

FBI COUNTERINTELLIGENCE PROGRAMS

HEARING
BEFORE THE
CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-THIRD CONGRESS
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ON
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FBI COUNTERINTELLIGENCE PROGRAMS

WEDNESDAY, NOVEMBER 20, 1974

HOUSE OF REPRESENTATIVES,
CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:15 p.m., in Room 2141, Rayburn House Office Building, the Honorable Don Edwards [chairman of the subcommittee] presiding.

Present: Representatives Edwards, Waldie, Sarbanes, Drinan, Rangel, Wiggins, McClory, and Butler.

Also present: Alan A. Parker, counsel; Arden B. Schell, assistant counsel; and Kenneth N. Klee, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

This past Monday, November 18, Attorney General William B. Saxbe released a report regarding FBI Counterintelligence programs.

We have invited the Attorney General and Mr. Lawrence Silberman, Deputy Attorney General, is here in his place, along with Assistant Attorney General Henry E. Petersen, and the Director of the Federal Bureau of Investigation, Clarence M. Kelley, to be with us today to discuss this report. The purpose of our discussion today is not to elicit specific details concerning specific groups or individuals. We must be mindful as we proceed with our responsibility to protect individual privacy and not to foster or be the vehicle for the dissemination of potentially harmful or damaging allegations in the course of this meeting.

With that caveat in mind, however, I do believe it essential to begin the free exchange of information which will enable this subcommittee to satisfy itself that the practices outlined in the report will be controlled in the future (as my colleague, Mr. Wiggins, has stated) by a mechanism based on more than simple good faith.

Let me recount some background in order to set the stage for our meeting.

The subcommittee's attention was first directed to allegations of questionable FBI activities when materials surfaced after an FBI office was broken into in Media, Pa., in 1971. Following that break-in, a suit was brought under the Freedom of Information Act by NBC newsman Carl Stern. After an 18-month court battle, the FBI recently released a number of memoranda which surfaced the so-called "COINTEL PRO" operations.

The potential for invasions of constitutionally protected rights was apparent, and a letter requesting a review of the operations of the FBI was signed by Chairman Rodino, and sent to the Comptroller Gen-

eral of the United States, Elmer B. Staats, on June 3, 1974. Since that date numerous meetings have been held between our staff and the staff of the Comptroller General, between the staff of the Comptroller General and the FBI, and between the Comptroller General, personally, the Attorney General and the Director of the FBI.

Today, nearly 6 months after Chairman Rodino's original request, the GAO, the official congressional auditing agency, has still been denied access.

In June 1974, we became aware of the investigation and report of the Petersen committee. Chairman Rodino requested the report by letter to the Attorney General on June 28, 1974. The following has transpired since that date:

July 10, 1974—The Attorney General advised Chairman Rodino that he and Mr. Kelley had, in executive session, briefed the Senate FBI Oversight Committee and offered in that letter to similarly brief Mr. Rodino and Mr. Flutchinson.

July 12, 1974—Chairman Rodino asked the Attorney General to brief this subcommittee, as the appropriate oversight entity. No response was received.

August 14, 1974—Chairman Rodino again asked the Attorney General that this subcommittee be briefed on the Petersen report. No response was received.

Monday, November 11, 1974—Chairman Rodino and Mr. Hutchison were briefed by Attorney General Saxbe and Mr. Kelley. Chairman Rodino urged that the Petersen report be made public and that Mr. Wiggins and I be briefed on the entire report. A meeting was arranged for this past Saturday. As you know, that morning the Saturday Washington Star-News carried the entire story before we met.

I feel that I must express my personal reactions to the revelation of the briefing last Saturday. They were of utmost concern and dismay, and I called an emergency session of the subcommittee the following Monday, at which meeting today's hearing was scheduled.

This subcommittee is charged with legislative and oversight jurisdiction over the constitutional rights of American citizens. We take this responsibility most seriously. No provision of the Constitution, law enacted by Congress, or Presidential executive order—in my view—has authorized activities by the FBI such as those described in the Petersen report. When I was an FBI agent many years ago, nothing in any manual or rule book authorized such conduct, and if they do today, they are without legal license.

Regardless of the unattractiveness or noisy militancy of some private citizens or organizations, the Constitution does not permit Federal interference with their activities except through the criminal justice system, armed with its ancient safeguards. There are no exceptions. No Federal agency, the CIA, the IRS, or the FBI, can be at the same time policeman, prosecutor, judge, and jury. That is what constitutionally guaranteed due process is all about. It may sometimes be disorderly and unsatisfactory to some, but it is the essence of freedom.

I am disturbed by the spirited defense of the FBI's COINTELPRO program by Mr. Kelley. In his November 18 statement Mr. Kelley seems to say that the mere invocation of the catch phrase "national

security" justified the COINTELPRO program's frightening litany of Government violations of constitutional rights.

I suggest that the philosophy supporting COINTELPRO is the subversive notion that any public official, the President or a policeman, possesses a kind of inherent power to set aside the Constitution whenever he thinks the public interest, or national security warrants it. That notion is the postulate of tyranny.

Law enforcers cannot be lawbreakers. Attorney General Saxbe has characterized aspects of these activities as "abhorrent in a free society". I join in that statement and commend the Attorney General for making this information public. We on this subcommittee intend to assist him in making sure that the full story is told and that serious efforts are begun for exercising responsible congressional oversight in this area.

In order for this subcommittee to make the proper kind of determination in the exercise of its legislative oversight responsibilities, we must have correct, factual and complete information. Our request to the General Accounting Office to proceed with its audit and general review was but one step in that direction—this hearing is another.

I can assure you that this subcommittee takes its jurisdiction and its responsibilities in this matter most seriously. What we begin here today, we shall vigorously continue in the future.

I wish to thank Mr. Kelley, Mr. Petersen, and Mr. Silberman, representing the Attorney General, for accepting our invitation on such short notice.

Mr. Wiggins, do you desire to make an opening statement.

Mr. Wiggins. Yes; I do, Mr. Chairman.

I concur in many of the remarks of my subcommittee chairman.

It seems to me, Mr. Chairman, that what we are here to discuss are the counterintelligence and intelligence activities conducted in the past by the FBI and the Department of Justice and to insure that in the future those activities shall in all cases be consistent with the law.

I see no great public benefit in attempting to assess responsibility for past actions, since there is a clear policy direction from the present Attorney General that such conduct shall not reoccur. But we do have the responsibility, Mr. Chairman, to monitor by careful oversight the activities of the Department to see that that policy is implemented in the future.

I fully expect the cooperation of the Department of Justice and the FBI in pursuit of these oversight responsibilities.

Of necessity however, our initial inquiry is going to focus upon the operation described as COINTELPRO. I am concerned, Mr. Chairman that a description of those activities may probably prejudice national security concerns, may probably tend to defame, degrade, or ridicule individuals, and may tend to prejudice constitutional rights and statutory rights of privacy of those individuals.

We expect our witnesses to be candid with us and I am concerned that that candor is properly within the context of a public hearing. We are here to discuss highly sensitive material; namely, the intelligence activities of the Department of Justice.

Accordingly, Mr. Chairman, with your permission I would like to ask just a few preliminary questions of all three witnesses.

I will direct the question to you, Mr. Silberman, and will expect responses, if there is a contrary point of view, by Mr. Kelley and Mr. Petersen.

In order to describe the activities generally known as COINTELPRO, Mr. Silberman, is there a likelihood that the personal reputation of any individual may be defamed or disgraced?

TESTIMONY OF LAURENCE H. SILBERMAN, DEPUTY ATTORNEY GENERAL OF THE UNITED STATES, ACCOMPANIED BY: CLARENCE M. KELLEY, DIRECTOR, BUREAU OF FEDERAL INVESTIGATION, AND HENRY E. PETERSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Mr. SILBERMAN. Depending upon the scope of the questions, I think there is very much that danger, Congressman Wiggins.

