FEDERAL BUREAU OF INVESTIGATION
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Total Deleted Page(s) = 4
Page 12 ~ Duplicate;
Page 29 ~ Referral/Consult;
Page 30 ~ Referral/Consult;
Page 31 ~ Referral/Consult;

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Total Deleted Page(s) = 4
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File—Serial Charge Out
FD-5 (Rev. 6-17-70)

048—16—83475-1 GPO

File 66-3843 Date
Class. Case No. Last Serial

☐ Pending ☐ Closed

Serial No.	Description of Serial	Date Charged
	Statement of A.G. Levi before Committee 2/11/76	2/20/76
	Statement of Director before Committee 2/11/76	2/20

SAC
Employee

RECHARGE Date

To From

Initials of Clerk

Date

Date Charged

Employee

Location

NR Ø74 WA CODE

849PM NITEL 5-2-75 MSE

TO ALL SACS

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SENSTUDY 75

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

RECENTLY, THE SENATE SELECT COMMITEE (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 COMMITEE AND WE WISH TO ASSIST AND FACILITATE ANY INVESTIGATIONS UNDER-TAKEN 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

ASAC

VIA ENCIPHERED TELETYPE

Routine receipt today, 5/3/75 pm

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.

END

FBI NH CLR FOR THREE TELS ETS

NRØ38 WA CODE

536PM URGENT 5-2-75 WGM

TO ALEXANDRIA

BALTIMORE

NEW HAVEN

NEWARK

OMAHA

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SENSTUDY 75

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 INTERVIEW CURRENT AND FORMER FBI EMPLOYEES. THE SENATE SELECT COMMITTEE (SSC) STAFF HAS ALREADY INTERVIEWED SOME FORMER EMPLOYEES. NEWARK TELETYPE APRIL 3Ø LAST "ADMINISTRATIVE INQUIRY; 1964 DEMOCRATIC PARTY NOMINATING CONVENTION, ATLANTIC CITY, NEW JERSEY," REPORTED ADVICE FROM FORMER SPECIAL AGENT JOHN P. DEVLIN THAT HE HAD BEEN INTERVIEWED BY

no action necessary to-day, 5/3/75 RBM

ASAC

VIA ENCIPHERED TELETYPE

SEARCHED INDEXED
SERIALIZED FILED
MAY 2 1975
FBI—NEW HAVEN

[redacted] SSC STAFF MEMBER, CONCERNING DEVLIN'S PART IN FBI'S ACTIVITIES AT DEMOCRATIC CONVENTION, ATLANTIC CITY, AUGUST 22-28, 1964. b6 b7C

SET OUT BELOW ARE NAMES AND LAST KNOWN ADDRESSES OF FORMER BUREAU AGENTS ASSIGNED TO SPECIAL SQUAD AT ATLANTIC CITY, AUGUST, 1964. EACH OF THESE FORMER AGENTS IS TO BE IMMEDIATELY CONTACTED AND ALERTED THAT THEY MIGHT BE APPROACHED BY THE SSC STAFF. THEY ARE NOT, REPEAT NOT, TO BE ADVISED OF THE AREA WHICH MAY BE COVERED IN ANY INTERVIEW OF THEM BY THE SSC. THEY SHOULD, HOWEVER, BE TOLD THAT IN THE EVENT THEY ARE INTERVIEWED AND DURING THE COURSE OF SAME, QUESTIONS ARE ASKED WHICH RELATE TO SENSITIVE BUREAU OPERATIONS, THEY CAN REQUEST THAT AN FBI AGENT BE PRESENT. CONTACTS WITH THESE FORMER AGENTS TO BE HANDLED PERSONALLY BY SAC OR ASAC. IN THE EVENT THIS NOT FEASIBLE FOR JUST CAUSE, TO BE HANDLED BY A SENIOR SUPERVISOR.

IMMEDIATELY AFTER CONTACT, RESULTS SHOULD BE FURNISHED BUREAU BY TELETYPE IN ABOVE CAPTION. IF A FORMER AGENT NO LONGER IN YOUR TERRITORY OR TEMPORARILY AWAY, SET OUT LEAD TO OTHER OFFICE IMMEDIATELY WITH COPY TO FBIHQ.

NEWARK SHOULD INCLUDE RECONTACT WITH DEVLIN FOR PURPOSE

INDICATED ABOVE AND ALSO FURNISH BUREAU ANY INFORMATION DEVLIN MAY HAVE FURNISHED YOUR OFFICE IN ADDITION TO THAT IN YOUR TELETYPE.

ALEXANDRIA: HAROLD P. LEINBAUGH, 1643 NORTH VAN DORN, ALEXANDRIA. [redacted]

BALTIMORE: DONALD G. HANNING, 18 OXFORD STREET, CHEVY CHASE

NEW HAVEN: HOBSON H. ADCOCK, 65 GLENBROOK ROAD, STAMFORD, CONNECTICUT.

NEWARK: [redacted] JOHN PATRICK DEVLIN, 39 BENNINGTON ROAD, LIVINGSTON, NEW JERSEY. [redacted]

OMAHA: [redacted]

END

HOLD

b6
b7C

FD-36 (Rev. 5-22-64)

F B I

Date: 5/5/75

Transmit the following in _____
(Type in plaintext or code)

Via TELETYPE URGENT
(Priority)

001

TO: BUREAU

FROM: NEW HAVEN

SENSTUDY 75

REBUTEL 5/2/75.

FORMER SA HOBSON H. ADCOCK WAS CONTACTED THIS DATE BY THE SAC. ADCOCK WAS FURNISHED INFORMATION AS SPECIFIED IN RETEL. ADCOCK ADVISED THAT HE HAD NOT AS YET BEEN CONTACTED BY ANY REPRESENTATIVE OF CAPTIONED GROUP.

TRD:ML
(1)

VIA ENCIPHERED TELETYPE

66-3845-3

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

FD-350 (Rev. 7-16-63)

(Mount Clipping in Space Below)

Lack Of Reforms Irritates Weicker

BRIDGEPORT, Conn. (AP) — Sen. Lowell Weicker says he finds it frustrating that Congress has done nothing to prevent a recurrence of Watergate.

"I'm coming up against a deadline. Interest is waning in passing Watergate reform legislation. "If I can't do it in 1975, I'm not going to be able to do it," Weicker said at the Connecticut Associated Press Circuit meting Thursday night.

"The FBI and the CIA were running amok. There was no control. I can't promise to you that those things are not happening now because nothing's been done," he said.

Weicker, R—Conn., one of three GOP members of the Senate Watergate committee, said he's frustrated that Congress has failed to pass reforms to prevent future use of the FBI and CIA for partisan political purposes. He's also frustrated that Congress has not required legislators and administration officials to disclose their personal finances and still has not guaranteed the confidentiality of Internal Revenue Service documents.

Weicker said he was cautiously optimistic that Congress would pass his bill to safeguard tax returns. But he thought that the federal bureaucracy probably would water it down to give government agencies access to tax information.

"The only way to monitor the CIA and FBI is to have effective congressional watchdog committees" that can control the amount of money those agencies receive, Weicker said.

He added that four committees now are responsible for watching the CIA but that responsibility is a secondary function for all of them. He said efforts to create new oversight committees have been bogged down for political reasons.

Congress has passed a measure to subsidize presidential campaigns with federal money, he said. Although some legislators label that Watergate reform, it's just the opposite, he added.

"Ninety per cent of the abuses of Watergate didn't occur in the private sector. They occurred in the government," he said.

"This law gives more power to the incumbent administration. How would you have liked Nixon to have control over Democratic campaign contributions? Under this law, he would have."

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

__ PAGE 2

__ NEW HAVEN REGISTER

__ NEW HAVEN

__ CONNECTICUT

Date: 5-9-75
Edition: DAILY
Author: (AP)
Editor: ROBERT J. LEENEY
Title:

Character:
or
Classification:
Submitting Office NEW HAVEN

☐ Being Investigated

66-3843-4

SEARCHED CK INDEXED
SERIALIZED FILED
MAY 12 1975
FBI — NEW HAVEN

CC to Bureau 5/13/75

SAC

NR036 WA CODE

4:53PM 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

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.

Enclosures (3)

C M Kelley 66-3843-7

Clarence M. Kelley
Director

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____
JUN 9 - 1975
FBI — NEW HAVEN

Distributed to employees

cc 66-1946

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

NRØ22 WA CODE

3:14PM NITEL 6-13-75 VLJ

TO ALL SACS

FROM DIRECTOR (62-116464)

PERSONAL ATTENTION

HOUSTUDY 75. 66-3843*

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

66-3843-8

SEARCHED INDEXED
SERIALIZED FILED
JUN 13 1975
FBI — NEW HAVEN

SAC (last)

(Mount Clipping in Space Below)

FBI's Top Secret Is Its Phone Book

WASHINGTON (AP) — One of the FBI's best-kept secrets is its telephone directory.

Hardly anyone outside the FBI has one and not even the attorney general has one, although his aides say he doesn't really need it.

Reporters and other private citizens cannot get one, not even by petitioning for it under the Freedom of Information Act which is supposed to, and sometimes does, open all sorts of government files to public view.

This reporter tried that route but only gained one page of the directory after Atty. Gen. Edward H. Levi overruled the FBI. That page lists the numbers for FBI Director Clarence M. Kelley's office and for the offices of 10 of the 13 FBI divisions. The phone numbers for Kelley and all 13 divisions long have been listed in the Justice Department directory which is routinely provided to reporters.

The page that Levi released also includes the numbers for the FBI gymnasium, the guard captain, and the cafeteria. A reporter might cover the FBI for 30 years and never need those numbers.

Reporters who occasionally have glimpsed one of the secret directories believe it contains an alphabetical list of the thousands of headquarters employes, their division assignment, room numbers and telephone numbers.

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

PAGE 9

NEW HAVEN REGISTER

NEW HAVEN

CONNECTICUT

Date: 7-28-75
Edition: DAILY
Author: AP
Editor: ROBERT J. LEENEY
Title:

Character:
or
Classification:
Submitting Office: NEW HAVEN

☐ Being Investigated

66-3843-9

SEARCHED ... INDEXED ...
SERIALIZED ... FILED ...
JUL 29 1975
FBI — NEW HAVEN

Levi and [illegible]y argued that a reporter doesn't need a phone book because the main switchboard operator will put through calls to any FBI employe. That sometimes works and sometimes doesn't.

This exercise began last Feb. 21, in an effort to obtain a necessary tool of reporting. On March 14, Kelley denied the request, citing the sections of the FOI Act exempting certain internal records and personnel files from public disclosure. And he wrote in a letter:

"I am aware that the information you requested would be vital to certain foreign intelligence services intent upon disrupting or otherwise thwarting our activities. I am therefore concerned that public disclosure of this inform[illegible]n could impede our ability to carry out our investigative responsibilities."

Besides, he said, reporters already have the names and telephone numbers for the agents designated to respond to press inquiries. The spokesman deliver only the agency's official response and they often don't have the requested data or take hours or days to provide it.

Kelley's decision was appealed to Levi who replied on July 17, "I have decided to affirm the action of Director Kelley in this case with a single modification" — the page he ordered released.

"Failure to have access to this directory affects the public not at all," Levi wrote. He said the FBI switchboard will connect any caller with the individual he requests or with "the appropriate office to deal with the caller's problem."

The attorney general said he was acting to protect the privacy of FBI employes.

"It may be that the privacy consideration . . . seems remote to you," he wrote. "It is not viewed in that light, however, by the many employes of the bureau who have been subjected to harassment in their private lives solely because of their bureau affiliation, and whose spouses and families have been the recipients of obscene and threatening telephone calls."

Few if any Justice Department officials have a copy. Aides to the attorney general say they either dial through the FBI switchboard or already know the numbers of the FBI officials they deal with most often, so have no real need for the full directory.

One department attorney recently asked an FBI associate for an FBI phone book and was turned down. The FBI man eventually gave the lawyer a typed list of phone numbers for some key officials and that satisfied the attorney's needs.

This lawyer confided, "I gave a copy of my list to the deputy attorney general's office because they didn't have a directory."

NR051 WA CODE

9:13PM NITEL JULY 29, 1975 MSY

TO ALL SACS

FROM DIRECTOR

PERSONAL ATTENTION

ATTORNEY GENERAL'S REQUEST RE SENSITIVE INVESTIGATIVE TECHNIQUES.

