JFK ASSASSINATION SYSTEM

IDENTIFICATION FORM

AGENCY INFORMATION

AGENCY : FBI
RECORD NUMBER : 124-10274-10045

RECORDS SERIES :
BH

AGENCY FILE NUMBER : 66-2211-1 THRU 10

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 : 06/29/94

OPENING CRITERIA :
INDEFINITE

COMMENTS :

[R] - ITEM IS RESTRICTED

Date: August 2, 2021

From: National Archives and Records Administration

Subject: Reconstructed FBI File BH 66-2211, Serials 1-10

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 66-2211, Serials 1 through 10.

RIF Number	FBI File Number	List of Serials From Inventory Sheet	List of Identified Serials at NARA	Reconstructed Status (None, Partial, Complete)
124-10274-10045	BH 66-2211	1-10	1-3, 5-9	Partial

FEDERAL BUREAU OF INVESTIGATION
POSTPONEMENT INFORMATION SHEET (JFK MATERIALS)

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

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

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

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

[] For your information: _____

[X] The following number is to be used for reference regarding this page (these pages):
BH 66-2211

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

JFK Inventory Sheet
(COMMITTEE FILES)

File #: BH 66-2211 - - **Section #:** 1 **Re:** PIKE 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	05/02/75	TT	HQ	ALL SACS		2		2	0						NAR
2	05/20/75	TT	HQ	ALL SACS		1		1	0						NAR
3	06/13/75	TT	HQ	ALL SACS		1		1	0						NAR
4	06/16/75	RS	BH			1		1	0						NAR
5	05/28/75	MEMO	HQ	ALL EMPLOY		8		8	0						NAR
6	09/26/75	TT	HQ	ALL SACS		1		1	0						NAR
7	10/09/75	TT	HQ	ALL SACS		2		2	0						NAR
8	02/11/76	TT	HQ	ALL SACS		3	3	6	0						NAR
9	02/11/76	TESTIMONY	AG		22			22	0						NAR
10	06/28/77	MEMO	HQ	ALL SACS		2		2	0						NAR

Page: 1

Grand Totals.....	22	21	3	46	0	0	0	0

End of Report....

CODE TELETYPE NITEL

5/2/75

TO SACS ALL OFFICES

1 - Mr. T.J.Jenkins
1 - Mr. J. B. Adams
1 - Each Assistant Director

FROM DIRECTOR FBI (62-116395)

1 - Mr. W. O. Cregar

SENSTUDY 75

PERSONAL ATTENTION

CAPTIONED MATTER PERTAINS TO BUREAU'S HANDLING OF REQUESTS FROM SENATE AND HOUSE SELECT COMMITTEES TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES. IN CONNECTION WITH WORK OF THESE COMMITTEES, STAFF MEMBERS MAY SEEK TO INTERVIEW CURRENT AND FORMER FBI EMPLOYEES.

RECENTLY, THE SENATE SELECT COMMITTEE (SSC) STAFF HAS INTERVIEWED SEVERAL FORMER EMPLOYEES AND IT IS ANTICIPATED THAT MANY MORE SUCH PERSONNEL WILL BE CONTACTED.

THE FBI HAS PLEDGED FULL COOPERATION WITH THE COMMITTEE AND WE WISH TO ASSIST AND FACILITATE ANY INVESTIGATIONS UNDERTAKEN BY THE COMMITTEE WITH RESPECT TO THE FBI. HOWEVER, WE DO HAVE AN OBLIGATION TO INSURE THAT SENSITIVE SOURCES AND METHODS AND ONGOING SENSITIVE INVESTIGATIONS ARE FULLY

Original Filed In 62-116395-93

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

WOC:ekw
(185)

REC-16

SEE NOTE PAGE TWO

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

62-116464-
NOT RECORDED

JUN 13 1975

TELETYPE UNIT

JUN 12 1975

PROTECTED. SHOULD ANY FORMER EMPLOYEE CONTACT YOUR OFFICE AND HAVE ANY QUESTION REGARDING HIS OBLIGATION NOT TO DIVULGE INFORMATION OBTAINED BY VIRTUE OF HIS PAST FBI EMPLOYMENT, HE SHOULD BE INSTRUCTED TO CONTACT LEGAL COUNSEL, FBIHQ, BY COLLECT CALL. YOUR CONVERSATIONS WITH FORMER EMPLOYEES MUST BE IN KEEPING WITH OUR PLEDGE. IT IS BELIEVED SUCH A PROCEDURE WOULD INSURE PROPER PROTECTION AND ALSO FACILITATE THE WORK OF THE SSC.

THE ABOVE PROCEDURE ALSO APPLIES TO CURRENT EMPLOYEES OF YOUR OFFICE. HOWEVER, CONTACT WITH THE LEGAL COUNSEL SHOULD BE HANDLED THROUGH THE SAC.

NOTE: Teletype prepared for all offices to alert SACs to the possibility former employees may contact their offices seeking guidance.

The Office of Legal Counsel in response to requests from former employees will utilize the briefing paper prepared by the Intelligence Community Staff of the Director of Central Intelligence and concurred in by Assistant Attorney General Antonino Scalia.

NR036 WA CODE

5:15PM NITEL 5-20-75 PAW

TO ALL SACS

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SENSTUDY - 75.

REBUTEL MAY 2, 1975.

IN CONNECTION WITH WORK OF THE SENATE AND HOUSE SELECT COMMITTEES, ITS REPRESENTATIVES MAY CONTACT YOUR OFFICE FOR INFORMATION.

IN ONE RECENT INSTANCE, A REPRESENTATIVE OF THE SENATE SELECT COMMITTEE TELEPHONICALLY INQUIRED AS TO IDENTITY OF SAC IN A PARTICULAR OFFICE DURING 1970.

IN HANDLING SUCH INQUIRIES INSURE ESTABLISHING BONA FIDES OF REPRESENTATIVE BY SHOW OF CREDENTIALS ON PERSONAL CONTACT OR, IF TELEPHONIC CONTACT, BY TELEPHONING BACK TO COMMITTEE. UNLESS INFORMATION IS OF A PUBLIC NATURE, AS IN THE INSTANCE CITED ABOVE, OBTAIN FBIHQ CLEARANCE PRIOR TO SUPPLYING ANY INFORMATION. FBIHQ MUST BE EXPEDITIOUSLY ADVISED OF ALL INFORMATION FURNISHED.