Mr. WIGGINS. Is there the possibility that full and candid answers may jeopardize the personal security of individuals?

Mr. SILBERMAN. Again, depending on the scope of the questions, the answer, of course, is yes.

Mr. WIGGINS. Is there the possibility that full and candid answers compassed within the COINTELPRO program without running the risk which you have just described?

Mr. SILBERMAN. Not fully, no, because when we get into the question of individual groups we have rights of privacy which we are quite concerned about.

Mr. WIGGINS. Is there a risk to national security—and I might add that that term in our rules is not confined to external threats to the security of this nation—if full and candid answers to questions concerning the COINTELPRO are disclosed to this committee.

Mr. SILBERMAN. Certainly with respect to some portions of what have been referred to as the counterintelligence programs.

Mr. WIGGINS. In light of those answers do either Mr. Peterson or Mr. Kelley take exception to the remarks of the Deputy Attorney General.

Mr. PETERSEN. Not at all.

Mr. KELLEY. I do not.

Mr. WIGGINS. In light of that, Mr. Chairman, the Chair may wish on its own motion to move that these hearings be closed and that we proceed in executive session.

Mr. EDWARDS. Do you so move?

Mr. WIGGINS. I am first inviting you to do so.

Mr. EDWARDS. Mr. Waldie.

Mr. WALDIE. I wish to speak in open session to the implication that a case has been made that the rule of the House demanding executive sessions when material is being adduced that will tend to degrade and defame—I do not believe that the answers have in fact made that case. My own belief is that when a question is asked that would elicit a response that would fall within those prohibitions, that then is the time to advance the proposal that we go into executive session.

I must say executive sessions do not seem to me to be the way to protect the privacy of individuals and organizations. It is the invasion of their privacy that was done in an executive manner that has even

brought about the necessity of these hearings. When the cloak of secrecy surrounds the activities of the agencies that are presently being examined by this committee, privacy suffers. It is not enhanced, and it does not seem to me that this legislative branch should in any way be a contributor to the aura of secrecy that has been established and brought about by what appears, on the face, to have been an abuse of executive power. I believe the facts warrant an open and candid investigation and examination of those facts. If there is an instance when an individual will be injured by any testimony that will be adduced by any particular question, that would be the time to assert the application of the rule and not during the hypothetical problem posed here that might eventually occur.

Mr. EDWARDS. Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

The preliminary question, directed by my colleague, Mr. Wiggins, indicates very positively that it would be proper for our committee to close this hearing to the public, and it seems to me that this is the proper time for us to take that action.

Clause 27 (f) (2) of rule XI of the rules of the House refers to a committee meeting where all or part of the remainder of a hearing would involve testimony, evidence or other matters which might endanger the national security, or, to other rules of the House such as rule XI, clause 27 (m), where the hearing may tend to defame, degrade or incriminate any person. Then the rule is that we shall take action to receive the testimony in this case in executive session.

Now, I feel very jealous of the prerogatives of this committee. I don't want us to have a hearing here which does nothing more than to reiterate what we have read in the papers or what we have seen in press releases. If we are going to perform a true oversight function, it seems to me we have to get into the details, personal details, involving names and events and other detailed information which is vital for us to receive in order to determine to what extent, if to any extent whatsoever, the jurisdiction and authority of the Federal Bureau of Investigation has been excepted.

I am very anxious that we protect the civil rights of all concerned, including those that have been subjected to this counterintelligence activity, but likewise the individual rights of those who may be named in the course of this hearing; and I am confident that we can do a more thorough and a more responsible job consistent with our oversight functions if we take action under clause 27 to have the meeting closed.

Mr. WIGGINS. Would you yield?

Mr. McCLORY. Yes.

Mr. WIGGINS. I would like the members to know what my intention is.

I have not yet made the motion to close the hearing into executive session, but that would be my intention; however, I would like the members to know that it seems to me that there will certainly come a time when open hearings into this subject will be completely proper, but we are treading on new ground here. We do not fully understand the scope of the testimony which is about to be offered nor the possible sensitive nature of it, and before we barge ahead in public, I would think that the better part of discretion is that we have what amounts to a briefing session in advance with these distinguished wit-

nesses so as to understand the scope of their testimony, the likely nature of it, and its possible sensitivity.

It is very difficult to discuss these important preliminary matters in an open session, and that is my motive in preparing at least to offer a motion to close.

Mr. EDWARDS. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, I would oppose the motion to close and I simply want to note that the chairman of the full committee, Chairman Rodino, wrote on three separate occasions to the Attorney General with respect to a report on these activities, that no answer at all was forthcoming to the latter two of those letters, and that on the 18th of November, namely, on Monday of this week, the Attorney General in an open public briefing session to the press promised either to give the entire contents or at least a considerable portion of a summarized version thereof of the Petersen report to the press in a public session.

The Director has issued, I gather, a public statement as a follow-up to the statement of the Attorney General's, and it seems to me that at a minimum we should proceed here now in an open fashion to consider a briefing with respect to those materials and questions pertaining thereto.

The response to the questions addressed by Mr. Wiggins earlier obviously indicate that in part whether we even begin to involve any question of the rules depends on the scope of the questioning and there is certainly plenty of material to be reviewed and briefed to this committee and inquired about, which has already been done in an open and public manner by the Department to the press, and it seems to me that the committee ought to proceed in open session at least until we have explored that matter.

Mr. EDWARDS. We will recess for purposes of the vote until 2:45.

[Short recess.]

Mr. EDWARDS. The subcommittee will come to order.

Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, we have discussed where the votes are, and I have four, the chairman has four, and unfortunately I must make a motion. And that means the motion will not prevail; but let us go through the motion, Mr. Chairman.

I move that these hearings be closed and that the committee adjourn into executive session for the purpose of hearing the testimony of the witnesses.

The motion is made pursuant to the rules of the committee and the rules of the House.

Mr. EDWARDS. Those in favor of the motion signify by raising their hands.

[Wiggins and McClory raised their hands.]

Mr. EDWARDS. Those opposed?

[Drinan, Sarbanes, Waldie, and Edwards raised their hands.]

Mr. EDWARDS. Four to four. The motion does not carry.

Mr. SILBERMAN. I would be glad to cast a vote if you need someone to break a tie.

Mr. EDWARDS. You have to go through an election, Mr. Silberman.

Mr. SILBERMAN. Mr. Kelley or Mr. Petersen, do any of you have opening statements?

Mr. SILBERMAN. Yes, I have a brief statement I would like to make.

Mr. EDWARDS. Mr. McClory.

Mr. McCLORY. As I read the rule, it says that the motion is to be determined on a rollcall vote and I suggest a rollcall.

Mr. EDWARDS. The Clerk will call the roll.

Mr. PARKER. Mr. Waldie.

Mr. WALDIE. No.

Mr. PARKER. Mr. Sarbanes.

Mr. SARBANES. No.

Mr. PARKER. Mr. Drinan.

Mr. DRINAN. No.

Mr. PARKER. Mr. Rangel.

[No response.]

Mr. PARKER. Mr. Wiggins.

Mr. WIGGINS. Aye.

Mr. PARKER. Mr. McClory.

Mr. McCLORY. Aye.

Mr. PARKER. Mr. Butler.

Mr. WIGGINS. Proxy Aye.

Mr. PARKER. Mr. Latta.

Mr. WIGGINS. Proxy Aye.

Mr. PARKER. Mr. Edwards.

Mr. EDWARDS. No.

Mr. PARKER. The vote, Mr. Chairman, is four to four. The motion fails.

Mr. EDWARDS. The motion fails.

Mr. Silberman?

Mr. SILBERMAN. Yes, Mr. Chairman, I would just like to make a few brief remarks concerning some of the matter you alluded to in your opening statement.

The Attorney General has in previous conferences with the chairman of the full committee indicated his desire to arrive at a consensus or an understanding with Chairman Rodino as to the most effective manner in which this subject, which is discussed here today, as well as other subjects, could be discussed with the appropriate committee or subcommittee of the House.

