everybody, including moderate civil rights leaders, war dissenters and so on, how on earth can standards be developed

that would provide any basis for oversight?

How can you, from among other things, be protected from criticism later on that you exceeded your authority or didn't do something that some politician tried to pressure you into doing?

Mr. Kelley. It might well be, Senator, that ten years from now a Director of the FBI will be seated here and will be criticized for doing that which today is construed as very acceptable.

Senator Mondale. Correct. And I have great sympathy for the predicament the FBI finds itself in.

Mr. Kelley. And the Director.

Senator Mondale. And the Director especially, and that is why I think it's in the interest of the FBI to get these lines as sharply defined as possible, so that when you are pressured to do things, or when, after the fact, people with good 20/20 hindsight can criticize you or the Bureau, that you can say well, here are the standards that you gave us, and they specifically say this, and that is your answer. We have to live by the law. If we don't define it specifically, it seems to me that these excesses could reoccur, because I don't think it's possible to define them, and the FBI is inevitably going to be kicked back and forth, depending on personal notions of what you should have done.

Don't you fear that?

Mr. Kelley. Not too much, Senator. I think we learned a great lesson by virtue of Watergate, the revelations that have come up as a result of this Committee's inquiries, the fact that I think that we have a different type of spirit today in the Bureau, the fact that, as I said before you came in, that I think the Bureau is a matchless organization, and they are eager to do that which is vital and proper, and the fact that we are getting a number of very fine young people in the organization, people of the other ethnic backgrounds than we had years ago. I think there is a greater understanding in the Bureau today of what is the proper type of conduct.

We may not be able to project this on all occasions, because we must equate this with the need and with our experience, but if the precise guidelines be the goal, you're going to have trouble. If, on the other hand, there be a flexibility, I think that we can work very well within those guidelines.

Senator Mondale. I think, as you know, I don't think there is a better trained or higher professionally qualified law enforcement organization in the world than the FBI. I think we all agree it is superb. But the problem has been, from time to time, that when you go beyond the area of enforcing the law into the area of political ideas, that you are subject to and in fact you leave the criminal field, you get into politics. And that is where, it seems to me, that the

great controversy exists, and where you are almost inevitably going to be subjected to fierce criticism in the future, no matter how you do it. Once you get into politics, you get into trouble.

Mr. Kelley. I agree to that, and I point out that in almost every branch of the government and in every part, as a matter of fact, every segment of our society, there are some who deviate from the normal course. I feel that within the Bureau there is less likelihood of this to happen, and I think that working with you we can at least make some achievements that will be significant.

Now, whether it be lasting, I don't think so, but I think we've made a good start.

Senator Mondale. In your speech in Montreal on August 9th, you said we must be willing to surrender a small measure of our liberties to preserve the great bulk of them.

Which liberties did you have in mind?

Mr. Kelley. Well, of course, this speech has been misunderstood many, many times.

Senator Mondale. Well, I want you to have a chance to clear it up.

Mr. Kelley. All that was intended here was a restatement of the approach which the courts historically have used in resolving most issues of Constitutional importance, and its recognition that rights are not susceptible to absolute

protection. It's a matter of balance. Even in the Fourth Amendment, for example, which protects the right of privacy, it does not prohibit searches and seizures. I mention, it only refers to those that are unreasonable.

I came from the police fiedd. What is more restrictive to more people than traffic regulation? But what would be more chaotic is of you did not have traffic regulation. We do have to , in order to love in the complexities and intricacies of today's life, have to give up some of our rights.

Some may construe this as an extravagant statement. If it is os, I wish to say that I only was pointing out that there has to be a balance.

Senator Mondale. So that when you say we have to give up some liberties, or as you just said, some rights, what you mean -- let me ask. Let me scratch that and ask again, you have to give up some tights. Which rights would you have us give up?

Mr. Kelly. Well, under the Fourth Amendment you would have the right for search and seizure.

Senator Mondale. You wouldn't give up the Fourth Amendment right.

Mr. Kelley. Oh, no not the right.

Senator Mondale. What right do you have in mind?

Mr. Kelley. The right to be free from search and seizure.

Senator Mondale. There's no such right in the Constitution. You can have such seizures, but they must be reasonable, under court warrant.

Did you mean to go beyond that?

Mr. Kelley. That's right.

Senator Mondale. That you should be able to go beyond that?

Mr. Kelley. No, no. I do not mean that we should ever go beyond a Constitutional right guarantee.