END

HOLD

ASAC
Frank
Condon
Capitol

62-5038-2

NR022 WA CODE

1:56PM NITEL 6-13-75 VLJ

TO ALL SACS

FROM DIRECTOR (62-116464)

PERSONAL ATTENTION

HOUSTUDY 75.

62-2368

REBUTELS MAY 2, 20, 1975, "SENSTUDY 75."

BUFILE 62-116464 AND CODE NAME "HOUSTUDY 75" DESIGNATED FOR ALL MATTERS RELATING TO HOUSE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES AND BUREAU'S HANDLING OF MATTERS PERTAINING THERETO. USE THIS FILE NUMBER AND CAPTION FOR MATTERS RELATING TO HOUSE COMMITTEE AS SEPARATE FROM SENSTUDY 75 FOR MATTERS RELATING TO SENATE COMMITTEE.

END

ASAC #3 #4 #5

done Read

62-DEAD 6/13

62-23176-1

1cc Dept Rec

OFFICE OF THE DIRECTOR

1-75

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

May 28, 1975

MEMORANDUM TO ALL EMPLOYEES

RE: INTERVIEWS OF FBI EMPLOYEES

All employees are advised that Congress is conducting an inquiry into activities of the Federal Bureau of Investigation. Congressional staff members are conducting interviews of former and current FBI employees. This Bureau has pledged its cooperation with the Congress.

You are reminded of the FBI Employment Agreement (copy attached) with which you agreed to comply during your employment in the FBI and following termination of such employment.

Also, you are reminded of Title 28, Code of Federal Regulations, Section 16.22 (copy attached), which reads as follows:

"No employee or former employee of the Department of Justice shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without prior approval of the appropriate Department official or the Attorney General in accordance with Section 16.24."

Also, you are reminded of Department of Justice Order Number 116-56, dated May 15, 1956, (copy attached) which, among other things, requires an employee upon the completion of his testimony to prepare a memorandum outlining his testimony.

Our cooperative efforts, of course, must be consistent with the above cited authority. Therefore, if you are contacted for purpose of interview or testimony you are to request approval as required by the Employment Agreement and await authorization before furnishing information, testimony, or record material.

62-2376-2

Enclosures (3)

Clarence M. Kelley
Director

SEARCHED ... INDEXED
SERIALIZED ... FILED
JUN 18 1975
FBI—ALBANY

FD-291 (Rev. 11-1-73)

EMPLOYMENT AGREEMENT

As consideration for employment in the Federal Bureau of Investigation (FBI), United States Department of Justice, and as a condition for continued employment, I hereby declare that I intend to be governed by and I will comply with the following provisions:

(1) That I am hereby advised and I understand that Federal law such as Title 18, United States Code, Sections 793, 794, and 798; Order of the President of the United States (Executive Order 11652); and regulations issued by the Attorney General of the United States (28 Code of Federal Regulations, Sections 16.21 through 16.26) prohibit loss, misuse, or unauthorized disclosure or production of national security information, other classified information and other nonclassified information in the files of the FBI;

(2) I understand that unauthorized disclosure of information in the files of the FBI or information I may acquire as an employee of the FBI could result in impairment of national security, place human life in jeopardy, or result in the denial of due process to a person or persons who are subjects of an FBI investigation, or prevent the FBI from effectively discharging its responsibilities. I understand the need for this secrecy agreement; therefore, as consideration for employment I agree that I will never divulge, publish, or reveal either by word or conduct, or by other means disclose to any unauthorized recipient without official written authorization by the Director of the FBI or his delegate, any information from the investigatory files of the FBI or any information relating to material contained in the files, or disclose any information or produce any material acquired as a part of the performance of my official duties or because of my official status. The burden is on me to determine, prior to disclosure, whether information may be disclosed and in this regard I agree to request approval of the Director of the FBI in each such instance by presenting the full text of my proposed disclosure in writing to the Director of the FBI at least thirty (30) days prior to disclosure. I understand that this agreement is not intended to apply to information which has been placed in the public domain or to prevent me from writing or speaking about the FBI but it is intended to prevent disclosure of information where disclosure would be contrary to law, regulation or public policy. I agree the Director of the FBI is in a better position than I to make that determination;

(3) I agree that all information acquired by me in connection with my official duties with the FBI and all official material to which I have access remains the property of the United States of America, and I will surrender upon demand by the Director of the FBI or his delegate, or upon separation from the FBI, any material relating to such information or property in my possession;

(4) That I understand unauthorized disclosure may be a violation of Federal law and prosecuted as a criminal offense and in addition to this agreement may be enforced by means of an injunction or other civil remedy.

I accept the above provisions as conditions for my employment and continued employment in the FBI. I agree to comply with these provisions both during my employment in the FBI and following termination of such employment.

_____
(Signature)

_____
(Type or print name)

Witnessed and accepted in behalf of the Director, FBI, on

_____, 19 ____, by _____.
(Signature)

Office of the Attorney General
Washington, D. C. 20530

January 18, 1973

ORDER NO. 501-73

RULES AND REGULATIONS

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Order 501-73]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart B—Production or Disclosure in Response to Subpenas or Demands of Courts or Other Authorities

This order delegates to certain Department of Justice officials the authority to approve the production or disclosure of material or information contained in Department files, or information or material acquired by a person while employed by the Department. It applies where a subpena, order or other demand of a court or other authority, such as an administrative agency, is issued for the production or disclosure of such information.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, Subpart B of Part 16 of Chapter I of Title 28, Code of Federal Regulations, is revised, and its provisions renumbered, to read as follows:

Subpart B—Production or Disclosure in Response to Subpenas or Demands of Courts or Other Authorities

Sec.

AUTHORITY: 28 U.S.C. 509, 510 and 5 U.S.C. 301.

Subpart B—Production or Disclosure in Response to Subpenas or Demands of Courts or Other Authorities

§ 16.21 Purpose and scope.

(a) This subpart sets forth the procedures to be followed when a subpena, order, or other demand (hereinafter referred to as a "demand") of a court or other authority is issued for the production or disclosure of (1) any material contained in the files of the Department, (2) any information relating to material contained in the files of the Department, or (3) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status.

(b) For purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of, the Attorney General of the United States, including U.S. attorneys, U.S. marshals, and members of the staffs of those officials.

§ 16.22 Production or disclosure prohibited unless approved by appropriate Department official.

No employee or former employee of the Department of Justice shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without prior approval of the appropriate Department official or the Attorney General in accordance with § 16.24.

§ 16.23 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Department for the production of material or the disclosure of information described in § 16.21(a), he shall immediately notify the U.S. attorney for the district where the issuing authority is located. The U.S. attorney shall immediately request instructions from the appropriate Department official, as designated in paragraph (b) of this section.