We have been faced, Mr. Chairman, with conflicting demands from several committees. As you may be aware, the subject which is discussed here today has in some respects been alluded to and explored by Congressman Ichord's committee, which I understand still has hearings going on, on this subject. Beyond that, Congressman Kastenmeier has written letters to the Attorney General asking for responses on a number of materials, a number of questions which we feel fall within the province of an FBI oversight committee.

Now, the Senate did in fact set up a special subcommittee of the Judiciary Committee of the Senate, which is an FBI oversight subcommittee, and to which the Attorney General in the spring of last year brought all of the matters concerning the counterintelligence programs, otherwise referred to as COINTELPRO.

It is our view, of course, and a number of other people have expressed the view that it may be wise to have a joint Senate-House committee, but of course, that is a matter for the House and the Senate to determine. But in any event, I have talked to Chairman Rodino,

even as late as yesterday, concerning the question of whether or not he or others would set up one committee whose only function would be FBI oversight, because we regard that as a terribly important matter and we think this Congress ought to be set up to respond to that challenge.

So that has been a matter that has been under discussion for a number of months and from my understanding from Chairman Rodino yesterday, it is still not finally determined.

Mr. EDWARDS. Mr. Silberman, back in June the Chairman of the full committee assigned this responsibility. Attorney General Saxbe has a number of letters so stating. This is a matter for the House of Representatives to determine.

Mr. SILBERMAN. Absolutely.

Mr. EDWARDS. And we have made this determination and we will now proceed.

Do you have a statement, any of the three of you gentlemen, on the program itself, which is the subject of this hearing.

Mr. SILBERMAN. No, we are here prepared to respond to your questions, Mr. Chairman. We didn't have time to prepare a statement.

Mr. EDWARDS. I just have one very short question before I yield to my colleagues.

Mr. Kelley, is this program still in operation to any extent whatsoever?

Mr. KELLEY. The COINTELPRO program is not in existence at this time.

Mr. EDWARDS. Mr. Kelley, Mr. Petersen, to the best of your knowledge, did the program, when it was in existence, entail any burglaries, electronic surveillance, wiretaps, or violence by governmental employees?

Mr. PETERSEN. We came across no evidence of that in the examination we conducted, which was an examination of COINTEL files. But I have to be candid. While electronic—first of all there was no evidence of burglary or assault or anything like that involved, but with respect to electronic surveillance, well, electronic surveillance was not part of the program. It may have been that some who were subject to counterintelligence activity were under other areas of the Bureau's activities also subject to electronic surveillance. For example, there is a suit pending by the Socialist Workers Party which alleges illegal electronic surveillance, which the Government is defending. They have subsequently amended their complaint to include allegations based upon the counterintelligence program. So I don't want to mislead you. So far as I was able to determine, and the Bureau supports this in their commentary to us, electronic surveillance as such was not part of the COINTELPRO program.

Mr. EDWARDS. Thank you.

Mr. Wiggins.

Mr. WIGGINS. Mr. Silberman, thus far, what this committee knows about the counterintelligence program it has obtained as a result of private briefings from the Attorney General and matters contained in the press.

I would like you as part of your testimony to lay the record before this committee and, therefore, before the Congress, with respect to the inception of the program, how long it was maintained, what its activi-

ties were, and the number of individual cases where the program was applied. In short, Mr. Silberman, we should have for our record, at least, a history of what has occurred.

Mr. SILBERMAN. Mr. Wiggins, I think the answers to all of those four questions are contained in the document which the Attorney General released on Monday and which I would ask be made part of this record.

Mr. WIGGINS. Mr. Chairman, I request that the Attorney General's statement with respect to the COINTEL program be made a part of our record at this point.

Mr. EDWARDS. Without objection it will be entered.

[The prepared statement of Hon. William B. Saxbe follows:]

STATEMENT OF HON. WILLIAM B. SAXBE, ATTORNEY GENERAL OF THE UNITED STATES

In January of this year during the course of my initial briefing on current issues facing the Department of Justice, I was informed of the existence of an FBI "Counterintelligence Program".

After ascertaining the general thrust of the counterintelligence programs, I directed Assistant Attorney General Henry Petersen to form a committee charged with the responsibility of conducting a complete study and preparing a report for me which would document the Bureau's activities in each of the separate counterintelligence programs. That study committee consisted of four Criminal Division representatives and three representatives from the Federal Bureau of Investigation, selected by Director Kelley.

The Committee's report to me stated that there were seven separate programs—five directed at domestic organizations and individuals, and two programs directed at foreign intelligence services, foreign organizations and individuals connected with them. These programs were implemented at various times during the period from 1956 to 1971 when all programs were discontinued. The Committee further found that 3247 counterintelligence proposals were submitted of which 2370 were approved. In 527 instances, known results were ascertained.

It is not my intention at this time to detail for you the particulars of the seven programs inasmuch as you have been provided with a copy of the Committee's report which has been edited to delete national security information. That document describes fully the activities involved in each of the programs.

The materials released today disclose that, in a small number of instances, some of these programs involved what we consider today to be improper activities. I am disturbed about those improper activities. However, I want to stress two things: first, most of the activities conducted under these counterintelligence programs were legitimate—indeed, the programs were in response to numerous public and even Congressional demands for stronger action by the Federal Government. Second, to the extent that there were, nevertheless, isolated excesses, we have taken steps to prevent them from ever happening again. In this connection, Director Kelley last December sent a memorandum to FBI personnel strongly reaffirming the Bureau policy that: "FBI employees must not engage in any investigative activity which could abridge in any way the rights guaranteed to a citizen of the United States by the Constitution and under no circumstances shall employees of the FBI engage in any conduct which may result in defaming the character, reputation, integrity, or dignity of any citizen or organization of citizens of the United States."

Attorney General William B. Saxbe and Federal Bureau of Investigation Director Clarence M. Kelley released today the details of certain counterintelligence programs conducted by the FBI from 1956 to 1971 against several domestic and foreign-based subversive or disruptive groups, organizations, and individuals.

These efforts, which carried the designation "COINTELPRO," were targeted against the Communist Party U.S.A., the Socialist Workers Party, the New Left, White Hate groups, and Black Extremist organizations, as well as certain espionage operations and hostile foreign-based intelligence services.

The materials released today significantly expand upon material released in December, 1973, by Director Kelley concerning the counterintelligence program

conducted against radical and violent elements as part of the COINTELPRO—New Left.

FBI COINTELPRO ACTIVITIES

I. INTRODUCTION

In Fall, 1973, the Department of Justice disclosed certain documents relating to a "counterintelligence" program of the Federal Bureau of Investigation entitled "COINTELPRO—New Left." Among the documents disclosed was a directive indicating that the FBI had also instituted six other counterintelligence programs ("COINTELPRO"), to wit: Espionage; White Hate Groups; Communist Party, U.S.A.; Special Operations; Black Extremists and the Socialist Workers Party. Based on these disclosures, additional requests have been made for numerous other documents relating to these FBI COINTELPRO activities. This paper is in response to those requests.

In January, 1974 Attorney General William Saxbe requested Assistant Attorney General Henry Petersen to form a committee to review these FBI COINTELPRO activities. The Committee was chaired by Assistant Attorney General Petersen, and consisted of four Criminal Division representatives and three FBI representatives selected by FBI Director Clarence Kelley.

In June, 1974 the various COINTELPRO programs were discussed at length by Attorney General Saxbe and FBI Director Kelley with the FBI Oversight Subcommittee of the Senate Judiciary Committee. More recently, the COINTELPRO activities of the FBI were discussed by Attorney General Saxbe and Director Kelley with Chairman Rodino and Ranking Minority Member Hutchinson of the House Judiciary Committee.