Senator Mondale. Well, would you say, Mr. Kelley, that that sentence might have been inartful in your speech?

Mr. Kelley. I said that if it was misunderstood, I made a mistake, because I should never make a statement which -- yes, it was inartful.

Senator Mondale. I think I know about your record in law enforcement well enough to tell you that I think you were saying something different, that it was taken to mean something different than I think you intended.

What you are saying is that in the exercise of your law enforcement powers, the rights of individuals is determined by the laws and the courts, but the courts, in the handling of those issues, have to balance rights and other values.

That's what you're essentially saying, is that correct?

Mr. Kelley. Senator, I ought to have you write my speeches so that I don't have any misunderstandings. I didn't

understand that to be at the time anything that was unusual. I have to admit that maybe I made a mistake.

Senator Mondale. What you are saying in effect is that in effect, the rights of the American people can be determined not by the Director of the FBI but by the courts and by the law.

You meant that.

Mr. Kelley. Indeed, yes, sir.

Senator Mondale. All right.

Thank you.

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The Chairman. Senator Hart.

Senator of Colorado. Mr. Kelley, in response to a question by Senaotr Mondale, one of his first questions about laying down guidelines, it seems to me what you were saying was we could work together. That is to say the Bureau and the Congress, lay down guidelines that would not unreasonably hamper you from investigations of crime control in the country.

But I think implicit in his question was also an area that you didn't respond to, and that is how do you, what kind of guidelines do you lay down to protect you and the Bureau from political pressure, the misuse of the Bureau by political figures, particularly in the White House?

And we've had indications that at least two of your predecessors, if not more, obviously were corrupted and Mr. Gray was under great pressure from the White House to use the facilities of the Bureau and their capabilities to accomplish some plititcal end.

Well, it seems to me you were arguing in favor of fewer restrictions so you could get on with your job, but that is not what Senator Mondale and the rest of us are interested in.

What kind of restrictions can we lay down to protect you from political pressures? I'd be interested in that sign of the coin, if you would.

Mr. Kelley. I would welcome any guidelines which would

protect me or any successor from this type of thing. I think that would be splendid. I have not reviewed the guidelines as prepared to the present date by the Department. It might be that they are well defined in there. But I welcome any consideration of such directives.

Senator Hart of Colorado. Do you think this is a problem?

Mr. Kelley. No, sir, not with me.

Senator Hart of Colorado. Do you think that it has been a problem for the people that preceded you?

Mr. Kelley. I think so.

Senator Hart of Colorado. And that's a problem the Congress ought to address?

Mr. Kelley. I think so.

Senator Hart of Colorado. The Committee received a letter from the Department of Justice a couple of days, the Assistant Attorney General asking our cooperation in carrying out the investigation or their efforts to review the investigation conducted by the FBI into the death of Martin Luther King, Jr., in order to determine whether that investigation should be re-opened. They asked our cooperation, they asked for our transcripts, the testimony before the Committee, all material provided to the Committee by the FBI which relates to Dr. King and the Southern Christian Leadership Conference.

I guess my question is this: Why is the Justice Department asking this Committee for FBI files?

Mr. Kelley. I don't think they're asking for files. I think they're asking for what testimony was given by witnesses whose testimony has not been given up. I don't know.

Senator Hart of Colorado. I'll quote it. "And all material provided to the Committee by the FBI which relates to Dr. King and the Southern Christian Leadership Conference."

I repeat the question. Why is the Justice Department asking this Committee for material provided to us by the FBI?

Mr. Kelley. Frankly, I don't know. Do you mind if I just ask --

(Pause)

Mr. Kelley. I am informed, and I knew this one. Everything that was sent to you was sent through them. Did they have a copy also? Yes, they had a retained copy. I don't know why.

Senator Hart of Colorado. So there's nothing you provided us that's not available to the Justice Department?

Mr. Kelley. That's right.

Senator Hart of Colorado. And you can't account for why an official of the Justice Department would ask this Committee for your records?

Mr. Kelley. No, sir.

Senator Hart of Colorado. You released a statement on November the 18th of '74 regarding the FBI's counter-intelligence

program and you said you made a detailed study of COINTELPRO activities and reached the following conclusions, and I quote:

"The purpose of these counter-intelligence programs was to prevent dangerously and potentially deadly acts against individuals, organizations and institutions both public and private across the United States."