(b) The Department officials authorized to approve production or disclosure under this subpart are:

(1) In the event that the case or other matter which gave rise to the demanded material or information is or, if closed, was within the cognizance of a division of the Department, the Assistant Attorney General in charge of that division. This authority may be redelegated to Deputy Assistant Attorneys General.

(2) In instances of demands that are not covered by paragraph (b)(1) of this section:

(i) The Director of the Federal Bureau of Investigation, if the demand is one made on an employee or former employee of that Bureau for information or if the demand calls for the production of material from the files of that Bureau, and

(ii) The Director of the Bureau of Prisons, if the demand is one made on an employee or former employee of that Bureau for information or if the demand calls for the production of material from the files of that Bureau.

(3) In instances of demands that are not covered by paragraph (b) (1) or (2) of this section, the Deputy Attorney General.

(c) If oral testimony is sought by the demand, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or his attorney, setting forth a summary of the testimony desired, must be furnished for submission by the U.S. attorney to the appropriate Department official.

§ 16.24 Final action by the appropriate Department official or the Attorney General.

(a) If the appropriate Department official, as designated in § 16.23(b), approves a demand for the production of material or disclosure of information, he shall so notify the U.S. attorney and such other persons as circumstances may warrant.

(b) If the appropriate Department official, as designated in § 16.23(b), decides not to approve a demand for the production of material or disclosure of information, he shall immediately refer the demand to the Attorney General for decision. Upon such referral, the Attorney General shall make the final decision and give notice thereof to the U.S. attorney and such other persons as circumstances may warrant.

§ 16.25 Procedure where a Department decision concerning a demand is not made prior to the time a response to the demand is required.

If response to the demand is required before the instructions from the appropriate Department official or the Attorney General are received, the U.S. attorney or other Department attorney designated for the purpose shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 16.26 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.25 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, in accordance with § 16.24, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. "United States ex rel Touhy v. Ragen," 340 U.S. 462.

Dated: January 11, 1973.

RICHARD G. KLEINDIENST,
Attorney General.

[FR Doc.73-1071 Filed 1-17-73;8:45 am]

OFFICE OF THE ATTORNEY GENERAL

WASHINGTON, D. C.

May 15, 1956

ORDER NO. 116-56

It is the policy of the Department of Justice to extend the fullest possible cooperation to congressional committees requesting information from departmental files, interviews with department employees, testimony of department personnel, or testimony of Federal prisoners. The following procedures are prescribed in order to effectuate this policy on a basis which will be mutually satisfactory to the congressional committees and to the Department. [This order supersedes the Deputy Attorney General's Memorandum No. 5, dated March 23, 1953, and his Memorandum No. 97, dated August 5, 1954. It formalizes the Attorney General's press release of November 5, 1953, establishing procedures to permit committees of the Congress and their authorized representatives to interview and to take sworn testimony from Federal prisoners. It supplements Order No. 3229 (Revised) dated January 13, 1953, and Order No. 3464, Supplement No. 4 (Revised) dated January 13, 1953 (with Memorandum of "Authorization Under Order No. 3464 Supplement No. 4 (Revised)" dated January 13, 1953), insofar as said orders have reference to procedures to be followed in the Department's relations with congressional committees. In support of this order, reference should be had to the President's letter dated May 17, 1954, addressed to the Secretary of Defense, and to the Attorney General's Memorandum which accompanied it.]

A. REQUESTS FOR INFORMATION FROM DEPARTMENT FILES

1. Congressional committee requests for the examination of files or other confidential information should be reduced to writing, signed by the chairman of the committee, and addressed to the Deputy Attorney General, who is responsible for the coordination of our liaison with Congress and congressional committees. The request shall state the specific information sought as well as the specific objective for which it is sought. The Deputy Attorney General will forward the request to the appropriate division where a reply will be prepared and returned for the Deputy Attorney General's signature and dispatch to the chairman of the committee.

2. If the request concerns a closed case, i. e., one in which there is no litigation or administrative action pending or contemplated, the file may be made available for review in the Department, in the presence of the official or employee having custody thereof. The following procedure shall be followed in such cases:

a. The reply letter will advise the committee that the file is available for examination and set forth the name, telephone extension number, and room number of the person who will have custody of the file to be reviewed;

b. Before making the file available to the committee representative all reports and memoranda from the FBI as well as investigative reports from any other agency, will be removed from the file and not be made available for examination; provided however that if the committee representative states that it is essential that information from the FBI reports and memoranda be made available, he will be advised that the request will be considered by the Department. Thereafter a summary of the contents of the FBI reports and memoranda involved will be prepared which will not disclose investigative techniques, the identity of confidential informants, or other matters which might jeopardize the investigative operations of the FBI. This summary will be forwarded by the division to the FBI with a request for advice as to whether the FBI has any objection to examination of such summary by the committee representative. The file will not be physically relinquished from the custody of the Department. If the committee representative desires to examine investigative reports from other government agencies, contained in the files of the Department, he will be advised to direct his request to the agency whose reports are concerned.

3. If the request concerns an open case, i. e., one which litigation or administrative action is pending or contemplated, the file may not be made available for examination by the committee's representative. The following procedure shall be followed:

a. The reply letter should advise the committee that its request concerns a case in which litigation or administrative action is pending or contemplated, and state that the file cannot be made available until the case is completed; and

b. Should briefly set forth the status of the case in as much detail as is practicable and prudent without jeopardizing the pending contemplated litigation or administrative action.

B. REQUESTS FOR INTERVIEWS WITH DEPARTMENTAL PERSONNEL

1. Requests for interviews with departmental personnel regarding any official matters within the Department should be reduced to writing, signed by the chairman of the committee, and addressed to the Deputy Attorney General. When the approval of the Deputy Attorney General is given, the employee is expected to discuss such matters freely and cooperatively with the representative, subject to the limitations prescribed in A respecting open cases and data in investigative reports;

2. Upon the completion of the interview with the committee representative the employee will prepare a summary of it for the file, with a copy routed to his division head and a copy routed to the Deputy Attorney General.

C. EMPLOYEES TESTIFYING BEFORE CONGRESSIONAL COMMITTEES

1. When an employee is requested to testify before a congressional committee regarding official matters within the Department the Deputy Attorney General shall be promptly informed. When the Deputy Attorney General's approval is given the employee is expected to testify freely subject to limitations prescribed in A respecting open cases and data in investigative reports;

2. An employee subpoenaed to testify before a congressional committee on official matters within the Department shall promptly notify the Deputy Attorney General. In general he shall be guided in testifying by Order 3229 (Revised) and the President's letter of May 17, 1954, cited at the beginning of this Order.