II. THE COINTELPRO PROGRAMS

A. Origin, scope, and objectives of COINTELPRO activities

The term "COINTELPRO" is a generic term used by the Bureau to describe seven separate "counterintelligence" programs which the Bureau implemented at different times during the period from 1956 to 1971, when all were discontinued. Five of these programs were directed at domestic-based groups and individuals—Communist Party, U.S.A., the forerunner of all other COINTELPROS (1956–1971); Socialist Workers Party (1961–1970); White Hate Groups (1964–1971); Black Extremists (1967–1971); and New Left (1968–1971). The documents authorizing these five programs define their objective as being either simply the disruption of the group's activities; or the disruption, exposure and neutralization thereof.

The other two COINTELPRO programs were in the area of foreign counterintelligence—Espionage or Soviet-Satellite Intelligence, which was in effect from 1964 to 1971; and Special Operations, which was in effect from 1967 to 1971. According to Bureau documents, the overall objectives of these two programs were to encourage and stimulate a variety of counterintelligence efforts against hostile foreign intelligence sources, foreign Communist organizations and individuals connected with them.

B. The background and context of COINTELPRO activities

A fair, accurate and comprehensive understanding of the various COINTELPRO activities undertaken by the FBI is possible only in light of the context and climate in which the programs were established.

As indicated above, COINTELPRO—Communist Party, USA was the predecessor—and in some respects the model—of subsequent FBI COINTELPRO activities. The Communist Party, USA program grew out of the "Red Scare" of the early and middle 1950's. This era of American political history was characterized by the growth and decline of "McCarthyism;" numerous and well-publicized "spy trials;" and, in general, a prevailing view in Congress and the American people that the Federal Government should take appropriate steps against domestic subversion. The period was also characterized by a widespread concern that subversive elements, spearheaded by the Communist Party, were not only pervasive, but were also in varying degrees effective in such areas as sabotage and espionage. Moreover, although domestically based, it was clear that the operations and activities of the Communist Party USA were in fact directed by foreign countries. Indeed, the fact of foreign (Soviet) direction and control of the Communist Party USA was recognized by the Supreme Court in *Communist Party USA v. United States*, 368 U.S. 871.

The original COINTELPRO was, then, conceived as a "counterintelligence" effort in the purest sense. Moreover, the overwhelming bulk of the activities carried out under the program were legitimate and proper intelligence and investigative practices and techniques. What was new in the COINTELPRO effort was primarily the *targeting* of these activities against one specified group or category of organizations. Although, as discussed in more detail below, some COINTELPRO activities involved isolated instances of practices that can only be considered abhorrent in a free society, it is important to understand that these improper activities were not the purpose or indeed even the major characteristic of the FBI's COINTELPRO efforts.

COINTELPRO—Socialist Workers Party, undertaken in 1961, appears to have been a direct outgrowth of the earlier effort targeted against the activities of the Communist Party, USA. Later COINTELPRO activities were based on the Communist Party, USA model, but reflected the changing threats to domestic order that emerged in the decade of the 1960's.

The next COINTELPRO undertaken was against White Hate Groups. This program, which began in 1964, grew out of the disruptive and harrasing activities of these groups in their attempt to subvert the civil rights movement. The activities of these groups were characterized by lynchings, burnings, bombings, and the like—a climate of violence and lawlessness which society and its law enforcement mechanisms seemed incapable of countering.

The next COINTELPRO undertaken was against Black Extremists in 1967. As in the case of the White Hate Groups, the activities of these extremist groups were marked by violence, arson and bombings. In addition, the activities of many of these extremist groups included police shootings and, as is well known, the fostering and fomenting of riots and other civil disturbances in cities all across the land.

Finally, many of these activities were led by or included individuals who publicly proclaimed their association with the political doctrines or leadership of hostile countries, including Communist nations.

The last domestic COINTELPRO was instituted in 1968 against the "New Left." The origin and purposes of this effort were best described by FBI Director Kelley in a press release on December 7, 1973:

"In the late 1960's, a hard-core revolutionary movement which came to be known as the 'New Left' set out, in its own words, to bring the Government to its knees through the use of force and violence.

"What started as New Left movement chanting of Marxist-Leninist slogans in the early years of their 'revolution' developed into violent contempt, not only for Government and Government officials, but for every responsible American citizen.

"During these years, there were over 300 arsons or attempted arsons, 14 destructive bombings, 9 persons killed, and almost 600 injured on our college campuses alone. In the school year 1968-69, damage on college campuses exceeded 3 million dollars and in the next year mounted to an excess of 9.5 million.

"In this atmosphere of lawlessness in the cities mobs overturned vehicles, set fires, and damaged public and private property. There were threats to sabotage power plants, to disrupt transportation and communications facilities. Intelligence sources informed the FBI of plans that were discussed to poison public water supplies.

"At this time of national crisis, the Government would have been derelict in its duty had it not taken measures to protect the fabric of our society. The FBI has the responsibility of investigating allegations of criminal violations and gathering intelligence regarding threats to the country's security. Because of the violent actions of the leadership of the New Left, FBI officials concluded that some additional effort must be made to neutralize and disrupt this revolutionary movement. This effort was called the 'Counterintelligence Program—New Left' or 'COINTELPRO-New Left.'

"While there is no way to measure the effect of the FBI's attempt at countersubversion, I believe that it did have some impact on the crisis at that time.

"Now, in the context of a different era where peace has returned to the college campuses and revolutionary forces no longer pose a major threat to peace and tranquility of our cities, some may deplore and condemn the FBI's use of a counterintelligence program—even against hostile and arrogant forces which openly sought to destroy this nation.

"I share the public's deep concern about the citizen's right to privacy and the preservation of all rights guaranteed under the Constitution and Bill of Rights."

As indicated in Director Kelley's statement—and as is apparent in the case of all COINTELPRO activities—"there is no way to measure the effect of the FBI's attempt at countersubversion." Unfortunately, no empirical data exist with respect to the effectiveness of the various COINTELPRO efforts undertaken in countering the threats perceived to the domestic order. Perhaps the nature of intelligence work is such that no such objective measure exists.

C. Authorization and implementation of COINTELPRO activities

According to FBI documents, all seven programs implemented under COINTELPRO were specifically authorized by former FBI Director J. Edgar Hoover. COINTELPRO programs were apparently not reported to any of the Attorneys General in office during the periods in which they were implemented. Only certain aspects of the Bureau's efforts to penetrate and disrupt the Communist Party USA and White Hate Groups—apparently conducted under COINTELPRO although not specifically stated as such (the term "COINTELPRO" was used only inside the Bureau), were reported to at least three Attorneys General and key White House staff of two Presidents between 1958 and 1969. It must be emphasized that none of the activities so reported involved any improper conduct. One additional Attorney General during this period was briefed on the Bureau's "counterattack" against the Communist Party USA.

Finally, Bureau documents disclosed that the House Appropriations Subcommittee was briefed on the Bureau's counterintelligence programs including the character of COINTELPRO and examples of specific activities undertaken in connection with this program, as early as 1958. Under the directives establishing the programs, no counterintelligence action could be initiated by the field without specific prior Bureau authorization. Except in a very small number of instances this policy was strictly adhered to. The great majority of actions were either approved or disapproved at the Assistant Director level or above, while a very small number were acted on at a lower level.

D. Statistical analysis of COINTELPRO activities

As indicated above, the maximum time span of all seven COINTELPRO programs covered the period 1956 to 1971. All programs, however, were not in effect during this entire period.

With respect to the five programs directed at domestic-based organizations and individuals, a total of some 3,247 proposals for counterintelligence activity were submitted by the various FBI field offices for consideration from the inception of the programs in 1956 to their termination in 1971—more than half of them arising under the Communist Party USA program. Some 2,370 of these proposals, or approximately 73%, were approved and implemented. Of those proposals which were approved and implemented, known results were obtained in only some 527, or approximately 22%.