THE ATTORNEY GENERAL, NOTING THE DEPARTMENT IS REVIEWING ACTIVITIES CONDUCTED UNDER PRESIDENTIAL AUTHORITY FOR USE OF WARRANTLESS ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE, INCLUDING COUNTERINTELLIGENCE PURPOSES, REQUESTED A REVIEW OF ALL OTHER ACTIVITIES WHICH ARE OR CAN BE CONDUCTED BY THE BUREAU INVOLVING NONCONSENSUAL, WARRANTLESS INTRUSION UPON REAL OR PERSONAL PROPERTY; NONELECTRONIC EAVESDROPPING UPON CONVERSATIONS THOUGHT BY THE PARTICIPANTS TO BE PRIVATE; INTERCEPTION OR OTHER RECEIPT NOT AUTHORIZED BY THE SENDER OR RECEIVER OF THE CONTENTS OF WIRE, RADIO OR WRITTEN COMMUNICATIONS; AND ALL OTHER ACTIVITIES, WHETHER OR NOT INVOLVING ELECTRONIC SURVEILLANCE OR PHYSICAL INTRUSION, THAT MIGHT BE CALLED INTO QUESTION OR SHOULD BE REVIEWED.

66-3843-10

VIA ENCIPHERED TELETYPE

THE ATTORNEY GENERAL REQUESTED A DESCRIPTION OF THE TYPES OF SUCH ACTIVITIES NOW BEING CONDUCTED BY THE BUREAU, AND ALSO ANY ADDITIONAL TYPES WHICH THE BUREAU CONSIDERS ITSELF AUTHORIZED TO CONDUCT. IN ADDITION, A REPORT ON ANY SUCH PAST ACTIVITIES ~~WAS~~ ALSO REQUESTED BY THE ATTORNEY GENERAL.

CANVASS YOUR PERSONNEL FOR ANY SUCH TYPES OF ACTIVITIES CONDUCTED IN YOUR OFFICE AND NOTE WHETHER USED IN ORGANIZED CRIME, GENERAL CRIMINAL, FOREIGN INTELLIGENCE, OR DOMESTIC SECURITY INVESTIGATIONS.

SUTEL BY CODED AND APPROPRIATELY CLASSIFIED NITEL, ATTENTION INTD.

ALL LEGATS ADVISED SEPARATELY.

END

LM FBI NEW HAVEN

FD-36 (Rev. 5-22-64)

004

FBI

Date:

Transmit the following in CODE
(Type in plaintext or code)

Via TELETYPE NITEL
(Priority)

TO: DIRECTOR, FBI ATTN: INTELLIGENCE DIVISION

FROM: SAC, NEW HAVEN

ATTORNEY GENERAL'S REQUEST RE SENSITIVE INVESTIGATION TECHNIQUES.

ALL AVAILABLE PERSONNEL NEW HAVEN DIVISION CANVASSED 7/31/75 RE CAPTIONED MATTER WITH NEGATIVE RESULTS. NO SUCH ACTIVITIES PRESENTLY BEING CONDUCTED NOR PREVIOUSLY CONDUCTED IN THIS DIVISION IN PAST TEN YEARS.

VIA ENCIPHERED TELETYPE

66-3243-108

FXO/cbs
(1)

SMD

Approved: _____ Sent 11:10 M Per _____
Special Agent in Charge

U.S.Government Printing Office: 1972 — 455-574

OFFICE OF THE DIRECTOR

PERSONAL ATTENTION
MEMORANDUM 35-75

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

August 12, 1975

MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE:

(A) INTERVIEWS OF FBI EMPLOYEES BY CONGRESSIONAL STAFF MEMBERS -- In accordance with a recently adopted suggestion, you are to insure that all new employees who enter on duty in your field office are fully apprised of the contents of the Memorandum to All Employees, dated May 28, 1975, dealing with captioned matter. This should be done at the time they execute the FBI Employment Agreement, FD-291, regarding the unauthorized disclosure of information.

This practice can, of course, be discontinued upon the completion of the inquiry that Congress has instituted.

8-12-75
MEMORANDUM 35-75

(B) "ALL SAC" TELETYPES, AIRTELS, OR LETTERS ORIGINATED BY FIELD OFFICES -- Effective immediately, field offices may initiate an "ALL SAC" teletype, airtel, or letter, provided SAC personally approves the communication. A copy of such communication must be furnished to FBIHQ for subsequent review by the substantive division.

Appropriate manual revisions to follow.

Clarence M. Kelley
Director

Note for new corp.

66-3843-11

8-12-75
MEMORANDUM 35-75

cc: 66-4446

FD-36 (Rev. 5-22-64)

FBI

Date: 8/17/75

001

Transmit the following in CODE
(Type in plaintext or code)

Via URGENT TELETYPE
(Priority)

TO: DIRECTOR (62-116395)

FROM: NEW HAVEN

SENSTUDY 75

REBUTEL 8/15/75.

FORMER SA JAMES T. HAVERTY CONTACTED 8/16/75, BY SAC AT HIS RESIDENCE, WESTPORT, CONN.

HAVERTY HAS ALREADY BEEN CONTACTED BY SENATE SELECT COMMITTEE (SSC) AIDE; [redacted] HAVERTY IS TO MEET WITH SSC AIDES IN WASHINGTON, DC, 2PM, WEDNESDAY, 8/20/75. HE WILL ARRIVE IN WASHINGTON, DC LATE IN THE MORNING OF THAT DAY AND GO DIRECTLY TO THE BUREAU'S OFFICE OF LEGAL COUNSEL FOR DISCUSSION REGARDING HIS MEETING WITH SSC AIDES.

b6
b7C

E N D

VIA ENCIPHERED TELETYPE

WAT

WAT

66-3843 — 12

Approved: SAC DUGAN
Special Agent in Charge

Sent WA - 12 20 Pm - JAC M Per RG

GPO : 1970 O - 402-735

NR033 WA CODE

5:26PM 9/4/75 NITEL AJN

TO ALL SACS

FROM DIRECTOR (62-116395)

PERSONAL ATTENTION

SENSTUDY 75

REBUTEL MAY 2, 1975.

PURPOSES OF INSTANT TELETYPE ARE TO (1) REITERATE THAT FBI HAS PLEDGED FULL COOPERATION WITH THE SENATE SELECT COMMITTEE (SSC) AND WISHES TO ASSIST AND FACILITATE ANY INVESTIGATIONS UNDERTAKEN BY THE SSC WITH RESPECT TO THE FBI; AND (2) SET FORTH NEW PROCEDURE RELATING TO SSC STAFF INTERVIEWS OF CURRENT AND FORMER FBI EMPLOYEES.

FOR INFORMATION OF THOSE OFFICES WHICH HAVE NOT PREVIOUSLY HAD CURRENT OR FORMER EMPLOYEES IN ITS TERRITOY INTERVIEWED BY THE SSC, THE BUREAU FREQUENTLY LEARNS FROM THE SSC OR OTHERWISE THAT FORMER EMPLOYEES ARE BEING CONSIDERED FOR INTERVIEW BY THE SSC STAFF. INSTRUCTIONS ARE ISSUED FOR THE FIELD OFFICE TO CONTACT THE FORMER EMPLOYEE TO ALERT HIM AS TO POSSIBLE INTERVIEW, REMIND HIM OF HIS CONFIDENTIALITY AGREEMENT WITH THE BUREAU AND SUGGEST THAT IF HE IS CONTACTED FOR

ENCIPHERED TELETYPE

ASAC #3 4 5

INTERVIEW, HE MAY CONTACT THE LEGAL COUNSEL DIVISION BY COLLECT CALL FOR FURTHER INFORMATION. IN THE USUAL CASE, AS CIRCUMSTANCES UNFOLD, THE FORMER EMPLOYEE IS TOLD(1) THAT HE HAS A RIGHT TO LEGAL COUNSEL, BUT THAT THE BUREAU CANNOT PROVIDE SAME; (2) THAT THE BUREAU HAS WAIVED THE CONFIDENTIALITY AGREEMENT FOR THE INTERVIEW WITHIN SPECIFIED PARAMETERS; AND (3) THAT THERE ARE FOUR PRIVILEGED AREAS IN WHICH HE IS NOT REQUIRED TO ANSWER QUESTION. THESE AREAS ARE RELATING TO INFORMATION WHICH MAY (A) IDENTIFY BUREAU SOURCES; (B) REVEAL SENSITIVE METHODS/TECHNIQUES; (C) REVEAL IDENTITIES OF THIRD AGENCIES, INCLUDING FOREIGN INTELLIGENCE AGENCIES, OR INFORMATION FROM SUCH AGENCIES; AND (D) ADVERSELY AFFECT ONGOING BUREAU INVESTIGATIONS.

HERETOFORE, BUREAU HAS OFFERED INTERVIEWEES CONSULTATION PRIVILEGES WHEREBY A BUREAU SUPERVISOR WOULD BE AVAILABLE NEARBY, ALTHOUGH NOT ACTUALLY AT INTERVIEW, SO INTERVIEWEE MIGHT CONSULT WITH HIM SHOULD QUESTIONS ARISE AS TO PARAMETERS OF INTERVIEW OR PRIVILEGED AREAS. THE CONSULTANT DID NOT ACT AS A LEGAL ADVISOR.

EFFECTIVE IMMEDIATELY, BUREAU WILL NO LONGER PROVIDE

ON-THE-SCENE PERSONNEL FOR CONSULTATION PURPOSES TO ASSIST EITHER CURRENT OF FORMER EMPLOYEES. PROSPECTIVE INTERVIEWEES SHOULD BE TOLD THAT, IF THEY DESIRE ASSISTANCE OF THIS NATURE DURING AN INTERVIEW, THEY MAY CONTACT EITHER PERSONALLY (IF INTERVIEW IS IN WASHINGTON, D. C.) OR BY COLLECT CALL, THE ASSISTANT DIRECTOR OF THE INTELLIGENCE DIVISION, MR. W. R. WANNALL, OR, IN HIS ABSENCE, SECTION CHIEF W. O. CREGAR.

THIS CHANGE IN PROCEDURE SHOULD NOT BE CONSTRUED AS LESSENING THE ASSISTANCE WE ARE FURNISHING TO CURRENT AND FORMER EMPLOYEES.

FOR YOUR ADDITIONAL INFORMATION, I AM WORKING WITH THE DEPARTMENT IN EXPLORING AVENUES TO ARRANGE LEGAL REPRESENTATION, WHEN NECESSARY, FOR CURRENT AND FORMER EMPLOYEES WITHOUT EXPENSE TO THEM. YOU WILL BE KEPT ADVISED OF DEVELOPMENTS IN THIS REGARD.

END

NR045 WA PLAIN

6:36PM NITEL 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

#3

#4

#5

66-3843-15

VIA ENCIPHERED TELETYPE

CC- BB

PAGE TWO

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

PLEASE ACK FOR TWO

HOLD FOR 1 PLS

LM FBI NEW HAVEN FOR 2

Routing Slip
0-7 (Rev. 12-17-73)

(Copies to Offices Checked)

TO: SAC:

☐ Albany	☐ Houston	☐ Oklahoma City	**TO LEGAT:**
☐ Albuquerque	☐ Indianapolis	☐ Omaha	☐ Beirut
☐ Alexandria	☐ Jackson	☐ Philadelphia	☐ Bern
☐ Anchorage	☐ Jacksonville	☐ Phoenix	☐ Bonn
☐ Atlanta	☐ Kansas City	☐ Pittsburgh	☐ Brasilia
☐ Baltimore	☐ Knoxville	☐ Portland	☐ Buenos Aires
☐ Birmingham	☐ Las Vegas	☐ Richmond	☐ Caracas
☐ Boston	☐ Little Rock	☐ Sacramento	☐ Hong Kong
☐ Buffalo	☐ Los Angeles	☐ St. Louis	☐ London
☐ Butte	☐ Louisville	☐ Salt Lake City	☐ Madrid
☐ Charlotte	☐ Memphis	☐ San Antonio	☐ Manila
☐ Chicago	☐ Miami	☐ San Diego	☐ Mexico City
☐ Cincinnati	☐ Milwaukee	☐ San Francisco	☐ Ottawa
☐ Cleveland	☐ Minneapolis	☐ San Juan	☐ Paris
☐ Columbia	☐ Mobile	☐ Savannah	☐ Rome
☐ Dallas	☐ Newark	☐ Seattle	☐ Singapore
☐ Denver	☐ New Haven	☐ Springfield	☐ Tel Aviv
☐ Detroit	☐ New Orleans	☐ Tampa	☐ Tokyo
☐ El Paso	☐ New York City	☐ Washington Field	
☐ Honolulu	☐ Norfolk	☐ Quantico	

Date 11/21/75

RE: SENATE SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES

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

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

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

Remarks:

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

66-3843-16

SEARCHED ____ INDEXED ____
SERIALIZED NES FILED NSS
NOV 2 1975
FBI — NEW HAVEN

66-3543

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Mr. Church's Cover-Up

By William Safire

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

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

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

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

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

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

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

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

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

ESSAY

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

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

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

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

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

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

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

(Copies to [redacted]es Checked)

TO: SAC:

- ☐ Albany
- ☐ Albuquerque
- ☐ Alexandria
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- ☐ Atlanta
- ☐ Baltimore
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- ☐ Mobile
- ☐ Newark
- ☒ New Haven
- ☐ New Orleans
- ☐ New York City
- ☐ Norfolk
- ☐ Oklahoma City
- ☐ Omaha
- ☐ Philadelphia
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- ☐ Savannah
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TO LEGAT:

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- ☐ Tokyo

RE: HEARINGS BEFORE THE SENATE SELECT COMMITTEE

Date December 4, 1975

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

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

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

Remarks:

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

66-3843-17

SEARCHED ... INDEXED ...
SERIALIZED ... FILED ...
DEC [illegible] 1975
FBI - NEW HAVEN

Enc. (1)
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Urfile

EXCERPTS OF REMARKS MADE BY

ASSISTANT TO THE DIRECTOR --

DEPUTY ASSOCIATE DIRECTOR JAMES B. ADAMS

TESTIFYING BEFORE THE

SENATE SELECT COMMITTEE

PERTAINING TO THE KU KLUX KLAN,

GARY ROWE, FORMER FBI INFORMANT, AND

PREVIOUS ATTEMPTS OF THE FBI

TO PREVENT VIOLENCE

DECEMBER 2, 1975

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.