Now we had an FBI informant in the other day before this Committee and he stated he told the FBI on a number of occasions he planned violent acts against black people in groups. And yet, he said few, if any, instances in which the FBI actually prevented violence from taking place.

How does his testimony square with your statement that I have quoted?

Mr. Kelley. It doesn't, and I don't know if any of his statements contrary to what we have said is the truth. We don't subscribe to what he said. We have checked into it and we know of no instances where, for example, 15 minutes and that type of thing has been substantiated.

Senator Hart of Colorado. You're saying the testimony he gave us under oath was not accurate?

Mr. Kelley. Right.

Senator Hart of Colorado. You also said in that statement, and I quote: "I want to assure you that Director Hoover did not conceal from superior authorities the fact that the FBI was engaged in neutralizing and disruptive tactics against

revolutionary and violence-prone groups.

Now the Committee has received testimony that the New Left COINTELPRO programs was not in fact told to higher authorities, the Attorney General and Congress.

Do you have any information in this regard?

I know in that statement you cite onw or two instances, but in terms of the bulk of COINTEL programs, the record seems to date at least to be clear that there was not systematic information flowing upward through the chain of command to Director Hoover's superiors?

Mr. Kelley: May I ask that I be given the opportunity to substantiate that with documentation?

Senator Hart of Colorado. Sure.

Mr. Kelley: Or respond to it.

Senator Hart of Colorado. Dorector Kelley, just in passing, do you agree with the statement made by President Ford that those responsible for harassing and trying to destroy Dr. King should be brought to justice.

Mr. Kelley. Those who directly responsible and upon whcse orders the activities were taken responsible. I don't know if he intended to say that, but if he did not, I would say that it would be more proper. Insofar as my own opinion is concerned, that it be centered on those who said to do it and those who are responsible.

I took the responsibility for any such program and I don't expect that those under me would be not acting in

accordance with what they think is proper and may even have some reservation, but they do it on my orders. I accept that responsibility.

I think that it should rest on those who instructed that that be done.

Senator Hart of Colorado. But you agree that the people who give the orders should be brought to justice.

Mr. Kelley. I do.

The Chairman. Aren't they all dead?

Mr. Kelley. No.

The Chairman. Not quite?

Mr. Kelley. Not quite.

Senator Hart of Colorado. That's all, Mr. Chairman.

The Chairman. Thank you, Senator.

Director Kelley, in the Committee's review of the COINTELPRO program and other political involvements of the FBI, it seems to me that we have encountered two or three basic questions.

Since the investigation is over insofar as the Committee is concerned, we're now turning our attention to remedies for the future, what I would think would be our constructive legislative work, it is very important that we focus on what we learned in that investigation.

And one thing that we have learned is that Presidents of the United States have from time to time ordered the FBI to

obtain for them certain kinds of information by exercising the necessary surveillance to obtain and to have a purely political character, that they simply wanted to have for their own personal purposes.

I think that you would agree that that is not a proper function of the FBI, and you agree.

Yet it's awfully difficult for anyone in the FBI, including the Director, to turn down a President of the United States if he receives a direct order from the President. It is always possible, of course, to say no, and if you insist, I will resign. But that puts a very hard burden on any man serving in your position, particularly if the President puts a good face on the request and makes it sound plausible or even invents some excuse. It is always easy for him to say, you know, I am considering Senator White for an important position in my administration, and I need to know more about his activities, particularly of late. I've had some cause for concern and I want to be certain that there is nothing in his record that would later embarrass me, and I just want you to keep careful track of him and report to me on what he's been doing lately.

It's difficult for you to say back to the President, Mr. President, that's a very questionable activity for the FBI, and I frankly don't believe that you've given me the real reason why you want this man followed. I think his opposition

to your current policy is politically embarrassing to you and you want to get something on him.

I mean, you know, the Director can hardly talk back that way, and I'm wondering what we could do in the way of protecting your office and the FBI from political exploitation in this basic charter that we write.

Now, I want your suggestions, but let's begin with one or two of mine. I would like your response.

If we were to write into the law that any order given you either by the President or by the Attorney General should be transmitted in writing and should clearly state the objective and purpose of the request and that the FBI would maintain those written orders and that furthermore they would be available to any oversight committee of the Congress. If the joint committee on intelligence is established, that committee would have access to such a file.

So that the committee itself would be satisfied that orders were not being given to the FBI that were improper or unlawful.

