JFK ASSASSINATION SYSTEM

IDENTIFICATION FORM

AGENCY INFORMATION

AGENCY : FBI
RECORD NUMBER : 124-10186-10063

RECORDS SERIES :
BH

AGENCY FILE NUMBER : 66-2204-17 THRU 21

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 : 07/27/94

OPENING CRITERIA :
INDEFINITE

COMMENTS :

[R] - ITEM IS RESTRICTED

Date: August 2, 2021

From: National Archives and Records Administration

Subject: Reconstructed FBI File BH 66-2204, Serials 17-21

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.

After an extensive search, neither the FBI nor the National Archives could locate a small number of NAR documents or case files.

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 BH 66-2204, Serials 17 through 21.

RIF Number	FBI File Number	List of Serials From Inventory Sheet	List of Identified Serials at NARA	Reconstructed Status (None, Partial, Complete)
124-10186-10063	BH 66-2204	17-21	17, 19-20	Partial

FEDERAL BUREAU OF INVESTIGATION
POSTPONEMENT INFORMATION SHEET (JFK MATERIALS)

85 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)

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

[] For your information: _____

_____

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

BH 66-2204-17 thru 21

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

JFK Inventory Sheet
(Committees Files)

File #: BH 66-2204 - - **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
1	03/24/75	TT	HQ	ALL SACS		1	1	2	0						NAR
2	03/25/75	TT	BH	HQ		2	1	3	0						NAR
3	05/02/75	TT	HQ	ALL SACS		2		2	0						NAR
4	05/20/75	TT	HQ	ALL SACS		1		1	0						NAR
5	06/16/75	RS	BH			1		1	0						NAR
6	05/28/75	MEMO	HQ	ALL EMPLOY		8		8	0						NAR
7	06/28/75	TT	HQ	AT		3		3	0						NAR
8	09/04/75	TT	HQ	ALL SACS		3	3	6	0						NAR
9	09/05/75	TT	HQ	AX		7	7	14	0						NAR
10	09/11/75	TT	BH	HQ		1	1	2	0						NAR
11	09/12/75	TT	BH	HQ		1	1	2	0						NAR
12	09/26/75	TT	HQ	ALL SACS		1		1	0						NAR
13	10/09/75	TT	HQ	ALL SACS		2		2	0						NAR
14	11/12/75	MEMO	BARNETT	BH		2		2	0						NAR
15	11/21/75	RS	HQ	BH		1		1	0						NAR
15	11/20/75	NEWS ARTIC	NY			1		1	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
16	12/12/75	TT	HQ	BH		1	1	2	2	2	2				NONE
17	12/02/75	TESTIMONY	CHURCH COM			14		14	0						NAR
18	12/04/75	RS	HQ	BH		1		1	0						NAR
19	12/10/75	TT	HQ	ALL SACS		4	4	8	0						NAR
20	12/02/75	TRANSCRIPT	CHURCH COM			61		61	0						NAR
21	12/05/75	RS	HQ	BH		1		1	0						NAR
22	12/24/75	AT	BH	HQ		1	1	2	2	2	2				NONE
22	12/24/75	LHM	BH	HQ		17	17	34	34	34	34				NONE
23	01/05/76	RS	HQ	BH		1		1	0						NAR
24	11/11/76	AT	BH	HQ		1		1	0						NAR
25	01/28/76	LHM	BH	HQ		8	8	16	16	16	16				NONE
26	01/28/76	AT	BH	HQ		1	1	2	2	2	2				NONE
27	02/12/76	TT	HQ	ALL SACS		2	2	4	0						NAR
28	02/24/76	AT	BH	HQ		1		1	0						NAR
29	07/16/76	AT	HQ	AL		1		1	0						NAR
29	04/21/76	MEMO	THIRD PART	NY		2		2	0						NAR
29	03/01/70	MEMO	THIRD PART	NY		2		2	0						NAR
30	08/24/76	MEMO	HQ	ALL SACS		5		5	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
31	08/31/76	TT	HQ	ALL SACS		1	1	2	0						NAR
32	09/07/76	TT	HQ	BH		1	1	2	0						NAR
33	06/28/77	MEMO	HQ	ALL SACS		2		2	0						NAR

Grand Totals.....	0	165	50	215	56	56	56	0

End of Report....

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

Dead

DECEMBER 2, 1975

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

SENSTUDY FILE RH

62-2368-14

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

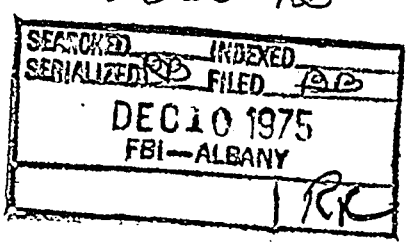
FROM DIRECTOR

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

62-2368-12



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

ACK FOR TWO CLR

TKS

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.

62-23608-16

66-2882

SEARCHED ____ INDEXED ____
SERIALIZED BB FILED ____

DEC 12 1975

FBI - ALBANY

SENSTUDY FILE

HANDLE AS SAC LETTER

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 it is like

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 i[illegible]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 organization and as part of his function he may be sent out by the Communist Party to try to infiltrate one of these clean organizations.

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?

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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