File—Serial Charge Out
FD-5 (Rev. 6-17-70)

* GPO : 1973 O - 503-768

File _____ _____ _____ Date _____
Class. Case No. Last Serial

☐ Pending ☐ Closed

Serial No.	Description of Serial	Date Charged
17A	R/S Jr. Bu. 12/5/75	12
	Re Resignation of Asst.	
	to the Dir. 12/12/75	1/28

SAC
Employee

RECHARGE Date _____

To _____ From _____

Initials of Clerk { _____ _____ _____

Date { _____ _____ _____

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Date Charged

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Employee

_____
Location

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

STATEMENT ON TERRORISM
BY CLARENCE M. KELLEY, DIRECTOR, FBI
BEFORE SUBCOMMITTEE ON INTERNAL SECURITY,
SENATE COMMITTEE ON JUDICIARY, NOVEMBER 19, 1975

An explosion rocked historic Fraunces Tavern in New York City this January 24; four innocent persons died. Responsibility was claimed by the Armed Forces of Puerto Rican Liberation, or FALN. This group also claimed a coordinated series of bombings against Government buildings and corporate offices in three cities on October 27, 1975.

This is the face of the terrorist in the United States today--the twisted rationale of the revolutionary and the urban guerrilla, joined to the expertise and will to build and explode bombs.

When we speak of terrorism by various self-proclaimed urban guerrillas, revolutionaries, and extremist nationalists in this country, we are talking about violence.

Violence against the Government, against police officers, against the "system," as some label our society, violence against innocent victims--the four in New York--violence intended to demonstrate the power of the terrorist, in an attempt to show that a free society cannot protect itself and preserve its freedom at the same time.

The problem of terrorism is, of course, worldwide. Arab terrorists make what amounts to war in their battle for the Middle East.

66-3843-18

Kidnappings, bombings, murders, and robberies by urban guerrillas strained the West German judicial system. In Northern Ireland, terrorism has become a way of life--and death.

Because there are a number of small terrorist groups spread across our large Nation, some of them operating in a limited area, we sometimes miss the total impact of their activity. How many Americans have heard of the New World Liberation Front? This group has claimed at least fourteen terrorist bombings in California this year alone.

What is the Continental Revolutionary Army? This is the name used by those who took credit for three bombings in Denver this year--a Government office, a bank, and the home of a Government official were the targets.

Other terrorist groups, because of their spectacular activities or their longer presence on the scene, are better known. The SLA, or Symbionese Liberation Army, received massive publicity after the kidnapping of Patricia Hearst--much more attention with this so-called political kidnapping than with their earlier claim of the murder of the Oakland school superintendent.

The Weather Underground, which started with the name Weatherman, is still an active terrorist group, claiming the September 5 bombing of the Kennecott Copper building in Salt Lake City. The Weather Underground, which recently described itself as a guerrilla organization of communist

women and men underground in the United States, claimed four bombings of Government and corporate targets last year. This group makes no secret of its intent to wage war, in its words, and then to seize power.

This Subcommittee performed a valuable public service in publishing its report on the Weather Underground this January.

Your report notes the use of guerrilla manuals by the Weather Underground. We have found that most terrorist groups use handbooks, such as the "Minimanual of the Urban Guerrilla," that were written abroad, usually by Marxists.

There is yet a third type of political terrorist in this country. Besides the extremist nationalists, such as the FALN, and the New Left-type revolutionaries--the Weather Underground and the New World Liberation Front--there are the self-described urban guerrillas of the Black Liberation Army.

Known as the BLA, this group grew out of the Black Panther Party, after the Panthers split into two factions in 1971. The 1966 formation of the Black Panther Party itself came at the height of the riots that wracked our Nation's cities in the 1960's.

This paralleled the development of the New Left on college campuses, and the escalation of campus disorders to acts of terrorism by the hard core of this New Left.

As early as 1968, the Panthers proclaimed that they would not dissent from the U. S. Government, they would overthrow it. The armed Panther invasion of the California legislature gained the group nationwide notoriety. The Panther antipolice slogan, "off the pig," became reality when officers were killed in confrontations with Panthers.

Police officers have been the primary target of the urban guerrilla. Since 1971, the deaths of 43 officers, and the wounding of 152 more, have been linked to these terrorists. The very first communique from the BLA boasted that the group had "no hangups about dealing with fascist pig cops."

Letters to the news media claimed credit for two ambush attacks on police in New York City in May, 1971. Two officers were killed and two others were wounded in these ambushes.

Attacks on police--12 ambushes, 27 snipings, and 50 other shooting confrontations--were epidemic in 1971. The police killings in New York City were the catalyst of a White House Conference on this emergency. A Presidential order that the FBI render assistance in police-killing cases, if requested by local authorities, resulted.

At the same time, the FBI was intensively investigating the BLA. At the end of the year, Frank Fields, a BLA member sought for bank robbery, fired on FBI Agents seeking to arrest him in Florida. He was fatally wounded in the shoot-out.

The investigation of the 1971 police killings by New York City police and the FBI was an excellent example of cooperation between local and Federal authorities in a case that had nationwide ramifications. It resulted in the conviction of three BLA members this April.

The FBI response to terrorism has included investigations, training of local police, and research.

Under new bombing laws enacted by Congress, we received authority to investigate terrorist bombings. We operate the FBI Bomb Data Program to correlate all bombing matters reported and then inform local police of tactics and trends in this area.

In 1970, the wave of Weather Underground bombings broke. The group claimed the bombings of a military facility in May, of the New York City Police Department headquarters in June, of a bank in New York, and another military facility in San Francisco, in July.

In response to this violence, we set up nationwide law enforcement training on bombings in the Fall of 1970; some 277 training sessions were held, attended by thousands of police officers.

While Weatherman-type bombings continued in 1971, these attacks on property were exceeded in dangerousness by the attacks on the lives of police officers in 1971 and 1972. The FBI response to these attacks on police included extensive work on the handling of snipers and nationwide law enforcement training on this subject.

In 1973, there was a decline in terrorist-type attacks on police. There was also a slackening in terrorist bombings--the Weather Underground claimed only three in 1972 and 1973 together.

We have statistics on terrorist activity in the United States which I would like to offer for the record at this time. These show some 634 reported incidents--bombings, fire bombings, ambushes, and other shootings of police, and other terrorist-type activity--from 1971 through 1974.

We knew, though, that the lull might be only temporary. We continued assistance to police agencies with symposiums at Quantico and law enforcement training around the country--almost 25,000 officers attended the 1973 training sessions. We also began disseminating a periodic summary of terrorist activity and tactics to police departments.

The decline in attacks on police by members of the Black Liberation Army has continued. Most of this group's recent activities have been attempted jailbreaks, in an effort to free some of the BLA leaders now behind bars.

But bombings by New Left revolutionaries are now on the increase. In 1973, there were 24 bombings claimed by or attributed to terrorist groups. Last year, the number of terrorist bombings increased to 45. The first six months of this year, there were 46 of these bombings, 1 more than all of 1974.

New terrorist groups have now appeared. This country has experienced its first so-called political kidnapping. The activities of the Symbionese Liberation Army, the self-proclaimed revolutionaries who recruited among prison inmates, are well known.

Diehard anti-Castro Cuban exiles have, in some cases, turned to terrorist-type bombings in Miami, other parts of the country, and abroad. These activities increase with reports of normalization of relations with Cuba.

Law enforcement faces new challenges in combating terrorism. Terrorists in this country have adopted the cell system to prevent infiltration. The fanaticism of many of these urban guerrillas and revolutionaries makes intelligence penetration difficult.

Many terrorists are expert in the use of false identification, and are able to melt into a whole subculture of communes that extends across the Nation.

There is also an element of support for today's terrorists, both moral and material support, from some segments of the American public. This, to me, is the most difficult aspect of the problem to understand: the approbation of terrorist activity by otherwise law-abiding citizens, given apparently because of the so-called idealism of the terrorists.

How does today's terrorism differ from the murderous Ku Klux Klan violence of a decade ago? While the motives of the terrorists may differ, motive is of no moment to a murder victim.

Decent Americans were outraged over Klan bombings, beatings, and killings. Where is that outrage today?

In spite of this attitude on the part of some people, I still feel that terrorism is criminal violence, not so-called protest, and must be dealt with as such.

Routing Slip
0-7 (Rev. 12-17-73)

(Copies to Offices Checked)

TO: SAC:

- ☐ Albany
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RE: DIRECTOR'S APPEARANCE BEFORE SENATE SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES DECEMBER 10, 1975

Date 1/5/76

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

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

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

Remarks: By routing slip dated 12/30/75 and captioned as above, all SACs and Legats were furnished a copy of the transcript of Mr. Kelley's 12/10/75 appearance before the Senate Select Committee on Intelligence Activities. Although the data contained in the transcript may be made available to news media representatives, used in answering questions received from citizens, and otherwise treated as being of a public-source nature, the transcript itself should not be reproduced for, or given to, anyone outside the FBI.

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ASAC

66-3863-19

SEARCHED _____ INDEXED _____
SERIALIZED _____ FILED _____
JAN 7 - 1976
FBI — NEW HAVEN

Levi Objects To Proposal For Special Spy Prosecutor

WASHINGTON (AP) — Atty. Gen. Edward H. Levi today rejected "as an attack on the integrity" of the Justice Department a proposal to appoint a special prosecutor to investigate any wrongdoing by the CIA, FBI and other intelligence agencies.

Levi told the Senate Government Operations Committee the proposal assumes that the "ordinary law enforcement mechanism cannot be trusted" to investigate any suspicious activities by government employees.

"It's a most debilitating and destructive view of the Department of Justice and of the government," Levi said. "If I believed that, I would ask myself what I am doing here."

The proposal to appoint a special prosecutor was made Thursday by the chairman of the Senate intelligence committee.

Sweeping recommendations approved by the House intelligence committee would create a permanent House panel to keep an eye on U.S. spy activities and would outlaw such covert military aid operations as the CIA project in Angola.

Completing its major recommendations Thursday, the House intelligence committee also approved a proposal to require a president to report every covert operation to Congress within 48 hours, much as military action must be reported under the War Powers Act.

The committee also approved recommendations that would subject members who leak information to censure or expulsion from the House and subject staff aides who leak secrets to dismissal and criminal prosecution.

The recommendation to outlaw U.S. paramilitary operations like the one in Angola was approved 7 to 5 and includes a ban on assassination attempts against foreign leaders except in time of war.

The committee also approved recommendations that would require the President to personally certify within 48 hours that a covert operation is needed to protect national security and that would require the CIA director to report details on the nature, purpose and costs of the operation, risks involved and prospects of success.

Committee members rejected a proposal that would have outlawed all U.S. covert operations and rejected a plan to outlaw U.S. arms aid aimed at sustaining or overthrowing foreign governments.

The proposals will be sent to the full House for consideration.

Chairman Otis G. Pike, D-N.Y., scheduled a session for Tuesday to give all recommendations final approval before the committee goes out of business Wednesday.

Meanwhile, Secretary of State Henry A. Kissinger supported creation of a joint House-Senate watchdog intelligence committee, provided safeguards could be imposed to prevent leaks.

Kissinger complained to a Senate panel that "every covert operation that we have attempted in the past year has leaked to the press within a matter of weeks, perhaps months."