The individual statistics on each of these five programs are as follows:

Organization	Proposals	Approved and Implemented	Known results
Communist party U.S.A.	1,850	1,388	222
Socialist Workers Party	72	46	13
White Hate Groups	404	289	139
New Left	381	285	77
Black Extremists	540	362	76
Total	3,247	2,370	527

With respect to the two other "COINTELPRO" programs, Special Operations and Espionage or Soviet-Satellite Intelligence—both of which related to operations primarily targeted against hostile foreign intelligence services, foreign organizations and individuals connected with them—no statistics are set forth in this report. Because of the nature of these activities, all documents relating to "Espionage or Soviet-Satellite Intelligence" are classified Secret, and a very substantial part of the documents relating to "Special Operations" are likewise classified Secret. Publication of these statistics would be inappropriate in terms of the national security.

E. Analysis of types of activity conducted under COINTELPRO domestic-based programs

Reports with respect to the five domestic based COINTELPRO programs disclosed a close similarity in the types of activities conducted under each program. In general, the activities common to all programs may be grouped into approximately a dozen categories. As indicated above, the overwhelming bulk of these activities were clearly legitimate and proper undertakings, within the scope of the FBI's ongoing responsibilities, and are listed as "COINTELPRO" activities only because they were reported as such. They may be characterized as follows:

(1) *Sending anonymous or fictitious materials to members or groups.*—The vast majority of these actions consisted of items of information designed to create dissention and cause disruption within the various groups. Of the total number of actions implemented under all five domestic based programs, approximately, 40% fell under this category.

(2) *Dissemination of public record information to media sources.*—Actions implemented under this category consisted primarily of making public source material available to friendly media representatives for the purpose of using such material in a newspaper, magazine, or radio or television program in order to expose the aims and activities of the various groups. This type of activity represented approximately 20% of all actions implemented under domestic COINTELPRO efforts. It was implemented in some 360 instances in connection with the Communist Party USA program; in six instances in connection with the Socialist Workers Party; in 26 instances in connection with Black Extremists; in 15 instances in connection with White Hate Groups; and in 25 instances in connection with the New Left.

(3) *Leaking informant based on non-public information to media sources.*—Most of the actions implemented in this category related to the leaking of investigative material to friendly media sources for the purpose of exposing the nature, aims and membership of the various groups. There were no instances of this type of activity in connection with the Socialist Workers Party program, and relatively few in connection with the Communist Party USA and New Left programs. Approximately one-seventh of the actions implemented under the Black Extremists program, and one-sixth of the actions implemented under the White Hate Groups program fell under this category.

(4) *Advising local, State and Federal authorities of civil and criminal violations by group members.*—This activity—totally legal—represented approximately 8% of the total number of actions implemented under all five domestic based programs.

(5) *Use of informants to disrupt a group's activities.*—Most of the actions implemented under this category were for the purpose of using informants to disrupt the activities of various groups by sowing dissention and exploiting disputes. No statistics are available as to the number of instances of this type of activity in connection with the Communist Party USA program, but it seems that informants were used in this program to cause disruption but not as agents provocateurs. This type of activity represented less than two percent of the activities undertaken in connection with the four other domestic based COINTELPRO programs.

(6) *Informing employers, credit bureaus and creditors of members' activities.*—The majority of actions implemented under this category consisted of notifying credit bureaus, creditors, employers and prospective employers of members' illegal, immoral, radical and Communist Party activities in order to affect adversely their credit standing or employment status. No statistics are available as to the number of instances in which this type of activity was used in connection with the Communist Party USA program, although the Bureau has reported that it was used in a number of instances. It was used in only a small number of instances in connection with the four other domestic based COINTELPRO programs, namely in one instance in connection with the Socialist Workers Party, seven instances in connection with Black Extremists, 15 instances in connection with White Hate Groups, and 20 instances in connection with the New Left, or a total of some 43 instances in all domestic based COINTELPRO programs other than the Communist Party USA.

(7) *Informing or contacting businesses and persons with whom members had economic dealings of members' activities.*—The majority of actions implemented under this category consisted of notifying persons or businesses with whom members had economic dealings of the members' association with the various groups involved for the purpose of adversely affecting their economic interests.

No instances of this type of activity were reported in connection with the Communist Party USA program. It was implemented in only one instance in connection with the Socialist Workers Party program, in 62 instances in connection with the Black Extremists, 14 instances in connection with the White Hate Groups, and eight instances in connection with the New Left, or a total of some 85 instances in all domestic based programs.

(8) *Interviewing or contacting members.*—This type of activity—again, totally legal—was implemented in only a small number of instances for the purpose of letting members know that the FBI was aware of their activity and also in an attempt to develop them as informants. No instances of this type of activity were reported in connection with the Communist Party USA, Socialist Workers Party and Black Extremists programs, and in only eleven instances in connection with White Hate Groups and in one instance in connection with the New Left. It should be noted that many FBI field offices carried on this activity routinely but did not attribute it to a counterintelligence function but rather to the routine investigation of individuals or organizations.

(9) *Attempting to use religious and civil leaders and organizations in disruptive activities.*—The majority of actions implemented under this category involved furnishing information to civic and religious leaders and organizations in order to gain their support and to persuade them to exert pressure on state and local governments, employers and landlords to the detriment of the various groups. No instances of this type of activity were reported in connection with the Communist Party USA program. It was used in only 2 instances in connection with the Socialist Workers Party program, in 36 instances in connection with Black Extremists, in 13 instances in connection with White Hate Groups and in 10 instances in connection with the New Left, or a total of some 61 instances in connection with all domestic based programs.

(10) *Activity related to political or judicial processes.*—This type of activity represents less than one half of one percent of all COINTELPRO activities—a total of only 12 instances in connection with all five domestic based programs.

Although small in number, these 12 instances are among the most troubling in all of the COINTELPRO efforts. Consequently, in the interest of full disclosure, they are described in detail as follows: tipping off the press that a write-in candidate for Congress would be attending a group's meeting at a specific time and place; leaking information to the press that a group official was actively campaigning for a person running for public office; furnishing the arrest and conviction record of a member of a group who was candidate for a local public office to a friendly newspaper which published the information; sending an anonymous letter to a political candidate alerting him that a group's members were active in his campaign and asking that he not be a tool of the group; sending an anonymous letter to a local school board official, purporting to be from a concerned parent, alerting him that candidates for the school board were members of a group; mailing an anonymous letter to a member of a group who was a mayoralty candidate in order to create distrust toward his comrades; furnishing background of a group who was a candidate for public office, including arrests and questionable marital status, to news media contacts; furnishing public source data on a group to a local grand jury chairman who had requested it in connection with the grand jury's probe of the shooting of police by group members; furnishing information concerning arrests of an individual to a court that had earlier given this individual a suspended sentence and also furnishing this same information to his employer who later discharged the individual; making an anonymous telephone call to a defense attorney, after a Federal prosecution had resulted in a mistrial, advising him (apparently falsely) that one of the defendants and another well known group individual were FBI informants.

(11) *Establishing sham organizations for disruptive purposes.*—This type of activity was utilized only in connection with the White Hate Groups program and was implemented in only five instances primarily for the purpose of using the organizations to send out material intended to disrupt various such groups.

(12) *Informing family or others of radical or immoral activity.*—The majority of actions implemented under this category involved the sending of anonymous communications to family members or groups to which individuals belonged advising them of immoral or radical activities on the part of various individuals. These activities represent a little more than one percent of all COINTELPRO activities—a total of some thirty instances in all domestic-based programs. This type of activity was reported to have been used infrequently in connection with

the Communist Party USA program, and was not used in connection with the Socialist Workers Party program. It was reported to have been used in twelve instances in connection with the Black Extremists program, in two instances in connection with White Hate Groups, and in 16 instances in connection with the New Left.