3. Upon the completion of his testimony the employee will prepare a memorandum outlining his testimony with a copy routed to his division head and a copy routed to the Deputy Attorney General.

D. REQUESTS OF CONGRESSIONAL COMMITTEES FOR THE TESTIMONY OF FEDERAL PRISONERS

Because of the custodial hazards involved and the extent to which their public testimony may affect the discipline and well-being of the institution, it is the policy of the Department not to deliver Federal prisoners outside the penal institution in which they are incarcerated for the purpose of being interviewed or examined under oath by congressional committees. However, when it appears that no pending investigation or legal proceeding will be adversely affected thereby and that the public interest will not be otherwise adversely affected, Federal prisoners may be interviewed or examined under oath by congressional committees in the institution in which they are incarcerated under the following procedures, and with the specific advance approval of the Deputy Attorney General.

1. Arrangements for interviewing and taking of sworn testimony from a Federal prisoner by a committee of the Congress or the authorized representatives of such a committee shall be made in the form of a written request by the chairman of the committee to the Deputy Attorney General.

2. Such written request shall be made at least ten (10) days prior to the requested date for the interview and the taking of testimony and shall be accompanied by written evidence that authorization for the interview or the taking of sworn testimony was approved by vote of the committee. Such request shall contain a statement of the purpose and the subjects upon which the prisoner will be interrogated as well as the names of all persons other than the representatives of the Department of Justice who will be present.

3. A member of the interested committee of the Congress shall be present during the entire time of the interrogation.

4. The warden of the penal institution in which the Federal prisoner is incarcerated shall, at least forty-eight (48) hours prior to the time at which the interview takes place, advise the Federal prisoner concerned of the proposed interview or taking of sworn testimony; and shall further advise that he is under the same, but no greater obligation to answer than any other witness who is not a prisoner.

5. The warden of the penal institution shall have complete authority in conformity with the requirements of security and the maintenance of discipline to limit the number of persons who will be present at the interview and taking of testimony.

6. The warden or his authorized representative shall be present at the interview and at the taking of testimony and the Department of Justice shall have the right to have one of its representatives present throughout the interview and taking of testimony.

7. The committee shall arrange to have a stenographic transcript made of the entire proceedings at committee expense and shall furnish a copy of the transcript to the Department of Justice.

E. OBSERVERS IN ATTENDANCE AT COMMITTEE HEARINGS

In order that the Department may be kept currently advised in matters within its responsibility, and in order that the Deputy Attorney General may properly coordinate the Department's liaison with Congress and its committees, each division that has an observer in attendance at a congrssional hearing, will have the observer prepare a written summary of the proceeding which should be sent to the division head and a copy routed to the Deputy Attorney General.

/s/ Herbert Brownell, Jr.

Attorney General

NR 053 WA PLAIN

1023PM NITEL 9/26/75 PMJ

TO ALL SACS

FROM DIRECTOR

LEGAL ADVICE FOR PRESENT OR FORMER BUREAU EMPLOYEES.

IN RESPONSE TO OUR REQUEST, THE ATTORNEY GENERAL ADVISED THAT LEGAL REPRESENTATION FOR EMPLOYEES WOULD BE MADE AVAILABLE FOR PRELIMINARY ADVICE. SHOULD CASES ARISE WHERE A FORMER OR PRESENT EMPLOYEE REQUIRES MORE PROTRACTED AND SUBSTANTIAL LEGAL REPRESENTATION, IT IS THE POSITION OF THE DEPARTMENT THAT SPECIAL COUNSEL MAY BE RETAINED FOR SUCH EMPLOYEES AT DEPARTMENT EXPENSE. GUIDELINES ARE BEING DRAWN BY THE DEPARTMENT TO GOVERN THESE MATTERS.

HOWEVER, SHOULD THE DEPARTMENT SUBSEQUENTLY CONCLUDE THAT SUCH CASES INVOLVE MATTERS OUTSIDE THE SCOPE OF A PRESENT OR FORMER EMPLOYEE'S DUTIES, OTHER CONSIDERATIONS WOULD APPLY.

ALL LEGATS ADVISED SEPARATELY.

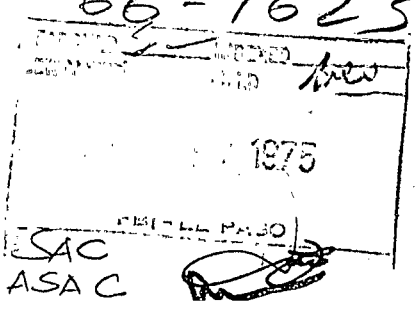
END.

HOLD

all Legat Conf - 9/29

Use Names Route to employees

66-1623



VIA ENCRYPTED TELETYPE

NR045 WA PLAIN

8:42PMNITEL 10/9/75 GHS

TO ALL SACS

FROM DIRECTOR

INTERVIEWS OF FBI EMPLOYEES BY CONGRESSIONAL COMMITTEES

BY MEMORANDUM TO ALL EMPLOYEES DATED MAY 28, 1975, CAPTIONED "INTERVIEWS OF FBI EMPLOYEES," ALL EMPLOYEES WERE ADVISED OF THE NECESSITY OF SECURING FBI HEADQUARTERS APPROVAL PRIOR TO SUBMITTING TO INTERVIEWS BY REPRESENTATIVES OF CONGRESSIONAL COMMITTEES. THE NECESSITY OF SECURING THIS APPROVAL IS PROMPTED BY THE EMPLOYMENT AGREEMENT ALL EMPLOYEES HAVE SIGNED.

YOU WERE ADVISED THAT CONGRESSIONAL STAFF MEMBERS WERE CONDUCTING INTERVIEWS OF FORMER AND/OR CURRENT EMPLOYEES AND THAT THIS BUREAU HAD PLEDGED ITS COOPERATION WITH CONGRESS. OUR COOPERATIVE EFFORTS, OF COURSE, MUST BE CONSISTENT WITH BUREAU PROCEDURES.