Kissinger opposed any law requiring Congress to be notified of all covert operations in advance, saying the President should not be blocked by law from ordering a covert operation without asking Congress first.

He accused the House committee of using classified information recklessly and said "the covert operations the have leaked to the press" have given

(Continued on Page 2)

TODAY'S INDEX

44 Pages

Edward Hirsch Levi
151-71+
Secretary

(Indicate page, name of newspaper, city and state.)
NEW HAVEN REGISTER
NEW HAVEN, CT.

Date: 2-6-76
Edition: FINAL
Author: AP
Editor:
Title: AS INDICATED

Character:
or
Classification:
Submitting Office:

☐ Being Investigated

66-3843-30

Opposed By Levi

(Continued from Page 1)

a false picture of covert operations in general.

Meanwhile, Sen. Frank Church, chairman of the Senate intelligence committee, called for appointment of a special prosecutor to investigate and press charges against those involved in any criminal action attributed to the CIA, FBI and other intelligence agencies.

In a Senate speech, Church said Justice Department investigation of abuses uncovered by congressional panels "just will not work."

NR064 WA PLAIN

8:48PM 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 FACT"; THAT ACTION TO PREVENT LEGITIMATE DISSENT UNDER OUR DEMOCRATIC FORM OF GOVERNMENT WOULD BE INTOLERABLE; THAT PRIOR TO TAKING PREVENTIVE ACTION IN A

VIA ENCIPHERED TELETYPE

Original on bulletin board

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

ALL FOXX OFFICES PLEASE RETURN TO TALK

TKS

GA

0-9 (Rev. 5-18-71)

FBI

Transmit in _____ (Type in plaintext or code) Via AIRTEL _____ (Priority)

Date 2/2/77

To: SAC, Albany

From: Director, FBI

MAIL OPENING ACTIVITIES

Enclosed for your information and guidance is a copy of the report of the Department of Justice concerning its investigation and prosecutorial decisions with respect to the opening of mail to and from foreign countries during the years 1953 and 1973. Attorney General Levi, in transmitting the report to me, advised that since the report discusses standards concerning current conduct, it would be appropriate to distribute it to FBI officials for their guidance.

Enclosure

1 - All Field Offices - Enclosure

1 - All Legats - Enclosure

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(1) ASAC
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(5) SAC

66-3843-22

SEARCHED ___ INDEXED ___
SERIALIZED ___ FILED ___
FEB 1977
FBI — NEW HAVEN

FBI/DOJ

Department of Justice

FOR IMMEDIATE RELEASE
JANUARY 14, 1977

AG
202-739-2028

NOTE TO NEWS MEDIA:

Attached, for immediate release, is a copy of the report of the Department of Justice concerning its investigation and prosecutorial decisions with respect to CIA mail-opening activities in the United States.

Attachment

Report of the Department of Justice Concerning Its Investigation and Prosecutorial Decisions with Respect to Central Intelligence Agency Mail Opening Activities in the United States

The Department of Justice has decided, for reasons discussed in this report, not to prosecute any individuals for their part in two programs involving the opening of mail to and from foreign countries during the years 1953 through 1973.

On June 11, 1975, the President transmitted to the Attorney General the Report of the Commission on CIA Activities within the United States (the Rockefeller Commission). The President asked the Department of Justice to review the materials collected by the Commission, as well as other relevant evidence, and to take whatever prosecutorial action it found warranted. At the direction of the Attorney General, the Department's Criminal Division conducted an investigation to determine whether any government officer or employee responsible for CIA programs described in Chapter 9 of the Commission Report, involving the opening of mail taken from United States postal channels, or responsible for related or similar activities of the Federal Bureau of Investigation, had committed prosecutable offenses against the criminal laws of the United States. Such an investigation was immediately begun by the staff of the Criminal Division and regular reports on its status were made to the Attorney General.

On March 2, 1976, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities acceded to the Department's request that the Criminal Division be allowed access to the documentary evidence in its possession

concerning the projects. In August 1976 the Criminal Division submitted to the Attorney General a report summarizing the evidence it had acquired, and analyzing the legal questions that potential prosecutions would present. The report concluded that it was highly unlikely that prosecutions would end in criminal convictions and recommended that no indictments be sought.

Because of the importance of this recommendation and its conclusion that a prosecution would so likely fail, the Attorney General and the Deputy Attorney General asked the Criminal Division to review its analysis and findings, and in addition asked experienced criminal lawyers in the Tax Division to undertake a review. As part of the review process, three experienced United States Attorneys, and two specially appointed consultants, Professors Herbert Wechsler and Philip B. Kurland, were asked to participate in an evaluation of the recommendations with the Attorney General, the Deputy Attorney General, the Solicitor General, and the Assistant Attorney General for the Criminal Division.1/

1/ In the course of these deliberations, it became clear that no decision to prosecute could responsibly be made on one of the two mail opening projects -- the West Coast Project which is described on pages 20-21, infra -- within the five year statute of limitations set forth in 18 U.S.C. §3283. In any event, it was the unanimous view that, because the West Coast Project was of relatively brief duration, small in scale, and directed only to incoming mail, any potential prosecution inevitably would focus on the CIA's East Coast mail openings, described on pages 7-19. These openings ended in early 1973, and only the last year of the project is within the statute of limitations. This is enough, however, to allow a prosecution to be commenced with respect to these acts and the entire agreement, dating to 1953, to open mail.

The Department has now completed its investigation into the mail opening projects and has examined in detail the elements of the crimes that may have been committed, the defenses that might be presented, and the proof that would be required to establish the commission of crimes and refute the expected defenses.

Although the Department is of the firm view that activities similar in scope and authorization to those conducted by the CIA between 1953 and 1973 would be unlawful if undertaken today, the Department has concluded that a prosecution of the potential defendants for these activities would be unlikely to succeed because of the unavailability of important evidence 2/ and because of the state of the law that prevailed during the course of the mail openings program.

It would be mistaken to suppose that it was always clearly perceived that the particular mail opening programs of the CIA were obviously illegal. The Department believes that this opinion is a serious misperception of our Nation's recent history, of the way the law has evolved and the factors to which it responded -- a substitution of what we now believe is and must be the case for what was. It was until recent years by no means clear that

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2/ Important evidence would be missing because of the great length of time between the commencement of the mail openings and the holding of a potential trial. Many important participants in the process have died, and because some of the events occurred a generation ago, the memories of other witnesses have dimmed.

the law and, accordingly, the Department's position, would evolve as they have. A substantial portion of the period in which the conduct in question occurred was marked by a high degree of public concern over the danger of foreign threats. The view both inside and, to some extent, outside the government was that, in response to exigencies of national security, the President's constitutional power to authorize collection of intelligence was of extremely broad scope. For a variety of reasons judicial decisions touching on these problems were rare and of ambiguous import. Applied to the present case, these circumstances lead to reasonable claims that persons should not be prosecuted when the governing rules of law have changed during and after the conduct that would give rise to the prosecution. They also would support defenses, such as good faith mistake or reliance on the approval of government officials with apparent authority to give approval. Whether these arguments would be acceptable legal defenses is not necessarily dispositive. As Judge Leventhal has reminded us: 3/

> Our system is structured to provide intervention points that serve to mitigate the inequitable impact of general laws while avoiding the massive step of reformulating the law's requirements to meet the special facts of one harsh case. Prosecutors can choose not to prosecute, for they are expected to use their "good sense. . .conscience

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3/ United States v. Barker, C.A.D.C., No. 74-1883, decided May 17, 1976 (dissenting opinion), quoting from United States v. Dotterweich, 320 U.S. 277, 285 (1943).

> and circumspection" to ameliorate the hardship of rules of law. Juries can choose not to convict if they feel conviction is unjustified, even though they are not instructed that they possess such dispensing power.

These factors would make difficult a showing of personal guilt. The issue involved in these past programs, in the Department's view, relates less to personal guilt than to official governmental practices that extended over two decades. In a very real sense, this case involves a general failure of the government, including the Department of Justice itself, over the period of the mail opening programs, ever clearly to address and to resolve for its own internal regulation the constitutional and legal restrictions on the relevant aspects of the exercise of Presidential power. The actions of Presidents, their advisors in such affairs, and the Department itself might have been thought to support the notion that the governmental power, in scope and manner of exercise, was not subject to restrictions that, through a very recent evolution of the law and the Department's own thinking, are now considered essential. In such circumstances, prosecution takes on an air of hypocrisy and may appear to be the sacrifice of a scapegoat -- which increases yet again the likelihood of acquittal. And in this case, an acquittal would have its own costs -- it could create the impression that these activities are legal, or that juries are unwilling to apply legal principles rigorously in cases similar to this.

Where a prosecution, whether successful or not, raises questions of essential fairness, and if unsuccessful could defeat the establishment of rules for the future, the Department's primary concern must be the proper operation of the government for the present and in the future. The Department of Justice has concluded, therefore, that prosecution should be declined. At the same time, however, the need of eliminating legal ambiguities and of guiding future conduct in this field demands a precise public statement of the Department's position on the law -- namely, that any similar conduct undertaken today or in the future would be considered unlawful. Ordinarily public announcements of reasons for declining prosecution are not made, for they may invade the privacy of the potential defendants and charge them with misconduct while denying them an opportunity to respond in court. The circumstances of this case justify an exception to that rule. Publication of the Rockefeller Commission and Senate Select Committee reports, with their extensive descriptions of the mail opening programs, substantially diminishes any harm to the potential defendants' reputations that could be caused by public explanation of the Department's position. The harm is further diminished by the description of the circumstances and the considerations of fairness on which the Department's decision not to prosecute ultimately rests.

I. SUMMARY DESCRIPTION OF ORIGINS, CONDUCT AND TERMINATION OF CIA MAIL OPENING ACTIVITIES IN THE UNITED STATES.

Investigations conducted by the Rockefeller Commission, the Senate Select Committee, and the Department of Justice disclose that between 1953 and 1973 the CIA engaged in five separate projects involving the opening of mail in United States postal channels. The "East Coast Project" began in 1953 and ended early in 1973; the "West Coast Project" was carried out intermittently from 1969 to 1971. Three remaining projects were of brief duration and ended more than a decade ago. Prosecution for violations arising out of all but the East Coast Project is barred by the statute of limitations.

A. East Coast Mail Project

In 1952 the CIA, investigating the possibility of gaining positive and operational intelligence information from first-class mail to or from the Soviet Union, found that all such mail was sent through postal facilities in the New York City area. Postal inspectors were contacted and, with their cooperation, plans were made for CIA personnel to conduct surveillance of United States-Soviet mail.

In February 1953, when the program was implemented, CIA personnel from the Office of Security were permitted to examine and copy (by hand) information from envelope exteriors

under the close supervision of a postal inspector, but they were admonished that the mail could not be tampered with or delayed. From the very outset of this operation, however, the CIA planned to convert the project into a mail opening operation. The major obstacle to accomplishing this goal was the constant presence of a postal inspector. The CIA thought that if it could establish procedures to photograph the exterior of the mail, it could obtain relatively unsupervised access to the mail.

Such an expansion of the operation required contact by Director of Central Intelligence ("DCI") Allen Dulles with postal officials. An undated memorandum prepared by the CIA's Director of Security in late 1953 noted that the New York mail operation was at that time confined to the inspection of covers only. It recommended that the project be discussed as soon as possible with the President and that a secret White House directive be issued jointly to the Central Intelligence Agency and the Post Office Department requesting those organizations to make a "study" on the subject of the censorship of foreign mail. The memorandum noted that the CIA could then disclose its desires and requirements to the Post Office Department and take steps to implement the program on an expanded scale. This memorandum was not formally transmitted to Dulles but, on January 4, 1954, the Director of Security forwarded

a memorandum to Dulles which recommended that CIA seek expanded access to the mails from the Postmaster General for the purpose of photographing covers; the Director of Security also recommended that the "oral approval" of the President be obtained.

In May 1954 Director Dulles, accompanied by then Chief of Operations Richard Helms, briefed Postmaster General Arthur Summerfield about the CIA's desires for expanded access and means to photograph envelope exteriors. The Chief Postal Inspector agreed to permit such photographing. A contemporaneous CIA memorandum of that briefing makes no reference to any discussion of mail openings. The Chief Postal Inspector specifically recalled, in a 1975 interview, that DCI Dulles argued that the Soviets opened mail and, therefore, that the CIA's efforts were unfairly circumscribed by American postal practices. However, the Inspector, now deceased, recalled that he had told DCI Dulles that any opening of letters would, in his view, be a violation of postal law.

Following this briefing, the CIA obtained private rooms at two New York postal facilities. Although some information suggests that a very few selected openings may have occurred as early as July 1953, available evidence indicates that the selective opening and reading of letters with some regularity began in late 1954.