What would you think of writing a provision of that kind into a charter for the FBI?

Mr. Kelley. I would say writing into the law any order issued by the President that is a request for action by the Attorney General should be in writing, is certainly, in my opinion, is a very plausible solution. I'm sure that in

contemplation of this there would be some that will say yes or some that will say no, but I think we could define an area where you are trying to cure the abuses and we could do that.

Now as to the availability to any oversight committee of Congress, I would say generally that I certainly would have no objection to this, but I again, there may be some request for something of high confidentiality that the President might put in writing such as some national or foreign security matter.

I would like to have such a consideration be given a great deal of thought and that the oversight committee review be conditioned with that possibility. I don't think it would present a problem.

I have said previously that I feel I can discuss everything except the identity of the informants to the oversight committee. I welcome that.

The Chairman. Well, that has been of course the way we proceeded with this Committee. It has worked pretty well, I think.

Now Senator Goldwater brought up a question on the Martin Luther King tapes. I would like to pursue that question.

If these tapes do not contain any evidence that needs to be preserved for ongoing criminal investigations, and since Dr. King has long since been violently removed from the scene,

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why are they preserved? Why aren't they simply destroyed? Is there a problem that we can help through new law to enable the FBI to remove from its files so much of this information that is has collected that it is no longer needed or may never have connected the person with any criminal activity? And yet, all of that information just stays there in the files year after year.

What can we do? How can a law be changed? If that's not the problem, then what is? Why are these tapes still down there at the FBI?

Mr. Kelley. Well, of course, we do have the rule that they are maintained ten years. Now why the rule is your question and why right now are they maintained? Since we do maintain everything since the inquiry has started and until that's lifted, we can't destroy anything.

I would say that this is a proper area for guidelines or legislation and again, as I have said, there should be some flexibility and I know that's a broad statement but there might be some areas wherein that the subject of the investigation himself may want them retained because it shows his innocence.

I think you have to deliberate this very carefully, but it can be done and we are willing to be guided by those rules.

The Chairman. Let me ask you this. The FBI is conducting thousands of investigations every year on possible appointees

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to Federal positions. As a matter of fact, the only time I ever see an FBI agent is when he comes around and flashes his badge and asks me a question or two about what I know of Mr. so and so, who's being considered for an executive office. And we have a very brief conversation in which I tell him that as far as I know, he's a loyal and patriotic citizen, and that is about the extent of it.

Then when this file is completed and the person involved is either appointed or not appointed, what happens to that file? I know it's full of all kinds of gossip because it is in the nature of the investigation to go out to his old neighborhoods and talk to everybody who might have known him.

What happens to the file? Is that just retained forever?

Mr. Kelley. We have some capability of destroying some files and they are rather lengthy insofar as retention. We have some archival rules which govern the retention of mateial and is developed in cases involving certain members of the Executive Branch of the government.

I see no reason why this would not be a proper area for consideration of legislation.

The Chairman. Can you give me any idea of how much -- do you have records that would tell us how much time and money is being spent by the FBI just in conducting these thousands of routine investigations on possible Presidential appointments to Federal offices?

Mr. Kelley. I feel confident we can get it. I do not have it now, but if you would like to have the annual cost for the investigation of Federal appointees --

The Chairman. Yes. Plus, you know, plus any other information that would indicate to us what proportion of the time and effort of the FBI was absorbed in this kind of activity.

Mr. Kelley. I can tell you it is relatively small, but I can get you, I think, the exact amount of time and the approximate expense.

The Chairman. I wish you would do that because this is a matter we need more information about. And when you supply that data to the Committee, would you also supply the number of such investigations each year?

You know, I don't expect you to go back 20 or 25 years, but give us a good idea of the last few years. For example, enough to give us an idea of how much time and how broad the reach of these investigations may be.

Mr. Kelley. Through '70?

The Chairman. That would be sufficient, I would think.

The other matter that is connected to this same subject that I would like your best judgment on is whether these investigations could not be limited to offices of sensitivity. That is to say where legitimate national security interest might be involved so that there is a reason to make a close check on

past associations, attitudes and expressions of belief.

I have often wondered whether we couldn't eliminate routine Federal offices that are not particularly sensitive in the national security sense from the reach of these FBI checks.

And so when you respond to the series of questions, I wish you would include the offices that are now covered by such checks and give us an idea of how far down into the Federal bureaucracy this extends.

Could you do that?

Mr. Kelley. Yes, sir.