RECENTLY, WE HAVE HAD ATTEMPTS BY CONGRESSIONAL COMMITTEE STAFF MEMBERS TO INTERVIEW CURRENT EMPLOYEES WITHOUT PRIOR CONTACT WITH FBI HEADQUARTERS. YOU ARE AGAIN REMINDED

62-3439-18

SEARCHED ___ INDEXED ___
SERIALIZED ___ FILED ___
OCT 9 1975
FBI - OMAHA

THAT IF A REPRESENTATIVE OF A CONGRESSIONAL COMMITTEE SHOULD CONTACT A BUREAU EMPLOYEE, THAT EMPLOYEE SHOULD DECLINE TO RESPOND TO QUESTIONS POSED TO HIM AND ADVISE THE CONGRESSIONAL STAFF MEMBER OF THE NECESSITY OF RECEIVING FBI HEADQUARTERS APPROVAL BEFORE RESPONDING TO QUESTIONS.

END

RECD 2

FBI OM CLR PF

NR354 WA PLAIN

7:30PM NITEL 2-11-76 TKR

TO ALL SACS

FROM DIRECTOR

TESTIMONY BEFORE HOUSE CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS SUBCOMMITTEE FEBRUARY 11, 1976.

THE ATTORNEY GENERAL AND I TESTIFIED BEFORE CAPTIONED SUBCOMMITTEE TODAY CONCERNING LEGISLATIVE POLICIES AND GUIDELINES FOR THE FBI. COPIES OF THE STATEMENTS PRESENTED TO THE COMMITTEE BY THE ATTORNEY GENERAL AND ME ARE BEING MAILED TO ALL OFFICES TODAY. FOR YOUR INFORMATION, THERE FOLLOWS A SYNOPSIZED ACCOUNT OF THE MAJOR AREAS OF THE SUBCOMMITTEE'S QUESTIONS TO ME, TOGETHER WITH MY RESPONSES:

(1) IN RESPONSE TO QUESTIONS REGARDING THE PREVENTIVE ACTION PROVISION IN THE ATTORNEY GENERAL'S PROPOSED GUIDELINES FOR THE FBI WHICH ARE CITED IN HIS PREPARED STATEMENT, I STATED THAT THE PRIMARY MANDATE OF LAW ENFORCEMENT IS PREVENTION; THAT WE CANNOT INVESTIGATE SOLELY "AFTER THE FACT3; THAT ACTION TO PREVENT LEGITIMATE DISSENT UNDER OUR DEMOCRATIC FORM OF GOVERNMENT WOULD BE INTOLERABLE; THAT PRIOR TO TAKING PREVENTIVE ACTION IN A

ASAC
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FEB 11 1976

FBI - ALBANY

DOMESTIC SECURITY CASE TODAY WE WOULD ASCERTAIN THE NATURE AND EXTENT OF THE THREAT INVOLVED, CONSULT WITH THE DEPARTMENT, AND REACH A WORKABLE SOLUTION AS TO ANY NECESSARY AND PROPER ACTION TO BE TAKEN.

(2) REGARDING THE GUIDELINES, QUESTIONS WERE ASKED CONCERNING MY INPUT (MY RESPONSE WAS THAT THE FBI HAS A REPRESENTATIVE ON THE GUIDELINES COMMITTEE, AND I RECEIVE REPORTS FROM TIME TO TIME CONCERNING THE THRUST OF THESE GUIDELINES) AND WHETHER THE GUIDELINES IN PRESENT FORM ARE TOO STRICT OR LOOSE (MY RESPONSE WAS THAT THE FBI IS NOT UNCOMFORTABLE WITH THE GUIDELINES; THAT I CANNOT BROADLY CATEGORIZE THEM AS STRICT OR LOOSE; THAT THEY ARE STILL UNDER CONSIDERATION BUT AT THIS POINT ARE NOT TOO RESTRICTIVE).

(3) IN RESPONSE TO A QUESTION AS TO WHETHER THE DEPARTMENT OF JUSTICE SUPERVISES THE FBI, I STATED THAT I RECOGNIZE THAT IT DOES AND THAT I CAN STATE UNEQUIVOCALLY THAT I HAVE A VERY PLEASANT RELATIONSHIP WITH THE ATTORNEY GENERAL AND THAT WE GET ALONG VERY WELL.

(THE ATTORNEY GENERAL AGREED AND POINTED OUT THAT THE FBI HAS TO HAVE CONSIDERABLE AUTONOMY, THAT THE FBI DIRECTOR'S RESPONSIBILITY IS GREAT, AND THAT THE ATTORNEY GENERAL

HAS GENERAL OVERSIGHT RESPONSIBILITY OVER THE BUREAU. HE NOTED THAT THE ATTORNEY GENERAL "IS NOT RUNNING THE FBI" -- OR HE WOULD NOT HAVE TIME FOR ANYTHING ELSE -- AND THAT THERE IS "SOME DISTANCE" BETWEEN THE ATTORNEY GENERAL AND THE FBI DIRECTOR.)

(4) IN RESPONSE TO QUESTIONS CONCERNING CONTINUED OVERSIGHT OF THE FBI BY CONGRESSIONAL COMMITTEES, I STATED THAT SINCE APRIL, 1975, THE FBI HAS DEVOTED 4500 AGENT DAYS AND 2221 CLERICAL DAYS TO PROVIDE CONGRESS WITH THE INFORMATION THAT IT HAS REQUESTED; THAT SOME SOURCES AND INFORMANTS HAVE BECOME UNWILLING TO FURNISH US INFORMATION BECAUSE OF THE WIDESPREAD DISCLOSURE OF THE MATERIAL WE HAVE PROVIDED CONGRESSIONAL COMMITTEES; THAT THE FBI DOES NOT OBJECT TO OVERSIGHT; THAT WE ARE WILLING TO HAVE OVERSIGHT AND GUIDELINES BUT THAT WE WANT TO DEVELOP SOME BALANCE SO THAT WE MAY MAINTAIN OUR CAPABILITIES INTACT TO FULLY DISCHARGE OUR RESPONSIBILITIES.

ALL LEGATS ADVISED SEPARATELY.

END

Department of Justice

TESTIMONY

OF

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE SUBCOMMITTEE ON CIVIL AND
CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

9:30 A.M.
WEDNESDAY, FEBRUARY 11, 1976
WASHINGTON, D. C.

CCO
PREPARE CC's
FOR SUPERVISORY
STAFF, SRA's, AND
SACHERIED.
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Sent 3/11/76

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FEB 1976
FBI—ALBANY

I welcome the opportunity to talk again with this Subcommittee. During the months since I last testified here there has been much discussion about various incidents which I described to you last February 27 involving the Federal Bureau of Investigation.