The Department has been unable conclusively to establish whether, as recommended in the January 4, 1954, memorandum, and as suggested by certain individuals in testimony before the Rockefeller Commission and Congress and in statements to Department representatives, the CIA obtained authorization from President Eisenhower to open and read mail. There is, however, evidence suggesting that President Eisenhower had knowledge of and had approved the CIA's East Coast operation.

Opinions regarding President Eisenhower's knowledge and approval were expressed by close associates of both President Eisenhower and DCI Dulles. Their judgments are based on experience with government operations, and their own knowledge of the individual characteristics and habits of Eisenhower and Dulles. For example, one high level official stated that no substantial CIA operation would have been undertaken without at least tacit White House approval. Another expressed the opinion that the CIA mail operation was the type of operation which would have been cleared with President Eisenhower by Allen Dulles. This same official recounted a Cabinet level discussion with President Eisenhower in which the reading of incoming Soviet mail was raised, but he was uncertain about the context in which the subject was discussed. Still another official in the Eisenhower Administration said it is "inconceivable" that Allen Dulles would

have embarked on any program as sensitive as the East Coast mail intercept without first informing the President. Former associates of Allen Dulles stated that Mr. Dulles was most conscientious about keeping President Eisenhower informed of the operations of the CIA.[4/] A former close associate of Mr. Dulles indicated that in about 1960 he was officially advised by a Dulles assistant that Mr. Dulles had informed President Eisenhower of the CIA's mail intercept project.

The absence of any conclusive evidence of presidential authorization should be considered in light of the well-observed, but seldom discussed, practice described as "plausible deniability" or "presidential deniability." Knowledgeable witnesses have noted that there existed in high government circles a long-standing aversion to making written records of presidential authorizations of sensitive intelligence-related operations.[5/] It was thought that the conduct of foreign

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4/ Foreign intelligence matters were of great interest to President Eisenhower, and he frequently consulted with DCI Allen Dulles and his brother, Secretary of State John Foster Dulles, concerning such matters.

5/ An example of this practice is the handling of the U-2 matter. According to high level officials, President Eisenhower personally approved all U-2 overflights, including the one in which an American pilot was shot down over Soviet territory just before the 1960 Paris summit conference. One former Eisenhower aide had first-hand knowledge that President Eisenhower made his U-2 approvals orally, and that no written records of such authorizations were made.

affairs frequently required the practice of non-recordation of such presidential authorizations. Covert actions were, by National Security Council definition, designed so that the United States Government could plausibly disclaim any responsibility for them. The concept of plausible or presidential deniability had been extended by interpretation, custom and usage to cover all sensitive intelligence activities. Moreover, the minutes of the President's Foreign Intelligence Advisory Board contain expressions of concern covering the relevant period from 1956 onward. For example, the minutes contain such phrases as "the President's shield," and "need to protect the President against public identification with . . . covert activities or intelligence activities," and "for security reasons, every effort would be made to leave no papers with the President."

In 1955 responsibility for the East Coast Project was given to the Counterintelligence (CI) Staff of the CIA. An outline of the funding, staffing and other logistical needs of the East Coast Project noted that foreign espionage agents relied upon the United States policy of respecting the sanctity of the mails and that these agents used the mails for espionage purposes to the detriment of the United States. It noted that, although the project did not contemplate censorship, discreet monitoring (opening) would be conducted and that under CI staff management "more letters will be opened."

In 1958 the FBI was advised of the existence and extent of the CIA's East Coast mail project, and the CIA offered to share the project's "take" with the FBI. FBI Director Hoover gave his approval, and the FBI provided the CIA with the names and addresses of persons or organizations in which it had an espionage or counterespionage interest. Such lists were used as additional guides by the CIA in making selections from the United States-Soviet mail that passed through the CIA checkpoint.

On February 15, 1961, following the election of President Kennedy, DCI Allen Dulles, Deputy Director of Plans Richard Helms, and another CIA officer met with newly appointed Postmaster General J. Edward Day. According to Mr. Day's recollection, Dulles said he came to tell him of "something secret" regarding the CIA and the mails. Exactly what Day was told is not clear. A contemporaneous CIA memorandum of the 1961 meeting strongly suggests that Day was told by Dulles of mail openings being made by the CIA. On the other hand, in 1975 Day averred that, while his memory of the 1961 meeting might be faulty, he recalled that Dulles offered to tell him of a secret CIA mail operation but that he (Day) declined the invitation to be briefed. Day, however, remains uncertain. Three months later DCI Dulles approved continuation of the project on the basis of its value to the intelligence operations of the CIA.

The Department's investigation has not definitively established whether Presidents Kennedy and Johnson were aware of the East Coast Project. President Eisenhower authorized Allen Dulles to brief President-elect Kennedy on all significant intelligence operations conducted by the CIA and other intelligence agencies. President-elect Kennedy met with Mr. Dulles on several occasions during and after the transition period to discuss such operations, but the Department has not been able to determine whether the East Coast Project was covered during the briefings.

In 1965, prompted by hearings held by Senator Edward V. Long concerning possible legislation to abolish mail covers by federal agencies, a high CIA official learned that President Johnson apparently had not been briefed on the East Coast Project and "gave instructions that steps should be taken to arrange to pass (information concerning the project) through McGeorge Bundy to the President after the (Long) Subcommittee has completed its investigation." Mr. Bundy does not recall being informed of the East Coast Project, and no documentary record that indicates such instructions were carried out has been found. Richard Helms testified that he believes he may have advised President Johnson of the East Coast project in the spring of 1967 at a meeting during which the President requested information concerning sensitive CIA operations. Again, no direct evidence corroborating or refuting Mr. Helms' statements has been located.

Interviews with former high level officials within the Kennedy and Johnson Administratons, however, disclose that Presidents Kennedy and Johnson were briefed on a regular basis by CIA officials about sensitive CIA operations. One former Cabinet official in both the Kennedy and Johnson Administrations stated that he was aware that mail openings were being conducted in the United States, although he did not know details of particular projects or their scope. The Cabinet officer stated that he believed Presidents Kennedy and Johnson were generally aware that the CIA was engaging in operations similar to the East Coast Project.

Interviews of individuals who served as members of the President's Foreign Intelligence Advisory Board (PFIAB) during the Kennedy and Johnson Administrations indicate that these individuals were aware of domestic mail openings by the CIA and FBI. PFIAB had the responsibility to review and assess the activities of the CIA and other agencies with foreign intelligence responsibilities and to advise the President on such matters. One PFIAB member, who served until 1968, stated that the PFIAB gave detailed briefings to the President; moreover, he stated his belief that the President would "have to be in a fog" to be unaware of the fact that techniques such as mail openings were being used. Again, however, the practice of "plausible deniability" was frequently raised by

persons knowledgeable of government intelligence practices as a possible explanation for the absence of any written records of presidential knowledge or authorization for the East Coast Project.

With the inception of Operation CHAOS, designed to determine the extent of hostile foreign influence on domestic unrest, the East Coast Project assumed a new intelligence-related purpose. In addition to Operations CHAOS, the project sought to develop positive foreign intelligence, such as information on Soviet crop and living conditions and population movements. Moreover, operational support intelligence was sought such as information on the postal censorship and secret writing techniques of the USSR, and there was a counter-intelligence purpose to assist the United States in meeting and neutralizing Soviet intelligence activities.

In July 1969 the CIA Inspector General's staff examined the East Coast Project and recommended that, although President Eisenhower apparently had authorized the project, if the CIA were to continue to administer the project, senior officials within the Nixon Administration should be briefed.

In 1969 William Cotter, a former CIA employee aware of the East Coast Project, was appointed Chief Postal

Inspector. Concerned that other top level postal officials were unaware of the project, in 1970 Cotter informed the CIA that either the Postmaster General would have to be apprised of the East Coast Project or it would have to be discontinued. Cotter pressed his request in January 1971. This caused a reevaluation of the merits of the East Coast Project. A CIA memorandum dated March 29, 1971, strongly urged continuation of the project, describing it as "an irreplaceable tool for the exercise of the Agency's counterintelligence responsibility." The memorandum noted that the counterintelligence information developed by the project was also of assistance to "the White House, the Attorney General and the FBI."

The CIA's senior officials decided to continue the project. In June 1971, to meet Cotter's concerns, Director of Central Intelligence Helms separately briefed both Attorney General John Mitchell and Postmaster General Winton Blount. There is dispute as to what the briefings encompassed. A contemporaneous CIA memorandum indicates that Mitchell and Blount were informed of the East Coast Project and agreed to its continuation; Helms testified before the Rockefeller Commission that he informed them fully

about the nature and scope of the mail opening project. Mitchell and Blount, though they acknowledge that there may have been a general discussion of mail covers, state that they were not informed about the opening of mail.

Former President Nixon has stated that he was aware of the CIA's monitoring of mail between the United States and the Soviet Union and the Peoples' Republic of China, but he disclaims any knowledge of mail openings, and the Department has uncovered no direct evidence which suggests that former President Nixon was ever specifically informed of the mail opening projects. It appears, however, that during the Nixon Administration the White House was receiving intelligence reports that enabled White House officials to determine that mail was being opened. John D. Ehrlichman, a White House official in the Nixon Administration, testified before the Senate Select Committee that, from his reading of intelligence reports, he was able to determine that mail was being intercepted, presumably by the CIA.

With the resignations of Postmaster General Blount in 1971 and Attorney General Mitchell in 1972, Chief Inspector Cotter again believed himself to be the only

senior government official outside the CIA and FBI with knowledge of the East Coast Project. He again informed CIA officials that, unless higher level approval for the project was obtained by February 15, 1973, he would withdraw the Postal Service's cooperation. James Schlesinger, who had succeeded Helms as DCI, decided that the foreign intelligence and counterintelligence information derived from the project did not outweigh the risk of embarrassment and potential public repercussions presented by its continuation. On February 15, 1973, the East Coast Project was suspended and, in effect, terminated.

Whether the failure of the Department's investigation to uncover any direct evidence, written or oral, of presidential knowledge or authorization was caused by the nonexistence of such knowledge or authorization, by confusion of mail openings with "mail covers," which were generally viewed as legitimate, or by the passage of time and the "presidential deniability" concept discussed above, cannot be determined. However, on the existing record, the government could not prove in a criminal prosecution beyond a reasonable doubt that the East Coast Project was conducted without presidential approval or without presidential knowledge and acquiescence.

B. West Coast Project

The West Coast Project was proposed in 1969 by CIA officials within the CIA's Plans Directorate for the purpose of obtaining foreign intelligence concerning the Peoples' Republic of China. The CIA was particularly interested in censorship techniques used by the Peoples' Republic of China, and the project was intended to evaluate such techniques through a survey of mail entering the United States from the Peoples' Republic of China. Initially, it was contemplated that the project would entail only the inspection of envelope exteriors. Approval of the project by postal officials was secured for a survey of envelope exteriors.

The West Coast Project, conducted in or near San Francisco, involved four separate surveys of mail between 1969 and 1971. The first survey took place in September, 1969 and lasted five days. Approximately 1,600 envelopes of incoming mail were screened during this period. No mail was opened in this initial survey, which apparently was undertaken without approval by top level CIA officials. The lower level officials responsible at that time for the project deemed this initial survey successful and concluded

that a broader scale survey of mail should be undertaken in order to evaluate Chinese intelligence techniques. During 1970 and 1971, three additional surveys were conducted by CIA officials in San Francisco, each lasting two or three weeks. In each of these surveys, only incoming mail from the Peoples' Republic of China was opened, apparently without the knowledge of the postal officials who cooperated by providing CIA officers with access to the mail. Approximately 550 pieces of mail were opened by the CIA during the course of the project. After the project's 1971 phase, no further West Coast operations were undertaken.

II. GROUNDS FOR PROSECUTION, POSSIBLE DEFENSES, AND EQUITABLE CONSIDERATIONS

A. Grounds for prosecution.

The Department of Justice has considered two statutory bases for prosecution of persons who participated in the East Coast Project. The first, 18 U.S.C. §1702, prohibits the unauthorized opening or obstruction of mail in United States postal channels; the second, 18 U.S.C. §241, proscribes conspiracies to deprive United States citizens of rights guaranteed by the Constitution. Under the general conspiracy statute, 18 U.S.C. §371, liability would extend to persons who agreed to take part in violations of sections 241 or 1702, whether by opening the mails, by approving the openings, or by acting in concert with others who opened the mails.