In addition to the above twelve categories, it was found that a small number of miscellaneous actions, approximately 20 instances in all the domestic-based programs, were implemented which did not fit in any specific category. Again, it is appropriate in the interests of full disclosure that these activities be set forth in detail. The most egregious examples of these miscellaneous types of activity are as follows: making arrangements for local authorities to stop two group members on a narcotics pretext and by prearrangement having a police radio operator indicate that another individual wanted them to call her with purpose of having this individual come under suspicion as a police informer; use of "citizen band" radio, using the same frequency being used by demonstrators, to provide disinformation; making telephone calls to parents of members of a group advising them of the connection of their son with the group; or advising the mother of a group leader that his actions would put him in danger; forging of a group's business card for informant purposes; reproducing a group leader's signature stamp; obtaining tax returns of members of a group; reproducing a group's recruiting card; and investigating the love life of a group leader for dissemination to the press.

F. Foreign intelligence activities

Two programs in the area of foreign counterintelligence—"Special Operations" and "Espionage" or "Soviet-Satellite Intelligence"—were implemented by the FBI under "COINTELPRO." The overall objective of each was to encourage and stimulate a variety of counterintelligence efforts against hostile foreign intelligence services, and, in the case of "Special Operations," also against foreign Communist organizations and individuals connected with them.

(1) *Special operations.*—The title "Special Operations" does not designate a program directed against a specific target. Rather, the title and the file on it are of a control character, and the file contains copies of correspondence of an informative or coordinating nature relating to ongoing intelligence operations and/or investigations primarily targeted against hostile foreign intelligence services, foreign Communist organizations and individuals connected with them. A very substantial part of this file is classified "Secret." Although it is not appropriate to provide statistics as to the precise number of actions implemented under this program, it can generally be stated to include approximately ten general types of activity, such as operations involving travel of confidential informants abroad; extended utilization of cooperative individuals and informants abroad; anonymous mailings for the purpose of disrupting activities of a suspected agent of a foreign intelligence service; etc.

(2) *Espionage or Soviet-satellite intelligence.*—This program, although officially designated a COINTELPRO program, emphasized intelligence gathering and counterintelligence efforts already being pursued in connection with the Bureau's ongoing foreign intelligence responsibilities. It did not curtail any activity or in any way change the scope of counterintelligence efforts already in effect and continuing today. It was primarily intended to inspire initiative and to encourage ingenuity in the Bureau's continuing counterintelligence efforts against hostile foreign intelligence services.

In the interest of the national security, no statistics or examples of the types of actions implemented under this program may appropriately be disclosed.

Mr. WIGGINS. Mr. Petersen, you led a team which investigated this program; is that true?

Mr. PETERSEN. Yes, sir.

Mr. WIGGINS. Who were the members of your team?

Mr. PETERSEN. First of all, Mr. Kevin Maroney, Deputy Assistant Attorney General, Criminal Division; Mr. Philip White, Staff Assistant to me in the Criminal Division; Mr. Michael Abbell, Staff Attorney in the Criminal Division; Mr. John Martin, Staff Attorney in the Criminal Division; Inspector Thomas Smith of the Federal Bureau of

Investigation; Agent James Williamson, Federal Bureau of Investigation, and Agent Edmund Pistey of the Federal Bureau of Investigation.

Mr. WIGGINS. Is the report which is known as the Petersen report a unanimous report of this committee?

Mr. PETERSEN. Yes, sir, it is a unanimous report of the committee as such. The Bureau as an institution may have differing views.

Mr. WIGGINS. With respect to what portions of the report?

Mr. PETERSEN. I am not aware. The report was submitted to Mr. Kelley so that he might express those views to the Attorney General. I have seen no formal expression of those views.

Mr. WIGGINS. Mr. Kelley, do you concur in the report of the Petersen committee?

Mr. KELLEY. There are some matters discussed which we thought perhaps needed some adjustment, but overall we concur that it is a faithful recording of what appeared in the committee's review.

Mr. WIGGINS. Mr. Petersen, did your task force examine all of the individual files or did you simply take random samples?

Mr. PETERSEN. I think both, but perhaps I would explain the methodology in some more detail.

First of all, for each field office that was engaged in a COINTEL program there was a control file maintained in the Bureau headquarters. The three Bureau agents on the committee examined with whatever assistance from other elements in the FBI that may have been necessary—I don't know there was any—all of those and summarized the relevant information with respect to each agent's activity taken under the COINTEL program. Those summaries were then assigned to the staff, attorneys on the committee; white, hate groups, black extremists, Communist Party USA, et cetera.

Based on those summaries the report was prepared.

Now, in order to assure the validity of those summaries, the attorneys in the Criminal Division and only attorneys in the Criminal Division, took 20 percent sampling of the original files and compared them to the summary to ensure accuracy and invariably they were an accurate summary of the raw files.

Mr. WIGGINS. It is my understanding that this activity was commenced some years ago at the direction of Director Hoover, is that a correct statement?

Mr. PETERSEN. Yes, sir, that is what the file reflects.

Mr. WIGGINS. Can you tell us whether there was at that time statutory authority for the conduct of such programs?

Mr. PETERSEN. I am not aware of any statutory authority for the exercise of this responsibility. Whatever authority exists would have been said to be implicit in the discharge of other duties and that is a very questionable area.

Mr. WIGGINS. There is not, as I understand it, a statutory prohibition against counterintelligence activities per se, but rather only against specific activities which might fall under that heading. Is that a fair statement, Mr. Petersen?

Mr. SILBERMAN. May I respond to that?

One of the difficulties in analyzing what is referred to as COINTELPRO is that there are a number of activities within COINTELPRO which fall clearly within the authority of the Bureau

under Executive orders and statutes; and, of course, there are some activities which the Attorney General has already indicated he believes to be inappropriate.

It seems to me that it might help to a certain extent to distinguish between those activities which, for instance, are clearly within the authority of any law enforcement agency and those which may exceed that authority.

Mr. EDWARDS. The committee is operating under House rules, under the 5-minute rule.

Mr. WALDIE.

Mr. WALDIE. I ask this to any one of you who might provide the answer.

I am examining the report itself and on pages 11 and 12 one of the tactics was the leaking of information based on nonpublic information to friendly media sources, and then you break down the number of times this tactic was used.

On page 12 you specify it was used 360 instances in connection with the Communist Party program, 6 instances Social Worker's Party, 26 instances black extremists, 15, white hate and 25 new left.

So I presume from the accuracy of those references that this is ample documentation as to whom the allegations were made, as to the identity of the friendly media sources. Is that a correct assumption?

Mr. SILBERMAN. Congressman Waldie, I think you are referring to dissemination of public record information to media contacts.

Mr. WALDIE. Well, I am in the first instance.

Mr. SILBERMAN. Yes.

Mr. WALDIE. And that was disseminated only to friendly media representatives, according to the report, and I presume that it is amply documented whom you construed to be "A friendly media representative" that is important for me to know, that you make a designation among the media of America as to whom is friendly and by exclusion you defined the rest as unfriendly.

Mr. SILBERMAN. First of all, Mr. Waldie, let me make perfectly clear to you.

Mr. WALDIE. Please, not that word.

Mr. SILBERMAN. I beg your pardon.

Mr. WALDIE. Please go ahead, I am sorry.

Mr. SILBERMAN. This is not a present assertion.

Mr. WALDIE. I understand that.

Mr. SILBERMAN. You were saying it as if it were the present tense.

Mr. WALDIE. I understand that. I will make that judgment when we have concluded this hearing. Part of my concern is to be satisfied that it is not a present intention of the Federal Bureau of Investigation. I am not at this stage of these proceedings so persuaded.

Now, to respond to my question, will you provide me with the list of the friendly media to whom public information was disseminated?

Mr. SILBERMAN. I am not sure that is appropriate.

Mr. WALDIE. That is not really for you to make this determination. If you can tell me that you will not, then we can take the steps that we are permitted to use. My question to you is will you provide me with that information?