The FBI's domestic security investigations have received the most attention. And much of it has centered on COINTELPRO, which was revealed to this Subcommittee before I arrived at the Department of Justice and about which I provided further details by letter on May 17, 1975, when they came to my attention.

From the beginning, this Subcommittee has been interested in the FBI's domestic security investigations. But it has also been concerned with the whole range of FBI practices. During my last appearance before this Subcommittee I promised to start work preparing guidelines to govern FBI practices in the future. The preparation of those guidelines has been slow and difficult--much slower and more difficult than I had realized. The problems are complex and important--as important as any now facing the Department of Justice. I had hoped when I first appeared before this Subcommittee that I would be able to present to you at my next appearance a complete set

of guidelines. This has proven impossible. But progress has been made in drafting guidelines in several areas. You have been provided with the most recent drafts of proposed guidelines covering White House inquiries, investigations for congressional staff and judicial staff appointments, the handling of unsolicited mail, and domestic security investigations. These draft guidelines cover many of the areas that have been of greatest concern to this Subcommittee.

Because the statutory base for the operation of the FBI is not satisfactory, I know the members of this Subcommittee have been considering what changes it should enact. The guidelines may be helpful in these deliberations. Before discussing briefly each of the draft guidelines you have seen, I would like to make a few points about the question of statutory changes.

The basic statutory provision concerning the FBI is 28 U.S.C. 533 which provides that the Attorney General may appoint officials "(1) to detect and prosecute crimes against the United States; (2) to assist in the protection of the President; and (3) to conduct such investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General." In addition, 28 U.S.C. 531 declares that the Federal Bureau of Investigation is in the Department of Justice. There

are other statutes, such as the Congressional Assassination, Kidnapping and Assault Act, which vest in the Bureau certain special responsibilities to investigate particular criminal violations. There are also Executive Orders and Presidential statements and directives placing investigatory responsibility upon the Bureau.

In some areas--such as domestic security--the simple statutory base I have just described is overlaid with a series of executive orders (for example, Executive Order 10450 concerning the federal loyalty program) and directives dating back decades. The simplicity of the statute vanishes when placed in this setting. Moreover, the authorized work of the Bureau in terms of crime detection must be seen in the context of statutes passed by Congress such as the Smith Act, 18 U.S.C. 2385, the seditious conspiracy law, 18 U.S.C. 2384, and the rebellion and insurrection statute, 18 U.S.C. 2383. I would like to begin the discussion today by suggesting a few considerations that should be taken into account in deciding what statutory changes should be made to define more clearly the areas of the Bureau's jurisdiction and the means and methods which the Bureau is permitted to use in carrying out its assigned tasks.

First, there is a temptation to resort to having the courts make many difficult day-to-day decisions about investigations. When a Fourth Amendment search or seizure is involved, of

course, recourse to a court for a judicial warrant is in most circumstances required. But the temptation is to extend the use of warrants into areas where warrants are not constitutionally required. For example, as you know it has been suggested that the FBI ought to obtain a warrant before using an informant. Extending the warrant requirement in this way would be a major step toward an alteration in the basic nature of the criminal justice system in America. It would be a step toward the inquisitorial system in which judges, and not members of the executive, actually control the investigation of crimes. This is the system used in some European countries and elsewhere, but our system of justice keeps the investigation and prosecution of crime separate from the adjudication of criminal charges. The separation is important to the neutrality of the judiciary, a neutrality which our system takes pains to protect.

There is another, related consideration. To require judges to decide whether particular informants may be used in particular cases would bring the judiciary into the most important and least definable part of the investigative process. Even disregarding the problem of delay to investigations and the burden that would be placed upon courts, we must ask ourselves whether the control of human sources of information--which involves subtle, day-to-day judgments about credibility and personality--is something judges ought to be asked to undertake. It would place an enormous responsibility upon courts which either would be handled perfunctorily or, if handled with care, would place a tremendous burden of work on federal judges.

In drafting statutory changes, it must be remembered that rigid directions governing every step in the investigative process could sacrifice the flexibility that is necessary if an investigative agency is to adapt to the diverse factual situations it must face. Rigid statutory provisions would invite litigation at every step in the investigative process. Such litigation could very well be used by clever individuals to frustrate legitimate law enforcement efforts without achieving the measure of control for which the statutes were enacted. As Lord Devlin has said, "As soon as anything has been codified, there is a lawyer-like--but sometimes unfortunate--tendency to treat the written word as if it were the last word on the subject and to deal with each case according to whether it falls on one side or the other of what may be a finely drawn boundary."

These considerations do not in any way mean that Congress ought not act to clarify the FBI's statutory base. I want to emphasize my belief that Congress should do so. The problems I have mentioned are surmountable. The Department of Justice is ready to work with Congress in drafting statutes that will meet the issues that have been raised about the responsibilities of the FBI.

The proposed guidelines are part of our effort to cooperate with Congress in meeting its legislative responsibility. Some of what has been proposed in the guidelines may be useful

in drafting statutes. Other parts of the guidelines may best be left to regulations or Executive Orders. As I said in my earlier testimony before this Subcommittee, consultation with you and with other Congressional committees is an important part of the process by which these guidelines can be perfected. There will not be complete agreement about what has been proposed--indeed, within the Department of Justice there is some disagreement about some provisions--but this is inevitable and is a necessary part of the road we must travel. We welcome discussion, which is also essential. Let me then briefly describe the four proposed guidelines that have been substantially completed and have been provided to you. Others--which will cover criminal investigations, use of informants, counter-intelligence investigations and other areas--are currently being drafted by a committee within the Department chaired by Mary Lawton, Deputy Assistant Attorney General in the Office of Legal Counsel, and composed of representatives of the Civil Rights and Criminal Divisions, the Office of Policy and Planning, the Federal Bureau of Investigation, and the Attorney General's Office. As new guidelines are drafted in these areas they, too, will be made available to you.

When I testified before this Subcommittee last February I described a number of incidents which occurred in a period dating back more than a decade in which the FBI was misused for political purposes. I noted that in most cases we discovered where the White House was involved

the initiation of an improper request was made by a White House staff member--acting in the President's name--to a counterpart in the FBI. These requests were often made orally. White House staff members in a number of different positions were involved.