A prosecution under section 241 requires proof of a violation of rights conferred on American citizens by the Constitution or laws of the United States; with regard to the mail openings, the prosecution would be premised upon a violation of the Fourth Amendment's prohibition against unreasonable searches and seizures. A prosecution cannot be maintained under section 241, however, unless it can be established that the defendants acted, or agreed to act, with the purpose of invading rights or interests protected by

the Constitution or by federal laws and that, at the time the defendants acted, protection of the right or interest violated had been "made definite by decision or other rule of law."[6/] Weaknesses in the evidence and the difficulty of establishing the absence of presidential authorization suggest that the Department would not be able to meet the burden of establishing, beyond a reasonable doubt, that the defendants acted with the "specific intent" required by section 241 as interpreted by the Supreme Court. Moreover, it is doubtful that, at the time the defendants acted, the Fourth Amendment forbade their actions with sufficient clarity to be "definite;" between 1953 and 1973 there was substantial evolution of Fourth Amendment law, as discussed later in this Report.

In a prosecution under section 1702 the Department would not be confronted with similar difficulties. All that is required to establish a prima facie violation of section 1702 is a showing that (a) the defendant opened mail in postal channels with "design to obstruct the correspondence, or to pry into the business or secrets of another" and (b) the defendant lacked lawful authority to do so.

6/ See Screws v. United States, 325 U.S. 91 (1945). See also United States v. Price, 383 U.S. 787, 806 n. 20 (1966); Anderson v. United States, 417 U.S. 211 (1974).

Whether the openings of mail in the present case violated section 1702 depends upon two related points: First, was authorization, from a person empowered to give such authorization, obtained for the East Coast Project?[7/] Second, if some authorization was obtained, was it effective? Resolution of the latter question requires a consideration of whether the Fourth Amendment to the Constitution permits officials of the Executive Branch to authorize the opening and reading of international mail and, if so, under what conditions and by what means. We turn to a consideration of those problems.

B. The requirement of lawful authorization.

Some courts have treated section 1702 as a specific intent statute, which would make prosecution overwhelmingly difficult. The Department of Justice believes, however, that a better view of the law is taken by the courts, which have treated it as a "general intent" statute, providing that persons shall not open envelopes moving through the mails. Its prohibition does not, however, extend to openings that have been lawfully authorized. Thus, other statutes (see, e.g., 19 U.S.C. §482) authorize the opening of envelopes under specified circumstances, and acting under its general powers the Postal Service

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7/ Since no statute authorizes the CIA to intercept or open mail in United States postal channels, legal authority for the East Coast Project could be derived only from powers granted to the President by Article II of the Constitution and delegated by him to the CIA or others.

itself opens envelopes when necessary to ascertain the address of the intended recipient. Indeed, unless there were an "authorized opening" exception, a law enforcement official who opened mail pursuant to a judicial warrant would violate the statute.8/ See United States v. Van Leeuwen, 397 U.S. 249 (1970). The Department of Justice consequently believes that the actions of the CIA in opening mail also would not violate section 1702, if those actions were properly authorized.9/

8/ An 1882 decision interpreting a statutory predecessor to section 1702 stated that "one is punishable who wrongfully, without any authority of law, or pretence of authority," interferes with the mail. United States v. McCready, 11 Fed. 225, 236 (W.D. Tenn. 1882).

9/ Neither section 1702 nor any other statute purports to take from the President, and the Executive Branch in general, any preexisting power to open and examine mail when necessary to the discharge of the President's constitutional responsibility for foreign affairs. Cf. United States v. Butenko, 494 F.2d. 593 (3rd Circ.) (en banc), certiorari denied, 419 U.S. 881 (1974), which holds that an analogous statute, although containing a broadly stated prohibition, does not affect presidential power to authorize surveillance when the Constitution otherwise permits it.

One other statute, 39 U.S.C. §3623(d), might be considered to do so. That statute forbids the opening of domestic first-class mail without a warrant. Nothing in the legislative history of section 3623(d) indicates that it was designed to affect the power of the President concerning foreign affairs. See, e.g., H.R. Conf. Rep. No. 91-1363, 91st Cong., 2d Sess. 88 (1970). Although section 3623(d) originated in the Espionage Act of 1917, 40 Stat. 230, it then contained only a statement that the Act did not affirmatively authorize the opening of mail. Moreover, it applies only to letters of "domestic origin," and so would not affect the opening of mail entering the United States from abroad. Finally,
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9/ Footnote continued from previous page.
section 3623(d) does not refer to section 1702 and does not provide criminal penalties for opening mail without a warrant. Nothing in the legislative history of the enactment of section 3623(d) indicates that Congress believed that it was altering the elements of 18 U.S.C. §1702.

It would have been extraordinary for the Congress without discussion to have enacted a restriction upon the President's foreign intelligence surveillance power so obliquely when, in 1968, legislating with respect to the much greater invasion of privacy constituted by wiretapping, it carefully disclaimed any intent to affect this area -- partly in response to the concern that it might have no power to do so. See 18 U.S.C. §2511(3), which is discussed at length in the Keith case. The Department has not heretofore taken that view of the statute, and to do so for the first time in connection with the present prosecution would -- in addition to reaching only post-1970 activities -- raise the difficulties concerning fairness, the defense of mistake of law, and jury reaction discussed below in connection with newly imposed requirements regarding the character of presidential authorization.

The Department does not wish, however, to make a final determination concerning the future interpretation it will accord section 3623(d) in the distorting context of the present proceeding, where any position other than that set forth above would have the flavor of retroactive legislation. If in the future any mail opening, based on express, properly limited Presidential authority, is contemplated, we would regard as a necessary preliminary step to assure its lawfulness the issuance of an advisory opinion by the Attorney General concerning the effect of section 3623(d) upon section 1702.

We think it clear that the prosecution could not establish beyond a reasonable doubt, as it would be required to do, that the East Coast Project was not authorized by the President, or by someone entitled to act for the President. The effect this would have on the legality of the mail opening program has changed considerably over the last 20 years; the authorization (which the court would be required to assume if the prosecution could not prove lack of authorization beyond a reasonable doubt) may have been sufficient at the outset to satisfy the requirements of the Fourth Amendment, but the understanding of the requirements of that Amendment has not remained constant.

The CIA mail opening program was initiated and took shape during the 1950s. Later operations were a continuation of this program with changes in emphasis. During the 1950s, and well into the 1970s, the law concerning clandestine surveillance was quite different, and the requirement of prior judicial authorization was different. Indeed, until 1967 respected scholars argued that the judiciary was the wrong branch of government to make authorization decisions concerning any clandestine surveillance; until 1972 courts held that prior judicial scrutiny was unnecessary when the surveillance involved national security; and at the present

time the case law indicates that prior judicial scrutiny is not necessary when surveillance of foreign powers or their agents is involved.

The Supreme Court indicated long ago [10/] that sealed domestic mail may not be opened in the absence of a search warrant. This ruling was based upon the expectation of privacy enjoyed with respect to the contents of first-class mail; that privacy was guaranteed by statute, and courts held that other classes of mail could be opened without judicial authorization. Those who send or receive mail crossing the border of the United States do not enjoy the same expectation of privacy as those sending or receiving domestic first-class mail. Customs Service officers are permitted by law to open all envelopes for necessary inspections. [11/] There may also be other reasons why international and domestic mail should be treated differently.

10/ Ex parte Jackson, 96 U.S. 727 (1877).

11/ 19 U.S.C. §482.

The expectation of privacy in the contents of international mail therefore cannot easily be equated to the expectation of privacy in domestic mail.

No cases have dealt with the surreptitious opening of international mail to gather foreign intelligence or counterintelligence information, but there is a close analogy in the interception of wire communications. In neither case is property taken; in neither case is a person delayed or physically inconvenienced. But in both cases private communications are intercepted, and the constitutional question becomes whether this intrusion must be authorized in advance in a specified way.

The Supreme Court's first constitutional decision concerning wire interceptions was Olmstead v. United States, 277 U.S. 438, which was handed down in 1928. Olmstead held that telephone conversations could be overheard without prior judicial approval. The Court set out two major rationales for its holding; first, that the interception of wire communications does not "seize" anything within the meaning of the Fourth Amendment because there is no physical trespass and it does not prevent the parties from conversing; second, that the Fourth Amendment does not reach beyond the home or office to the whole world into which communications may be sent. Under the standards of Olmstead, which was the law when the CIA

mail opening programs began, there was apparently no constitutional need for judicial approval of a program of covert openings of international mail, so long as the mail was resealed and sent on to its destination without censorship.

The law established by Olmstead did not begin to change until 1961, when the Supreme Court decided in Silverman v. United States 365 U.S. 505, that the Fourth Amendment applied to a listening device or "bug" placed by physical trespass in the wall of an office, even though the device did not prevent conversations from taking place. Silverman, however, left the remainder of the Olmstead analysis untouched.

During these years there also were serious questions whether the judiciary was empowered under Article III of the Constitution to issue surveillance orders. Respected scholars[12/] and at least one Justice of the Supreme Court[13/] argued that surveillance orders issued ex parte were not part of a "case or controversy" if they were not part of a criminal prosecution, and so judges lacked power to issue them. They argued, as well, that surveillance orders could

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12/ See, e.g., Telford Taylor, Two Studies in Constitutional Interpretation: Search, Seizure, and Surveillance 77-93 (1969).

13/ Osborn v. United States, 385 U.S. 323, 353 (1966) (Douglas, J., concurring).

not be classified as "warrants" under the Fourth Amendment because they were not designed to seize identifiable things and were not "returned" to the issuing judge in the historical fashion. Other objections, too, were raised. Resort to the judiciary, it was said, would diffuse responsibility and accountability for surveillance; responsible executive officials should authorize surveillance when necessary, and the Constitution would not forbid this practice.14/

In 1967, in Katz v. United States, 389 U.S. 347, the Supreme Court both overruled Olmstead and indicated that judges were empowered to issue surveillance orders in criminal cases. Katz held that the Fourth Amendment protects people, not places, and that law enforcement officers ordinarily must obtain advance judicial approval before intercepting communications in which there is a legitimate expectation of privacy.

Katz, however, did not resolve the question of whether a judicial warrant was available in non-criminal cases or whether it was necessary when national security was involved. The Supreme Court did not speak to the latter question until June 19, 1972, when it decided United States v. United States District Court (Keith), 407 U.S. 297. The United States argued in that

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14/ See, e.g., Taylor, supra, at 90.

case that the requirement of prior judicial approval should not apply to surveillance carried out to gather information about domestic security and foreign intelligence -- an argument which would, of course, support the propriety of the CIA mail opening programs as well as of wire interceptions for that purpose. The Supreme Court rejected part of the argument and held that a warrant is required for electronic surveillance in domestic security investigations. The Court made it clear, however, that it was setting aside a lengthy history of contrary practice,15/ and that it was reserving for decision in the future all questions concerning the procedures required to be used to gather foreign intelligence.16/

The East Coast Project ended eight months after Keith was decided. Keith affected the propriety of warrantless foreign intelligence surveillance, but it did not decide it. Those courts which have decided the issue have upheld such warrantless surveillance, and the Department of Justice has consistently taken the position in the courts, before congressional committees, and in public statements that the President or the Attorney General may authorize limited electronic surveillance of foreign powers or their agents for foreign intelligence

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15/ 407 U.S. at 299, 310-311.

16/ 407 U.S. at 308-309, 321-322.

purposes.[17] The CIA mail opening program was not authorized with the care and clarity that current practices and, we believe, the Constitution now require. But these principles have evolved so rapidly during the last two decades that they would have sounded strange to those who initiated the program during the 1950s and continued it during the 1960s.

A retroactive application of newly enunciated Fourth Amendment principles to persons whose conduct took place before the principles were established could, of course, not deter like conduct; and it would be unfair to punish federal employees for doing things which, as the law then appeared, were not illegal. The Supreme Court has held that changes in Fourth Amendment law should not apply retroactively. United States v. Peltier, 422 U.S. 531 (1975). That principle surely applies to criminal prosecutions against those who may have transgressed the Fourth Amendment no less than it does to the application of the exclusionary rule, which was at issue in Peltier.[18]

17/ Compare United States v. Brown, 484 F.2d 418 (5th Cir. 1973), certiorari denied, 415 U.S. 960 (1974); and United States v. Butenko, 494 F.2d 593 (3d Cir.) (en banc), certiorari denied, 419 U.S. 881 (1974); with Zweibon v. Mitchell, 516 F.2d 594 (D.C. Cir. 1975) (en banc), certiorari denied, 425 U.S. 944 (1976).

18/ See also Wood v. Strickland, 420 U.S. 308, 321 (1975), which holds that certain executive officials are liable in damages for a violation of constitutional rights only if they act in "ignorance or disregard of settled, indisputable law ...."