Mr. SILBERMAN. You mean the list of media sources—

Mr. WALDIE. The list of friendly—

Mr. SILBERMAN [continuing]. To whom the Federal Bureau of Investigation between 1956—

Mr. WALDIE. That is not what I am asking. Listen carefully to my question. Refer to page 11 of the Petersen report, subparagraph 2, line 3, the phrase friendly media representatives; page 11, where you are discussing to whom you disseminated public record information; and then on page 12, top paragraph, you enumerate specifically the instances in great detail in which that occurred.

I presume, therefore, you have ample information as to the friendly media in those instances to whom the information was disseminated.

Mr. SILBERMAN. First of all, the Justice Department does not at this stage, at this time distinguish between friendly and unfriendly media. We have no such distinction and we have no such operating instructions nor do we have any such policy.

If your question is the identity of newspapermen—

Mr. WALDIE. That is not my question. Listen to my question. I want to know in the 360 instances referred to on page 12, in connection with the Communist Party program, in the 6 instances in connection with the Socialist Worker's Party, and you can conclude the rest of that paragraph, I want to know in each of those specific instances the media to whom the information was released.

Mr. SILBERMAN. I am not sure but that wouldn't involve the exposure of newspapermen in a fashion which might well raise first amendment questions.

Mr. WALDIE. It raises a great number of first amendment questions but they are adverse to the Government and that is what I want to know. The Government has no business determining which of its media are friendly.

Mr. SILBERMAN. I absolutely agree with you.

Mr. WALDIE. Then would you agree with me that you would find no objection. I would think, in providing me with the information as to why such a policy was adopted at one time, in your Department.

Mr. SILBERMAN. Well, I wasn't there, this was back in 1956, through the 1960's, Congressman Waldie. I deplore the concept of distinguishing between friendly and unfriendly media.

Mr. WALDIE. Can you just simply tell me—

Mr. SILBERMAN. Your question is can we identify those reporters to whom the allegations were made?

Mr. WALDIE. I didn't know they were reporters. I want to know the media representatives. Will you provide that to me?

Mr. SILBERMAN. I am not certain. I would like to consult with the Attorney General about that. That may raise some questions that this committee would be equally concerned about—such as the identification of newsmen in the process of their news gathering activity. We are particularly sensitive in the Justice Department about this and have adopted a number of policies which prevent governmental power being imposed upon newsmen in such a fashion as to chill their first amendment free press rights.

Mr. WALDIE. My time is up. I will come back to you.

Mr. EDWARDS. Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

First of all I want to comment on your earlier statement, Mr. Silberman, particularly with regard to your suggestion as to where you

think the jurisdiction for FBI oversight ought to be, and I want to assert quite affirmatively and with some jealous feelings of the prerogatives of this committee that the oversight jurisdiction belongs right here in this subcommittee, and I think we have been sidetracked or we have been overlooked insofar as recognizing what our prerogatives are.

Mr. SILBERMAN. May I respond just briefly, Congressman McClory, to say that the Attorney General received a letter November 14 which in turn refers to an earlier letter of October 23 from Congressman Kastenmeier, chairman of the Subcommittee on Courts, Civil Liberties and Administration of Justice in which the very nature of his inquiry asserts the same jurisdictional "oversight" rights. It is obviously not up to us to make a determination as to which subcommittee or committee of the Congress has jurisdiction. All that we ask is that the chairman make clear which committee has jurisdiction.

Mr. McCLORY. Well, you are only being subjected to inquiries now by one subcommittee of the House Judiciary Committee, I assume.

Mr. SILBERMAN. We only get it one at a time, if that is what you mean.

Mr. McCLORY. Now, I have read the Director's statement with regard to the report which was made public in response to pressures which I judge came from the chairman and from this committee with regard to these counterintelligence activities. I think it would be extremely important for us to know of these earlier days—that we are not experiencing now, of course—and who these revolutionary forces were, these elements that were engaged in conspiracies and the potentially deadly agents which we were guarding against. Because while I recall highly offensive conduct and large-scale demonstrations right here in the Capitol, I am not aware myself of the revolutionary leaders or activities or the threats of killings and maimings which we were guarding against; and it is that kind of information which it seems to me that we should know about if we are going to either countenance a continuation of this activity or we are going to direct that it be discontinued.

I assume that would not be the kind of information that you would want to identify here in a public, open hearing by using names and identifying individuals who were involved in that sort of thing, or the names of individuals who were engaged in counterintelligence activities to try to protect our citizens, as you say, is that correct?

Mr. SILBERMAN. To whom are you addressing that question?

Mr. McCLORY. To whomever is the spokesman you have on the panel.

Mr. SILBERMAN. I am sorry, Congressman McClory, I thought for a moment you were addressing it to Director Kelley.

Let me first address the earlier part of your premise. The Attorney General has always expressed a desire to make this report public and indeed discussed that with the Senate FBI Oversight subcommittee many months ago. It is not so that it is public only because the chairman of this committee wished it to be made public.

Now with respect to the other part of your question, you are absolutely right that the disclosure in an open hearing of certain of the instances to which Director Kelley referred to in this statement would not serve the interest of either the Congress or the executive branch.

Mr. McCLORY. Some of these activities which we regard as offensive and which are covered in the report or the study are said to have been conducted at the request of Members of Congress.

Can you identify the Members of Congress who urged activities that are being questioned and scrutinized at this time?

Mr. SILBERMAN. I think you are referring to Director Kelley's statement, are you not, Congressman McClory, rather than the report?

Mr. McCLORY. I am not sure.

Mr. PETERSEN. The report does not say that.

Mr. SILBERMAN. The report does not say that?

Mr. McCLORY. It is in the press release.

Mr. SILBERMAN. You mean Director Kelley's press release?

Mr. McCLORY. Well, are you familiar with that and could you identify the Members of Congress for us?

Mr. SILBERMAN. I certainly could not identify them and I would have to defer to Director Kelley on that question.

Mr. KELLEY. There were in some instances members of the Appropriations Committee before whom Mr. Hoover testified on FBI appropriations. I cannot identify them at this point.

Mr. McCLORY. Thank you.

Mr. SILBERMAN. We did know that much of that testimony before the Appropriations Committee was designated "off the record."

Mr. McCLORY. I think my time is up.

Mr. EDWARDS. Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman.

Mr. SILBERMAN. I want to make one comment on this jurisdictional point which I raised. Mr. Wiggins and I were members of a select committee that spent well over 1 year studying the jurisdictional questions in the House of Representatives. I think we probably recognize the complexities connected with it. But I only suggest to you that if the House chose to, and its committees chose to, any number of subcommittees or committees could assert jurisdiction with respect to oversight connected to the FBI, if it fell within the purview of their responsibility. The Judiciary Committee is organized not on an agency basis or on a departmental basis, but is organized more on a functional basis in terms of subject matter that comes before the committee. The fact that two subcommittees of this committee have felt it necessary to inquire of the FBI with respect to certain matters may only reflect that they are carrying forth their responsibilities that are assigned to them. I can understand that the Department and the Bureau seeks some arrangement to which they can easily relate and I take it that you made that remark only as a suggestion of what would be convenient for you. But I just want to make it very clear that the way we do our business is for us to arrange and that a functional arrangement which may make a lot of sense from our point of view may well be the appropriate one even though it may make things somewhat inconvenient or repetitious for the Bureau or for the Department.

Mr. SILBERMAN. It was not convenience that I was concerned about, Congressman Sarbanes, but a much more important matter. The Attorney General and I feel very strongly that the Congress should exercise appropriate oversight jurisdiction over the Bureau and indeed over the Department, but particularly over the Bureau.

Much of the matters that the Bureau are engaged in are extraordinarily sensitive, particularly in the counterintelligence field. I don't mean counterintelligence in terms of COINTELPRO, I mean counterintelligence in its classic sense. Those matters are in many cases classified at the highest classifications. I only thought that both the Congress and the executive branch would share a desire to minimize the number of people who would have access to this information so that we could do all that we could to preserve its integrity and at the same time make certain that the Congress can and does exercise its appropriate oversight functions.