The Chairman. Fine.

Now there is a vote. The vote always comes just at the wrong time, but Mr. Schwarz wants to ask you some additional questions for the record, and there may be other questions, too that would be posed by the staff, after which I will ask Mr. Schwarz to adjourn the hearings. It looks like we're going to be tied up on the floor with votes.

But before I leave I want to thank you for your testimony, Mr. Kelley, and to express my appreciation to you for the way you have cooperated with the Committee in the course of its investigation during the past months.

Mr. Kelley. Thank you.

The Chairman. And I hope, as you do, that as a result of the work of the Committee we can write a generic law for

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the FBI that will help to remedy many of the problems we'll encounter in the future.

End Tape 4

Thank you.

Mr. Schwarz. Mr. Kelley, I'll try to be very brief.

On page 5 of your statement --

Mr. Kelley. What?

Mr. Schwarz. On page 5 of your statement, the third full paragraph, you said the following, and I would like then to question about what you said. "We must recognize that situations have occurred in the past and will arise in the future where the Government may well be expected to depart from its traditional role, in the FBI's case, as an investigative and intelligence-gathering agency, and take affirmative steps which are needed to meet an imminent threat to human life or property."

Now, by that you mean to take what kind of steps in what kind of situation?

And can you give some concrete examples under your general principles statement?

Mr. Kelley. I think that Mr. Adams addressed himself to that the other day, where you have an extremist who is an employee at the waterworks, and he makes a statement that he's going to do something which is devastating to the city, and you have no way to attack this under the ordinary procedures, and so therefore you must take some steps to meet that imminent threat to human life or property.

Mr. Schwarz. So let us take that case as a test of the principle. You are saying the extremist has said he is going

to do something to the waterworks, poison it or something, and he is on the way down there with the poison in his car.

Is that the presumption?

Mr. Kelley. We hadn't gone that far, but all right, you can extent it.

Mr. Schwarz. All right, now, in that case you have the traditional law enforcement tool, which is the power of arrest.

Mr. Kelley. Not under probable cause where he has not gone down there. The hypothetical we gave was one where he had not taken any overt acts in perpetration of this.

Mr. Schwarz. Well, if he hasn't taken any overt acts, are you then in what you would call in imminent threat of human life or property?

Mr. Kelley. I think so.

Mr. Schwarz. How so? Unless he has taken an overt act to buy the poison or to get in the car with the poison, there is not by definition any threat to life or property.

Mr. Kelley. Mr. Schwarz, I've been around in this business a long time. I've heard a number of threats which were issued, and they thereafter materialized into actions. I don't think -- take these threats as being empty ones, because so many times they have been acted upon.

I was criticized one time when there was a threat made to kill me, and it was said later on, it's not rhetoric, it's not rhetoric to me, because when they say they're going to

kill me, that just means one thing.

Mr. Schwarz. But I'm not disagreeing with you.

Mr. Kelley. But you are disagreeing with me. You're saying on the basis of experience that you cannot detect a possible threat. That's the whole area of concern that we have here, where we don't lose the capability of doing something. We don't say we should initiate ourselves. We say that we should go to the Attorney General. We do not subscribe to the idea that we should act independently because maybe we don't have the judicial review, the capability of determining, but we do think that we should report it and thereafter see what can be done.

Mr. Schwarz. Well, have you changed in the course of our discussion the standard on page 5.

On page 5 you're talking about an imminent threat.

Mr. Kelley. Yes.

Mr. Schwarz. And I hear you now as saying a possible threat.

Mr. Kelley. An imminent possible threat.

Mr. Schwarz. An imminent possible threat. All right.

Now, would a fair standard for either action, other than arrest, I don't know what you have in mind, but something to prevent the person from carrying out his activities, other than arrest, for instance, what is an example of what you have in mind?

Mr. Kelley. Removing him from his position or whatever is necessary in order to make it impossible or at least as impossible as possible to perpetuate this thing.

Mr. Schwarz. You mean have him lose his job or --

Mr. Kelley. I don't know what it would be.

Mr. Schwarz. Isolate him in some fashion.

Mr. Kelley. In some fashion perhaps.

Mr. Schwarz. Now, for such activity and for opening an investigation into a domestic group, could you live with a standard which said you would have to have an immediate threat that someone was likely to commit a serious federal crime involving violence?

Mr. Kelley. I think that this thing could be worked out so that there could be an adequate basis for an evaluation.