The role of authorization and its legality also is affected by changes in the law of border searches. It has long been accepted that things crossing the border are governed by special rules allowing search.[19/] These constitutional rules do not allow the government to subject a person to legal disabilities on account of his lawful communications,[20/] but they allow federal officers to open the mail without warrants to look for contraband and dutiable items, including pornography.[21/] These rules may affect the expectation of privacy surrounding international correspondence. Moreover, the international exchange of ideas, especially with citizens of potentially unfriendly powers, may be on a different footing from the domestic exchange of ideas.[22/]

19/ See Cotzhausen v. Nazro, 107 U.S. 215 (1882); California Bankers Ass'n v. Shultz, 416 U.S. 21, 62-63 (1974).

20/ Lamont v. Postmaster General, 381 U.S. 301 (1965).

21/ United States v. Thirty-seven Photographs, 402 U.S. 363 (1971); United States v. 12 200 ft. Reels of Super 8 mm. Film, 413 U.S. 123 (1973).

22/ Kleindienst v. Mandel, 408 U.S. 753 (1972).

Until 1973 it was widely thought that the border search rules allowed the inland search of persons and vehicles near the border for contraband and dutiable items.23/ The large majority of courts uphold the legality of opening envelopes at the border. Six courts of appeals have held that Customs officers may open envelopes without probable cause or search warrants to search for contraband, although one court of appeals has held to the contrary. The Supreme Court may resolve the dispute in the coming months.24/ The scope of the "border search" exception to the warrant clause of the Fourth Amendment would certainly bear upon the legality of any authorization to inspect international mail.

The discussion so far has traced changes in the law, during and after the time of the mail openings by the CIA, that would affect the lawfulness of a properly authorized surveillance. The law also has evolved in recent years concerning the form an authorization must take and the restrictions that must be observed in exercising any authority delegated to approve the activities. Questions regarding the necessity for express delegations by the President of his constitutional authority and for periodic reexamination of

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23/ Almeida-Sanchez v. United States, 413 U.S. 266. The extent to which Almeida-Sanchez altered existing law is discussed in United States v. Peltier, supra, 422 U.S. at 539-542.

24/ United States v. Ramsey, certiorari granted October 4, 1976, No. 76-167.

the activities in light of the need for the information and the intrusiveness of the techniques employed have only recently been addressed. These questions arise, in this case, because the presidential authorization for the East Coast Project -- if there was such authorization -- may have been presumptive rather than express; that is, it may have been in accord with the well-established principle applied in other areas of the law that agency heads are deemed to have been delegated those inherent presidential powers necessary to meet the responsibilities of the agency. Moreover, the approval for the openings was not limited in time, and responsible officials apparently did not reexamine the program on a regular basis to determine whether it should be continued.

Although the President may, consistent with the Constitution, authorize certain forms of surveillance to gather foreign intelligence information without seeking prior approval from the Judicial Branch, the Department believes that the evolving law in this area requires such authorization to be express. The executive official to whom the power to approve such surveillance has been delegated must take steps to assure himself that the surveillance is reasonable under Fourth Amendment standards.

He must consider the nature of the surveillance and the need for the information sought in determining whether to approve the activity, and then he must periodically reexamine the activity to ensure that it continues to meet constitutional standards. In urging the courts to accept executive authorizations of surveillance, the Department has argued that in each instance the personal approval of the President or his delegate, such as the Attorney General, would be employed to ensure the degree of consideration and control necessary under the Fourth Amendment.[25/] Mr. Justice White, concurring in Katz, indicated that he would accept such executive approval of surveillance, but only if it was explicitly considered by responsible officials and properly delimited.[26/]

It was only recently, in United States v. Ehrlichman, that a court of appeals concluded that a warrantless foreign intelligence search may be authorized only by the President or Attorney General personally, and that the authorization must

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25/ See, e.g. the Brief for the United States in the Keith case.

26/ 389 U.S. at 364. See also the opinions in United States v. Brown, supra, and United States v. Butenko, supra.

meet standards of consideration and limitation similar to those the Judicial Branch would impose on itself. 27/

The law we have described is of recent vintage. As was pointed out earlier, it was far from clear until 1967 that the judiciary would become involved in issuing warrants for surveillance even in criminal cases. Not until after Katz did courts begin to consider and delineate the requirements of specificity, personal responsibility, and limited duration that today limit the exercise of Executive Branch powers. It seems fair to conclude that, at the time the East Coast Project began, it was assumed that the President could, without issuing explicit delegations of power, allow others to speak for him in this field. So far as the CIA was concerned, the words of anyone who appeared to be authorized to speak for the President had the same legal effect as the President's own words.

27/ No. 74-1882, D.C. Cir., decided May 17, 1976, slip op. 31. Ehrlichman involved an inexplicit mandate which gave a general instruction to accomplish a particular end but did not discuss the means or techniques to be used to reach that end. Unlike the Ehrlichman case, there was an aura of presidential authority permeating the mail opening program for the two decades in which the technique was used. In addition, the program was not carried out, as the physical search was in Ehrlichman, by "an amorphous, ad hoc unit with no tradition of public service and no clear lines of responsibility," slip op. at 30, but by the unit of government established by Congress for the conduct of foreign intelligence operations.

Although President Eisenhower passed upon many foreign intelligence projects himself, he allowed Allen Dulles to speak for him on others, and CIA personnel may reasonably have assumed that Dulles did so with regard to the East Coast Project. Presidents Kennedy and Johnson often spoke through their subordinates -- or at least appeared to do so in order to maintain "plausible deniability." Any CIA personnel who discussed the matter with Attorney General Mitchell might reasonably have assumed that President Nixon acted in this respect through the Attorney General. Until various courts rendered several decisions within the past year, there was little or no indication from the judiciary that Presidents (or their surrogates) were required to act through explicit, time-limited orders; 28/ the entire concept of "plausible deniability" taught the opposite.

28/ Indeed, even as late as 1976 the courts seemed to accept an implied authority in the Attorney General without a written delegation of authority from the President. Ehrlichman, supra.

C. The Defense of Mistake.

Suppose, however, that it were concluded that present Fourth Amendment standards equitably could be applied to the East Coast Project, and that under those standards the authorizations -- if any there were -- would be insufficient to justify the lengthy and deeply intrusive program that was actually carried out. The trial court, and the jury, then would be required to determine whether the defendants made a mistake, either of fact or of law, sufficient to make them not culpable for violation of 18 U.S.C.§1702.

Mistake of fact generally is recognized as a defense in criminal cases; mistake of law is not. The present case would present both kinds of defenses -- mistake of fact to the extent the defendants reasonably believed there was presidential authorization for the East Coast Project, if in fact there was none; and mistake of law to the extent the defendants reasonably believed that the authorization was legally sufficient, if in law it was not.

The mistake of fact defense might not have to be raised by the defendants, since under the circumstances of this case the prosecution would have difficulty establishing that no authorization in fact existed. Because of the age of the evidence, the deaths of important participants in the events and the striving for "plausible deniability" that led to an absence of written records, the prosecution would be unable to prove

beyond a reasonable doubt that there was no presidential authorization for the East Coast Project. It would therefore, for practical purposes, have to concede that the mail openings were authorized and to argue that the authorization was ineffective. This would make it unnecessary for the defendants to raise a mistake of fact defense; the prosecution simply could not prove beyond a reasonable doubt that there was no authorization.

This would then lead to the assertion of a mistake of law defense. Mistake of law generally is recognized as a defense in criminal prosecutions only when a law or an authoritative legal decision or interpretation misled the defendant reasonably to believe that his conduct was lawful.29/ Criminal convictions in such circumstances would impose criminal sanctions for conduct which the defendant could not reasonably have known was unlawful.30/ In any potential mail opening prosecution, however, the normal foundation for the defense would not be present. No statute or judicial decision ever affirmatively established or announced that the mail opening projects, or conduct closely analogous to them, were lawful, and Attorney General Mitchell's possible approval of the projects lacked any indicia of a formal considered opinion

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29/ See Model Penal Code §2.04(3)(b) (P.O.D. 1962).

30/ Cf. Bouie v. City of Columbia, 378 U.S. 347 (1964); Brief for the United States in Marks v. United States, No. 75-708, argued in the Supreme Court, November 1 and 2, 1976.

of law that the defense normally would require.

Notwithstanding this, the Department believes that the circumstances of the case could very well induce the trial court to instruct the jury on a mistake of law defense broader than that generally recognized, perhaps on the ground that a reasonable belief in lawful authority would negate the intent that section 1702 requires.31/ Indeed, in the recent decision of the District of Columbia Circuit Court in the Barker and Martinez case, the prevailing opinions of two judges concluded that expansive variants of the defense properly were available to defendants who, as private citizens, had assisted a White House official in what purported to be a national security search. Judge Wilkey concluded that the defense properly would

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31/ Certain staff documents prepared in the CIA at several points in the East Coast Project's operation expressed the view that, under generally applicable domestic statutes, mail opening was unlawful. These documents, however, were not prepared by attorneys; they were not, in any sense, considered legal judgments; they did not conclude that, because of unlawfulness, the project should be terminated. To the contrary, their point appears to have been that the apparent unlawfulness would seriously embarrass the Agency if the program were exposed, perhaps especially because the true purpose and authorization of the project could not be exposed in justification. The Department accordingly does not believe it likely that such documents can be taken as indicating that the defendants subjectively were aware that the project was legally unjustified, or refute their probable defense that they believed it proper in the exercise of presidential power, supervening generally applicable law, to protect the national security.

apply if the defendants could show facts justifying their reasonable reliance on the White House official's apparent authority and a legal theory justifying their belief that the apparent authority was lawful. Judge Merhige concluded that a defense would be available if the defendants reasonably relied on an apparent interpretation of lawful authority by the White House official.

Even if the trial court did not choose to give an expansive mistake of law instruction, the Department believes that considerations of fairness would lead the judge to allow the introduction of evidence bearing on the defendants' motives and the circumstances in which they acted -- evidence which would, in the Department's view, critically influence the jury's judgment.

D. Problems of Proof.

Even if the prosecution could overcome the argument that the East Coast Project was adequately authorized, and even if it could successfully meet the defense of mistake, it still would not follow that the prosecution would be successful. The prosecution must prove its entire case beyond a reasonable doubt. Once a defense going to any of the elements of the offense has been raised, the prosecution must respond by negating that defense beyond a reasonable doubt.32/

32/ See Mullaney v. Wilbur, 421 U.S. 684 (1975).

Problems of proof are difficult whenever the prosecution seeks to prove a crime that took place long ago. Statutes of limitations -- which for most federal crimes are five years -- are designed to alleviate these problems by creating a policy of repose for offenses not prosecuted within a few years of their commission.33/ Although the statute of limitations applicable to 18 U.S.C.§§1702 and 371 would allow a conspiracy prosecution for the entire East Coast Project so long as any overt act of the conspiracy (such as the opening of any envelope) were committed within five years of the date of the filing of the indictment, the technical permissibility of a prosecution could not overcome the enormous problems of proof entailed in establishing, beyond a reasonable doubt, criminal culpability for events that took place as long ago as 1953.

The clearest illustration of the difficulty in mounting a successful prosecution is the deaths of persons who were major participants in the events. Presidents Eisenhower, Kennedy and Johnson are dead; they cannot disclose what they knew of the East Coast Project or what they may have authorized. Allen Dulles, J. Edgar Hoover, Postmasters General, several directors of the operating divisions of the CIA -- all of them persons who may have given, sought, or obtained authorization, or controlled the scope or duration of the mail openings -- are dead.

33/ See generally the Brief for the United States in United States v. Lovasco, certiorari granted October 12, 1976, No. 75-1844.

If documentary evidence reliably establishing authorization or lack of authorization existed, or if documentary evidence establishing personal responsibility for the scope or duration of the East Coast Project could be found, it might be possible to prosecute successfully despite the deaths of important persons. But the concept of "plausible deniability" led the principals to act without making a "paper trail" that could be used to reconstruct their acts. The absence of documentary evidence was intended to frustrate enemies or potential enemies and to protect Presidents; in practice, at least in this case, it also has the effect of frustrating the Department's ability to prove critical facts beyond a reasonable doubt in court. Whatever use this practice may have had, the understanding of the present state of the law articulated here by the Department of Justice requires that it be eliminated for reasons discussed in part III below.

The gaps and ambiguities in the evidence available in 1977 also would make it difficult to overcome a defense of mistaken reliance on what appeared to be proper authorization. In 1953, when the East Coast Project was begun, and for at least a substantial portion of the period of its operation, there was an acute consciousness on the part of the public and the government alike that serious foreign threats -- of both overt aggression

and covert subversion -- required extraordinary vigilance. There was widespread, if unjustified, belief that opposition to government policies, occasionally expressed violently, was generated, encouraged or supported by potentially hostile foreign powers. These concerns unquestionably affected perceptions of the government and of presidential power to respond by using covert activities. These attitudes were reflected in the men who authorized and conducted the mail openings program. The reasonableness of their attitudes would influence, in substantial part, the reasonableness of their beliefs that they were entitled to act as they did. A trial of this case therefore would open a searching inquiry into the perceptions of a generation of Americans; it would be, as Professor Wechsler put it during the course of his consultation with the Department, to "indict an era" and would raise fundamental jurisprudential questions concerning the application and use of the criminal law.