As you know, the FBI conducts background investigations of persons being considered for appointment by the President either to positions in government departments or agencies or to the White House staff. The FBI also checks it files and sometimes conducts further investigations of persons who will be in contact with the President or who will be given access to classified information. The guideline concerning White House inquiries sets up a procedure--which is already substantially being followed--which requires that requests for all such investigations be made in writing by the President or the Counsel or Associate Counsel to the President. Under the proposed guidelines the request for an investigation would have to certify that the person to be investigated has consented to the investigation with the knowledge that information gathered in the investigation would be retained by the FBI. The consent provision is important as a mechanism for preventing investigations in fact sought for political or other purposes from being initiated in the use of background investigations. It is also important as a protection of the privacy interests of persons to be investigated. There are provisions requiring

that access to information provided to the White House be strictly limited to those directly involved in the matter for which the investigation was initiated. Custodians of the files in the White House would be required to keep a list of all persons who were given access. The proposed guidelines concerning congressional staff and judicial staff appointments take the same basic approach as the guidelines concerning White House inquiries.

In addition the White House has been following the practice, which perhaps should be embodied in the guidelines, of directing through the Attorney General's Office all requests for investigation or for material from Bureau files except routine background checks. This was not the policy in the past. It reflects the Attorney General's role, which I described to you last year, as a lightning rod to deflect improper requests.

The proposed guidelines on the White House inquiries and on other matters accept the proposition that FBI files should be destroyed after a reasonable period of time. The deadlines for destruction of files have not yet been specified, however, because for administrative reasons these deadlines must be coordinated throughout the FBI file system.

The last time I appeared before this Subcommittee many members were concerned about the handling of unsolicited derogatory information received by the FBI. Unsolicited

information can be very valuable in law enforcement, as you know, but the concern has been that allegations about the private lives and habits of individuals have found their way into FBI files where they may remain for great lengths of time as a silent but troublesome invasion of individual privacy. In my testimony of last February 27, I suggested that on balance it would be desirable to devise some procedure under which some information in Bureau files would be destroyed. The guidelines concerning unsolicited information set up a procedure for the early destruction of such information when it does not relate to matters within the jurisdiction of the federal government or does not make an allegation of a serious crime within the jurisdiction of state or local police agencies. The draft guidelines provide for destruction of such unsolicited information within 90 days. The period after which other files would be required to be destroyed may vary. Information collected in background investigations might be retained long enough to avoid the need to repeat investigative steps as an individual moves from job to job within government or out of government and later back in. On the other hand, destruction of files developed in preliminary domestic security investigations may be required quite quickly if information indicating criminal conduct is not developed.

Finally I come to the proposed guidelines concerning the controversial area of domestic security investigations. I have already testified about these guidelines before the Senate Select Committee on Intelligence. Since that testimony, several changes have been made in the draft. You have been provided with the latest draft of these guidelines. There are several important features I would like to describe.

First, the proposed domestic security guidelines proceed from the proposition that government monitoring of individuals or groups because they hold unpopular or controversial political views is intolerable in our society. This is the meaning of the warning issued by former Attorney General Harlan Fiske Stone, as I read it. Stone said, "There is always the possibility that a secret police may become a menace to free government and free institutions, because it carries with it the possibility of abuses of power which are not always quickly apprehended or understood. . .It is important that its activities be strictly limited to the performance of those functions for which it was created and that its agents themselves be not above the law or beyond its reach. . .The Bureau of Investigation is not concerned with political or other opinions of individuals. It is concerned only with their conduct and then only with such conduct as is forbidden by the laws of the United States. When a police system passes beyond these limits, it is dangerous to the proper administration of justice and to human liberty, which it should be our first concern to cherish."

The proposed guidelines tie domestic security investigations closely to the violation of federal law. I realize there is an argument as to whether the guidelines tie domestic security investigations closely enough or too closely to the detection of criminal misconduct. But the main thing in my opinion is that the purpose of the investigation must be the detection of unlawful conduct and not merely the monitoring of disfavored or troublesome activities and surely not of unpopular views. This is accomplished in the guidelines by requiring some showing that the activities under investigation involve or will involve the use of force or violence and the violation of federal law. I must admit there is a problem--in part a drafting problem but perhaps more than that--of how to describe or set forth a standard which further specifies what is meant by "some showing."

Because investigations into criminal conduct in the domestic security area may raise significant First Amendment issues, the proposed guidelines provide for compendious reporting on such investigations to the Department of Justice. In general the guidelines provide for a much greater involvement by the rest of the Department of Justice and the Attorney General in reviewing FBI domestic security investigations. The emphasis upon departmental and congressional review is important, but it must be recognized that the Bureau must have primary responsibility for controlling itself. The guidelines attempt to strike an appropriate balance. Periodic reports by the Bureau of preliminary investigations would be required. All

full investigations would have to be reported to the Attorney General or his designee within one week of their opening. The Attorney General or his designee could close any investigation. FBI Headquarters would be required to review the results of full investigations periodically and to close any when it appears that the standard for opening a full investigation is not satisfied and all logical leads have been exhausted or are not likely to be productive. Each open case would be reviewed annually in the Department of Justice and would be closed if no longer justified under the standards. The personal approval of the Attorney General would be required when such sensitive techniques as Title III electronic surveillance or preventive action are to be used, and the Attorney General would be required to report to Congress periodically on the instances, if any, in which preventive action was taken.

Preliminary investigations--which would not involve the infiltration of informants into organizations or groups or such techniques as electronic surveillance or mail covers--would be authorized only on the basis of information or allegations that an individual, or individuals acting in concert, may be engaged in activities which involve or will involve the use of force or violence and the violation of federal law for one of five designated purposes. Those criminal purposes are:

(1) overthrowing the government of the United States or the government of a State;

(2) interfering, in the United States, with the activities of a foreign government or its authorized representatives;

(3) impairing for the purpose of influencing U.S. government policies or decisions:

(a) the functioning of the government of the United States;

(b) the functioning of the government of a State; or

(c) interstate commerce.

(4) depriving persons of their civil rights under the Constitution, laws, or treaties of the United States; or

(5) engaging in domestic violence or rioting when such violence or rioting is likely to require the use of the federal militia or other armed forces.

Preliminary investigations would be limited to inquiries of public record and other public sources; FBI files and indices; federal, state and local records; and existing informants and sources. Interviews and physical surveillance undertaken for the limited purpose of identifying the subject of the investigation would be allowed, but interviews or surveillance for any other purpose would require the written authorization of the Special Agent in Charge of the appropriate Bureau field office.

The draft guidelines provide that such intrusive investigative techniques as infiltration of informants into organizations and use of electronic surveillance and mail covers may only be initiated as a part of full investigations. The guidelines set out the following standard for the opening of a full investigation:

> "Full investigations must be authorized by the FBI Headquarters. They may only be authorized on the basis of specific and articulable facts giving reason to believe that an individual or individuals acting in concert are or may be engaged in activities which involve or will involve the use of force or violence and the violation of federal law for one or more" of the five purposes I mentioned earlier.