Mr. Schwarz. So those words, without trying to commit you entirely to them, do not seem to you to depart far from what you think would be an acceptable standard.

Mr. Kelley. Well, an imminent, immediate threat might be, by virtue of the word "immediate" that he's going to do it the next minute. In that case it may be necessary for you to, not with the presence or the possibility, not able to do anything except put him under arrest or anything.

Mr. Schwarz. Of course, of course.

And nobody would at all disagree with that kind of action.

Mr. Kelley. I don't think they would either.

Mr. Schwarz. But on the question, let's take the opening of an investigation into a domestic group.

Is it basically consistent with practicality to make the test immediate threat of a serious Federal crime involving violence?

Mr.Kelley. To open a domestic security case.

Mr. Schwarz. Yes.

Mr. Kelley. It appears to me that this is a terrorist activity, in effect. We certainly have terrorist activities under our jurisdiction as a threat against the United States.

Mr. Schwarz. Now, are there other circumstances where it is justifiable to open an investigation of the domestic group where you do not have an immediate threat of serious federal crime involving violence?

Mr. Kelley. Oh, I think there are other criteria, and they have been well defined as to what is the possible opening, the basis for a possible opening. We haven't been discussing that, we have been discussing particular instances, but there are other criteria that are used, yes.

Mr. Schwarz. What would the other criteria be?

Mr. Kelley. Well, the possible statutory violations over which we have jurisdiction are, generally speaking, the most used of the basis, and then you have, of course, some intelligence investigations which should, of course, be of short duration. If there is no showing of this into action

or a viable intent.

Mr. Schwarz. So that's what you're looking for in the intelligence investigation?

Mr. Kelley. By intelligence investigation, yes, you are looking to prevent.

Mr. Schwarz. And what you are looking to prevent, and what you're looking to find is a likelihood of action combined with an intent to take an issue?

Mr. Kelley. And the capability.

Mr. Schwarz. And the capability.

All right. I just have two other lines, Mr. Kelley, and I appreciate very much your time.

Mr. Kelley. That's all right.

Mr. Schwarz. Assuming a legitimate investigation has been started into a domestic intelligence matter, is it legitimate for the FBI, in addition to obtaining information that relates to what we've just been talking about, the likelihood of violent action, is it also legitimate for the FBI to collect, A, retain, B, disseminate, C, information concerning let's say the sex life of a person on the one hand, and the political views of a person on the other?

Mr. Kelley. I think, Mr. Schwarz, that this is just what many of our problems and perhaps the guidelines can define this type of thing. I think probably you will agree that within the determination of the deviations possibly of sex

lives, there might be something that is relevant. I would say ordinarily it's not. And so far as political views, yes, I think that this could be, if he is espousing some cause or some view that advocates violence or the overthrow of the government.

Mr. Schwarz. Would those be the two limits on political views?

Mr. Kelley. What?

Mr. Schwarz. Would those be the only limits on political views that you think are okay to collect, advocants of violence or advocants of overthrow?

Mr. Kelley. Well, I don't think because he's a Democrat or a Republican it would be anything that would be damaging, but it might on the other hand counter the report that he's a member of some other organization.

Mr. Schwarz. Is the standard you used on collection of sex life information, might be relevant? I suppose anything might be relevant, but don't you think that as a function of balance, it has to have a high degree of relevance before it's justifiable to collect that kind of information on American citizens who are not suspected of having committed crimes?

Mr. Kelley. Insofar as doing it presently, it has been included in some reports as a result of the requirement that that is what is required by our rules, that when a person reports something to us, we do a report of the complaint. Insofar

as a determination by guidelines that might be prepared later, I think that we can certainly deliberate on this to see whether or not this is something we should retain, and we would not object to anything reasonable in that regard.

Mr. Schwarz. I just have one final question.

Taking the current manual and trying to understand its applicability laid against the facts in the Martin Luther King case, under Section 87 there is a -- permission is granted to open investigations of the infiltration of non-subversive groups, and the first sentence reads: "When information is received indicating that a subversive group is seeking to systematically infiltrate and control a non-subversive group or organization, an investigation can be opened."

Now, I take it that is the same standard that was used in opening the investigation of the Southern Christian Leadership Conference in the 1960s, so that investigation could still be open today under the FBI manual, the current FBI manual.