The defendants in any mail openings prosecution would be able to present circumstantial evidence to indicate that Director Allen Dulles secured President Eisenhower's approval for the East Coast program; at least, the potential defendants reasonably could have believed and apparently did believe, that he had. The potential defendants, in any event, continued a program already begun -- a program that, by the time Richard Helms became Director of Central Intelligence, had acquired a

bureaucratic momentum of its own. The Agency's highest officials could have had every reason to suppose that, within the government itself, the program was thought fully consistent with the government's purposes, responsibilities, and powers. Potential defendants could reasonably have believed that Presidents succeeding President Eisenhower, and other high officials of the government's intelligence establishment during this later period, knew at least in a general way of the fact that mail openings were taking place and, in a general way, acquiesced in the practice. Furthermore, certain senior officials of both the Kennedy and Johnson Administrations have stated to the Department that, although they knew neither their nature nor their scope, they personally were aware of the existence of mail openings and were convinced that the Presidents under whom they served must have known as well. In light of such evidence, the Department almost certainly would encounter the gravest difficulties in proving guilt beyond a reasonable doubt.

The weaknesses of the evidence, combined with the changes in the law during the course of the East Coast Project, make it unlikely that a prosecution could succeed. An unsuccessful prosecution in a case of this nature would be most undesirable.

It would not establish standards to guide future conduct; to the contrary, an acquittal might be perceived, rightly or wrongly, as an indication that programs such as the East Coast Project are not now illegal -- an indication that the Department of Justice believes would be most unfortunate. Moreover, either the trial judge or an appellate court, sensing the equities of the case and the possibility that the defendants may have labored under an erroneous, albeit reasonable, belief that they were entitled to act as they did, might expand the availability of a "mistake of law" defense more than the Department believes is warranted. A prosecution in this case would present the courts with the sort of hard facts that lead to bad law.

Even to institute a prosecution and to win it might be unfair. If the potential defendants in fact had a reasonable belief that they were acting pursuant to lawful presidential authorization, a prosecution so many years later could appear to be a vindictive kind of second-guessing. All the worse to use the criminal sanction in hindsight against individuals when what we now see as wrong was not so much the malign conduct of individuals as a disturbing and dangerous policy of government. Bringing a criminal prosecution, especially when it would in all likelihood fail, is not the only nor even the best way to establish rules of conduct. The enunciation

of a clear interpretation of the Constitution and the criminal law that stands from this time forward as a barrier against such activity, whether by rogue individual officials or by the creation of an illegal policy, avoids the high risk of failure at trial but assures that the criminal law can justly be brought to bear on any further conduct of this sort.

III. THE DEPARTMENT BELIEVES THAT CONDUCT SIMILAR TO THE EAST COAST PROJECT TODAY WOULD BE CLEARLY ILLEGAL

This report has dealt so far with the problems in bringing and winning a prosecution for the CIA's mail interception program. The attention to the difficulties in the case should not obscure the most important of the Department's conclusions -- that any program similar to the East Coast Project, if carried out today or in the future, would violate the law. The Department therefore would not hesitate to prosecute any persons, whatever their office, who may become involved in such a program.

The East Coast Project arguably was authorized by Presidents and their delegates during a time when the Fourth Amendment was understood to be less rigorous in its requirements. Such a program conducted today could not meet the requirement of authorization.

With respect to the present situation, Executive Order 11905 withdrew any prior authorization for CIA mail opening programs. That order, issued February 18, 1976, prohibits the national security agencies covered by the order from "[o]pening of mail or examination of envelopes of mail in the United States postal channels except in accordance with applicable statutes and regulations." No statute or regulation authorizes the CIA to open or read mail.

More important, however, the Department of Justice believes that the President lacks the authority to authorize a program comparable to the East Coast Project whether or not Executive Order 11905 continues in effect. This is so for a number of reasons. As this report has discussed above, the Executive Branch may exercise its constitutional authority to engage in certain forms of surveillance without the prior approval of the Judicial Branch only if it determines whether the facts justify the surveillance, renders a formal, written authorization, and places a time limitation upon the surveillance. The authorizing officer must act pursuant to an express, written delegation of presidential authority. The East Coast Project, and anything similar to it, would not satisfy these standards: much of the program was unreasonably broad in scope, it was not explicitly authorized in writing, and it was not subjected to frequent reexamination to determine whether continuation was appropriate. The requirement of a formal, written authorization means that

the "plausible deniability" concept may never again be used as an excuse for lack of evidence of lawful authority.

The establishment of a program of surveillance could be justified only by the President's foreign affairs powers. But the existence of such powers does not validate every action taken in their name. There must in each case be a sufficient basis, measured in light of the private interests the surveillance invades, for believing that the surveillance is necessary to serve the important end that purportedly justifies it. It must, in other words, be reasonable in scope and duration, as "reasonable" has come to be defined by the courts in cases involving wiretapping. No open-ended authorization of the sort involved in the East Coast Project would be sufficient. The Department does not suggest that this means that there must be probable cause to believe that every letter sought to be opened under such an authority would contain foreign intelligence information, any more than there must be probable cause to believe that every telephone call that might be overheard during a wire interception for criminal investigative purposes will include a discussion of crime. But there must, at a minimum, be a determination that the facts justify the surveillance and that it is no more intrusive

than is necessary to that end.34/ The standards that guide presidential conduct and the conduct of the Department of Justice draw their substance from the evolving principles of Fourth Amendment jurisprudence. Under those standards the East Coast Project could not now lawfully be approved.35/

34/ Cf. United States v. Martinez-Fuerte, 428 U.S.____, 96 S. Ct. 3074 (1976) (cars may be stopped without probable cause or a warrant for a brief scrutiny, so long as the overall program of stopping cars is reasonable and productive); Camara v. Municipal Court, 387 U.S. 523 (1967) (warrants to search houses may be obtained on probable cause to believe that a building code violation has occurred).

Building on this and similar Supreme Court analyses, the Administration proposed legislation to provide for the issuance of a judicial warrant authorizing the use of electronic surveillance in foreign intelligence and foreign counterintelligence cases. That legislation would have required proof of probable cause that the target of the surveillance was a foreign power or an agent of a foreign power and a submission of a certification signed by a high level executive official that the information sought was necessary to the foreign intelligence or foreign counterintelligence needs of the federal government. It also required the court's review of procedures to minimize the acquisition and retention of extraneous information.

35/ See United States v. Brown, supra; United States v. Butenko, supra; United States v. Ehrlichman, supra. On the constitutional standards for the approval of domestic wiretaps, see Berger v. New York, 388 U.S. 41 (1967); Katz v. United States, supra; United States v. Kahn, 415 U.S. 143 (1974); United States v. Scott, 516 F.2d 751 (D.C. Cir. 1975); certiorari denied, 425 U.S. 917 (1976). Cf. United States v. Donovan, certiorari granted, 424 U.S. 907 (1976), argued October 13, 1976.

IV. CONCLUSION

The East Coast Project would now be illegal, and the Department would not hesitate to prosecute those who participated in such a program in the future. The applicable law has not always been so clear, however, so that a prosecution brought now for a course of conduct that spanned 1953 to 1973 might be unfair to defendants who believed that the program they were conducting began with presidential authorization and continued with this assumed authority. Finally, because of difficulties of proof that have been brought about by the lack of written documentation, the lapse of time, the fading of memories, and the deaths of key participants, the Department does not believe it could prove beyond a reasonable doubt that the potential defendants are criminally responsible for their participation in the mail opening program.

Questions of the legality of intelligence methods and of the scope and exercise of the national security power did not reach the courts until this decade. The preceding sections of this report have described the development, primarily in the last ten years, of Fourth Amendment law governing the use by the Executive Branch of surveillance that invades privacy, and the principles that the Department believes now govern its scope and exercise. But whatever can be said about the law now,

the Department believes at the time the potential defendants acted, there was a substantial basis for thinking that the law was otherwise. What would make the contemplated prosecution particularly unfair is the fact that ignorance of the developing law, and the consequent existence of erroneous assumptions of legality, were in large part the fault of the government, and indeed the Department of Justice itself. The Department's own attitudes toward mail openings as a means of gathering foreign intelligence must have appeared at least equivocal. Although after 1966 the FBI did not engage in mail opening, it participated in and was the primary beneficiary of the CIA's East Coast Project. On two occasions early in the 1960s the Department considered criminal prosecutions that would have been based in part on evidence derived from FBI mail openings. In each case the Department declined or withdrew prosecution. Whether it did so because it feared that the evidence would be excluded as illegally obtained, or whether it did so to avoid revealing the existence of the mail opening projects, the effect was the same: it allowed the programs to go on as before, and it did not instruct the FBI or the CIA to cease opening mail. What is more, in the mid-1960s, in connection with Senate subcommittee hearings on possible governmental monitoring of the mails, and again in the early 1970s,

the available evidence indicates that the then Attorneys General probably were informed generally of the CIA's activities and, in the latter instance, of their possible scope. Again, no steps were taken to determine what the programs encompassed or to question in any way their legality.

During the period in which the mail openings took place, there was no clear control to ensure that arguably valuable intelligence techniques would be employed only with careful attention to their legality and their effects on individual rights. The absence of defined control was perhaps in part the result of the necessary secrecy, even within the government, that attends intelligence operations, and of the desire for "plausible deniability" by the President. Whatever its cause, the failure of officials at the highest levels who were generally aware of these activities (though they did not participate in them) to clarify the law and establish institutional controls, and their apparent contentment to leave the individuals operating in this field to proceed according to their best estimates of legal constraints in a vague and yet vitally important area -- all this would render a prosecution by the government hypocritical. What really stands indicted as a result of the information which the Department's investigation has disclosed is the operation of the government as an institution: specifically, its failure to provide adequate guidance to its

subordinate officials, almost consciously leaving them to "take their chances" in what was an extremely uncertain legal environment.

One of the purposes, if indeed not the primary purpose, of the criminal law is not merely to punish past wrongdoing but to prevent wrongdoing in the future. If the present prosecution were the only way, or even an effective way, of achieving that result, it might be considered desirable despite elements of unfairness and the almost certain lack of success in obtaining convictions. It is of course recognized that whether a conviction could be achieved only can be determined by the bringing of a prosecution. The failure to convict, however, would hinder the development of the standards that we believe the law now establishes. The Department believes that the objective of preventing repetition of such activity can better be achieved by other means.

Substantial institutional changes in order to assure adequate protection for individual rights in the conduct of intelligence operations have already been made. Executive Order 11905 clearly delineates the proper responsibilities of each of the intelligence agencies and establishes a detailed structure of oversight and approval which includes substantial

participation by the Attorney General. Moreover, this report itself, which is a departure from normal Department practices, is meant to serve the purpose of clearly and publicly describing the Department's view of the current law. It serves as guidance for all federal officials acting in this area, and as fair notice that any failure in the future to comply with these newly developed but now clearly enunciated standards will result in prosecution.

PERSONAL ATTENTION
MEMORANDUM 12-90

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

May 9, 1990

MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE

RE: RESPONDING TO CONGRESSIONAL REQUESTS

The following guidelines are to be used when receiving requests for information from congressional sources.

When a request for information is received from any congressional source, an interim response must immediately be prepared and mailed to the inquirer prior to forwarding the request to FBIHQ. This interim response should only acknowledge receipt of the inquiry and state that the inquiry is being forwarded to FBIHQ for response. A copy of the interim response should be attached to the request when forwarded to FBIHQ and information of sufficient detail must be provided so that an appropriate response may be prepared. The inquiry also should be placed on record and indexed for future reference. Inquiries forwarded to FBIHQ should be directed to the Congressional Affairs Office.

In situations where the inquiry can be handled by your office, no interim response is required, provided a final response can be forwarded to the congressional source within three days. A copy of the inquiry and your final response should expeditiously be sent to FBIHQ. Any questions regarding a congressional inquiry should be directed to the Congressional Affairs Office.

The contents of this memorandum should be brought to the attention of all employees in your office. I cannot overemphasize the importance of a prompt response to congressional matters.

Appropriate manual changes to follow.

66-3843-23
SEARCHED SERIALIZED INDEXED FILED
MAY 16 1990
FBI — NEW HAVEN

William S. Sessions
Director

DRUG FREE AMERICA THE RIGHT CHOICE

5-9-90
MEMORANDUM 12-90