A provision is also included to allow the FBI to investigate for limited periods of time in situations in which domestic violence or rioting not violating federal law is likely to result in a request by a governor or legislature of a state under 10 U.S.C. 331 for the use of federal troops.

You will recognize that the standard for opening a full investigation proposed in the guidelines is the equivalent of the standard for a street stop and frisk enunciated by

the Supreme Court in Terry v. Ohio. There the Supreme Court wrote that in justifying a street search a police officer "must be able to point to specific and articulable facts which, when taken together with rational inferences from those facts, reasonably warrant the intrusion." In his summation of the holding of the Court, Chief Justice Warren wrote:

> We. . .hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. (emphasis added) (392 U.S. 1, 30)

This standard was adopted because it requires a strong showing of criminal conduct before a full investigation is authorized. I should point out that a change was made in this part of the guidelines since my testimony before the Senate Select Committee. Originally the standard had required a showing of specific and articulable facts giving reason to believe that the subjects of the investigation are engaged in activities that involve or will involve force and violence and the violation of federal law. The change to the phrase "are or may be" brings the formulation of the standard more closely in line with the Terry standard. The previous language of the guidelines proved to be too close to the arrest standard--that is, too restrictive as a standard for the opening of an investigation. The close correspondence of the revised draft's standard with the Terry language gives the guidelines' formulation a foundation in the Supreme Court's analysis of an analagous constitutional problem which, while it involves a different area of law enforcement, does provide a definition for the standard which is to control Bureau activities.

The proposed guidelines go on to require an additional consideration before a full investigation is opened. The guidelines state:

> [T]he following factors must be considered in determining whether a full investigation should be undertaken:
>
> (1) the magnitude of the threatened harm;

(2) the likelihood it will occur;

(3) the immediacy of the threat; and

(4) the danger to privacy and free expression posed by a full investigation.

This listing of factors, which has been added in the latest draft, gives the standard a dimension and explicitness it did not have in earlier drafts. For example, the balancing of the factors would require officials of the FBI and the Department of Justice to close any full investigation even if there is clear threat of a violation of federal law if the threatened harm is de minimus or unlikely or remote in time.

Finally, the draft guidelines provide a procedure to be followed in emergency situations when action by the FBI to intervene to prevent the use of illegal force and violence may be required. This section of the proposed guidelines has proven to be controversial, in part for fear that it seeks to allow the FBI to engage in activities of the sort that were involved in COINTELPRO. As I have said many times before, the activities that went under the name COINTELPRO were either foolish or outrageous, and the preventive action section of the guidelines was not intended to legitimize such activities, nor would it do so. It was included in the draft guidelines in the recognition that emergency situations may arise in which human life or the essential functioning

of government may be threatened. In such situations law enforcement officials would be expected to act to save life or protect the functioning of government. Indeed, law enforcement officials would be condemned if they did not act. The preventive action section of the guidelines was designed to provide a procedure for the Attorney General to authorize and report to Congress such activities. It was designed to set up an orderly and careful procedure to be followed in the case of emergency. It could be supplemented by further rules developed by the Attorney General. Under the proposed guidelines the Attorney General could authorize a preventive action only when there is probable cause to believe that illegal force or violence will be used and that it threatens life or the essential functioning of government. The Attorney General could authorize preventive action only when it is necessary to minimize the danger, that is, when other techniques will not work. In the latest draft of the guidelines several specific prohibitions were included to make clear that new COINTELPRO are not to be sanctioned. Prohibited are the commission or instigation by the FBI of criminal acts; the dissemination of information for the purpose of holding an individual or group up to scorn, ridicule, or disgrace; the dissemination of information anonymously or under false identity; and the incitement of violence.

It may be that Congress will choose to prohibit any FBI efforts to intervene to prevent force or violence. But to do so carries with it a risk and a responsibility.

The proposed guidelines are still in the process of revision. They are tentative. As the guidelines have been developed they have been shown to the Chairman of this Subcommittee. We must enunciate the differences among us about the best words to use and then seek to resolve those differences. But the main thrust of the guidelines is surely the most important thing, their recognition of the need for a program for destruction of files in the interest of privacy, their requirement of consent from the subject of background investigations, their requirement of progressively higher standards and higher levels of review for more intrusive investigative techniques, their requirement that domestic security investigations be tied closely with the detection of crime, and their safeguards against investigations of activities that are merely troublesome or unpopular. Upon these main themes I hope we all agree.

The Department of Justice has undertaken other steps to meet some of the issues of concern to this Subcommittee. We have created an Office of Professional Responsibility to investigate allegations of improper conduct by Department personnel and to review the investigations done by internal inspection units of agencies within the Department. We have been trying to work out a legislative proposal to bring national security wiretapping and microphone surveillance under a judicial warrant procedure. On June 24, 1975, I

provided the Chairman of the House Judiciary Committee with statistics concerning the use of national security electronic surveillance instituted without prior judicial approval. Before the Church Committee I recounted the history of national security electronic surveillance since 1940, revealing a year-by-year count of the number of telephone and microphone surveillances. The latest figures in this area show that in 1975 a total of 122 telephone wiretaps and 24 microphone devices were used to overhear conversations.

We have tried to be cooperative with this and other committees of Congress about other aspects of the past history of the FBI and other agencies within the Department. We have tried to reveal as much as possible about the past out of a sense of comity and a feeling that the past problems must be discussed in the process of creating new policy. But we have tried also to recognize that the past is not always the best guide to the future. As we review recent history we may be so overwhelmed by it--and by our failure of memory about the social and political forces that shaped recent history--that we will read its lessons more broadly than we ought to. If there was a lack of humility in the past about the perfection of our vision of what was proper, I hope we cannot fail to recognize the flaws in our vision about the past and the future today.

It is a challenging and interesting time, and I hope together we can prepare ourselves wisely for the future. We cannot escape from the responsibility of looking at the problems we face today and are likely to face in the future.

When I testified almost one year ago I stated to this committee--and I want to emphasize most strongly again today--that I have both a personal and official concern for the issues which face us in this area. Those issues are close to the basic duties of the Attorney General to protect the society--its values, and the safety of its members. I am sure that Director Kelley will agree with me that we must clarify for the present and for the future the kind of course to be followed, meticulously and candidly. I believe we have already made considerable progress in this regard. Together with Congress legislation can be worked out and wise policy achieved.