Mr. Kelley. We are interested in the infiltration of clearly subversive groups into non-subversive groups inasmuch as this is a ploy that is used many times, and having infiltrated, they then get control, and they have a self-laundered organization which they can use, and not, certainly, to the benefit of the country.

Mr. Schwarz. But is the answer to my question yes, that under that standard, the SCLC investigation could still be

opened today?

Mr. Kelley. I think so.

Mr. Schwarz. All right, then, just one final question.

Do you agree that special care needs to be taken not only of the standards for initially opening an investigation of a group, but perhaps extra care needs to be taken when the investigation goes beyond the initial target group to individuals or people who come into contact with it?

Mr. Kelley. I don't know if I agree with that entirely. If you mean that we go into the non-subversive group, that we then investigate people in that non-subversive group, not the infiltrators, but the non, that we conduct a lengthy investigation of them without any basis for doing so other than that they are in an infiltrated group, I would likely have said -- but off the top of my head I would say probably that's not necessary.

Mr. Schwarz. Thank you very much.

Mr. Smothers. Just a couple of very brief lines of inquiry, Mr. Kelley.

I think that the questions of the Chief Counsel was raising is one that goes further into your statement, when you talk about the difficulty of setting out the line between intelligence gathering and law enforcement kinds of functions. Nevertheless, though, I think that you have made an effort, indeed, the Bureau's organizational scheme reflects an effort to distinguish some of this has been made.

Putting aside for one moment the counterespionage effort, and looking strictly at what we have been calling the Domestic Intelligence, is it your view that the retention of this function in the Bureau is critical to the Bureau's law enforcement position?

Mr. Kelley. My personal opinion is that the Bureau does a splendid job in this area. I feel further that the background of criminal investigatory activities and experiences which all counterintelligence people have is very helpful. It is helpful not only in gathering knowledge and experience, it also enters into this field, a person with a broad understanding of the rights and privileges, and you don't have so much that spy type, that cloak and dagger, that very, very secret type of an operation.

I subscribe to the present system heartily.

Mr. Smothers. Would it be of assistance to your mission if within the Bureau guidelines were established that effectively limited access or controlled dissemination of the intelligence product? In other words, if we had a situation where the intelligence product is critical to assist the law enforcement effort, I don't think there's any question that there should be access to it.

Isn't our problem one of controlling the use of that intelligence product and preventing the kind of murky crossing of lines there with the information legitimately needed for

law enforcement?

Mr. Kelley. There is always a problem when there is wide dissemination, because that just numerically increases the possibility of misuse, abuse or slander, libel, or anything of that matter, and I think that it would be well worthwhile to review the dissemination rules to make them subject to close guidance in the guidelines that we're speaking of.

Mr. Smothers. Let me just raise one final area with you.

We talked a little bit about, or a question was raised about the investigation now being conducted by the Justice Department regarding the improper actions on the COINTELPRO, and the King case in particular.

As we look at allegations of impropriety by your personnel, I think it would be helpful for our record here to have some insight into the procedure the Bureau would normally follow.

What does the Bureau do when you get an allegation that an agent or administrative official in the Bureau has behaved improperly?

Is an investigation conducted internally, or is it routinely referred to the Justice Department?

Mr. Kelley. There may be a revision in this type of procedure as a result of the establishment of the Council for Professional Responsibility. At present it would be in the great majority of the cases turned over to our Investigative Division for investigation. There might, on some unusual

occasion, be a designation of a special task force made up, perhaps, of division heads. That is most unlikely, but it is handled internally at present.

Mr. Smothers. Would these internal determinations be reviewed by Justice, or do you think that is a necessary step?

I guess what we are searching for here is, first of all, I think you answered that, well, to what extent does the Bureau police itself, and then secondly, is the Department of Justice involved in the police determinations?

For instance, what if the Attorney General disagreed with the assertion that only the higher up officials who ordered the action against King should be the subject of investigation and maybe prosecution?

How does the interplay work there between you and Justice?

Mr. Kelley. We do report to the Attorney General those activities which we construe as improper or possibly illegal. There is a possibility that the Department, having been advised of the situation, might take it on their own to do their own investigating, and this is something that we feel is a decision to be made only rather rarely, because we feel we have within our own organization sufficient capability to handle that. But we do not protest it. It is handled independently of us.

Mr. Smothers. Thank you.

That is all I have.

Mr. Schwarz. Thank you.

(Whereupon, at 12:12 o'clock p.m., the Committee recessed subject to the call of the Chair.)

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