Mr. SARBANES. We want to preserve the integrity of the material. We also want to maximize the oversight, and I think that is really for us to decide how to go about that.

Mr. SILBERMAN. It is only a suggestion that we have been making.

Mr. SARBANES. I appreciate that.

Mr. Petersen, in this report that Mr. Wiggins has placed into the record, upon presentation by Mr. Silberman, headed FBI COINTELPRO activities dated November 18, 1974, a document 21 pages in length, I don't know how to refer to it, I guess the Petersen report or the complete report of the group which you headed whose members you enumerated earlier in the hearing.

Mr. PETERSEN. That is a truncated version of the report of the committee.

Mr. SARBANES. Well how truncated is it?

Mr. PETERSEN. I think our report was about 39 pages. This is about 21 or something like that.

Mr. SARBANES. In other words, this is about half of the report that was submitted by you to whom?

Mr. PETERSEN. To the Attorney General.

Mr. SARBANES. To the Attorney General.

Well, who prepared this report?

Mr. PETERSEN. It was prepared by the staff of the Attorney General.

Mr. SARBANES. Does Mr. Silberman know the answer to that question?

Mr. SILBERMAN. Yes; a number of us worked on that. There were certain matters in the Petersen report which concerned national security matters. There were also a number of other matters relating to the philosophical framework in which this would be examined as well as certain other procedural and other matters which have nothing to do with the facts of COINTELPRO. I understand that everything that was factual about the COINTEL programs is in this report.

Mr. SARBANES. Well, let me get this very clear.

Mr. SILBERMAN. All factual matters about the domestic COINTELPRO were included with the exception of one matter. One sentence was deleted because it was determined that it might well expose an informant who would be in personal danger.

Mr. SARBANES. Mr. Petersen, when were you charged with making this study?

Mr. PETERSEN. I really don't remember the date. It was earlier done, as I recall, by the Attorney General in January of this year.

Mr. SARBANES. When did you submit the 39 page Petersen report to the Attorney General?

Mr. PETERSEN. Approximately the third week in May.

Mr. SARBANES. Third week of May of this year?

Mr. PETERSEN. Yes, sir.

Mr. SARBANES. Then it is not really accurate then to refer to this document as the Petersen report. This is, in effect, an edited and rewritten summary or modification of the Petersen report prepared by the Attorney General's office; is that not correct?

Mr. PETERSEN. That is correct.

Mr. SARBANES. Well my time is up, I will come back to you, I assume later.

Mr. EDWARDS. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I would address my question to, I assume, Mr. Petersen, but since you are the one, the authority—

Mr. PETERSEN. We are willing to share, Congressman.

Mr. BUTLER. Thank you.

With reference to Mr. Saxbe's statement of November 18 at the news conference, on page 2, "The Committee found that 3,247 counter-intelligence proposals were submitted of which 2,370 were approved".

To whom were these proposals submitted and by whom?

Mr. PETERSEN. Those proposals came into the national headquarters of the Federal Bureau of Investigation and were approved generally at the Assistant Director level and in some instances at the level of the Director of the Federal Bureau of Investigation.

Mr. BUTLER. Well, I am not sure in my own mind what the levels of authority are but there is one Director of the Federal Bureau—

Mr. PETERSEN. Pardon?

Mr. BUTLER. There is one Director?

Mr. PETERSEN. Yes, sir.

Mr. BUTLER. How many Assistant Directors?

Mr. PETERSEN. I don't know how many Assistant Directors. Basically there is an Assistant Director in charge of the General Investigative Division and Internal Security Division. Mr. Kelley can give you more specifics.

Mr. BUTLER. What I am trying to determine in my own mind is how fragmented was the authority for approval of these counterintelligence proposals.

Mr. PETERSEN. I don't think it was very fragmented at all. It went to the two major operating divisions, the Internal Security Division or the General Investigative Division, and thence on up to the Director.

Mr. BUTLER. So is it a reasonable assumption that the Director or two Assistant Directors made the ultimate determination in these instances as to whether they were approved or not?

Mr. PETERSEN. That is right.

Mr. BUTLER. Were any policy criteria spread out on the record or in the file as to what would be approved and what would not, or was it purely—

Mr. PETERSEN. It was purely ad hoc. I don't think we came across any broad policy statement—

Mr. BUTLER. Even in directing assistance?

Mr. PETERSEN. That is right. It took its genesis from some of the pure intelligence programs of the Federal Bureau of Investigation and the standards were apparently known to the officials of the Bureau in conjunction with their performance of duties in that regard.

Mr. BUTLER. Well, let us go further, then. Of those procedures which were approved, either by the Director or the Assistant Director, how many were communicated upward? I am referring to the statement of Mr. Kelley on November 18: I want to assure you that Director Hoover did not conceal from superior authorities the fact that the FBI was engaging in neutralizing disruptive tactics.

Mr. PETERSEN. We are talking about now approval in the Department of Justice.

Mr. BUTLER. Yes; the extent to which the Director of the FBI advised the Attorney General of the United States of this.

Mr. PETERSEN. Well, I think there may be some differences of viewpoint between me at least and the officials of the Federal Bureau of Investigation on this score. This initial report prepared stated that we found no evidence in the Cointel control files to indicate that anyone outside of the Federal Bureau of Investigation in the Department of Justice knew about this program or its implementation and that was corroborated by oral advices of officials of the Bureau. Generally, within the past week Mr. Kelley and his staff have advised that some aspects of this program were communicated to a number of Attorneys General.

Mr. BUTLER. At this point may I direct some questions to Mr. Kelley. I am, of course, referring to your statement and I want to recognize that you were not there then and I was not here then so we are perfectly pure in both instances and we can proceed with total objectivity.

But you did state on November 18 that Director Hoover did not conceal and then, for example in a communication concerning revolutionary organizations he sent to the then Attorney General and the White House on May 8, 1956, and so forth on page 8 of your statement. Have you checked somewhere a list of the instances whether oral or written in which the Director of FBI communicated this upward?

Mr. KELLEY. Yes, sir.

Mr. BUTLER. Would you feel that it would violate any confidence to pass that information on to this committee?

Mr. KELLEY. We referred all of these to the Attorney General by written communications. As to the question on confidence I would like to defer to Mr. Silberman.

Mr. BUTLER. Well, Mr. Chairman, Mr. Silberman.

Mr. SILBERMAN. Congressman, that is a troubling question.

Mr. BUTLER. Just a moment. Mr. Chairman, I move that we go into executive session for the purpose of responding to this question at this moment.

Mr. EDWARDS. Perhaps it would be a good idea first to see if in executive session we would get a response.

Mr. BUTLER. All right.

Mr. SILBERMAN. I would not be prepared to give in open session copies of correspondence from the Bureau to the Attorney General which referred to this program or activities under this program because, I hasten to add, I have reviewed all of that and no Attorney General was ever given the full scope of these programs. But it is correct from the information which the Bureau has provided us in the last couple of weeks that Attorneys General were aware of certain aspects of the program, particularly certain targets. My view on that is that we

would be prepared to make that available to the committee subject, however, to excising any references in those reports that would disclose any confidential informants or endanger anybody's life. One of the things we are always concerned about is endangering the life of an informant within any of these groups and I think you agree it would be appropriate to make that editing change.

Mr. BUTLER. My time is up and I thank the gentleman. I withdraw the motion, if it is appropriate.

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. In the report, on page 14, there is noted a very shocking and degrading thing that the FBI went to various citizens and told them about the alleged extremists with whom they had economic dealings and it's also noted in 62 instances so-called black extremists were damaged in their economic relationship.

Does the Department of Justice have any intention of informing these 62 individuals, without informing others, that they in fact were spied upon, that their economic dealings with certain other citizens were deteriorated because of the alleged radicalism that was communicated to those with whom they had commercial relationships?

Mr. SILBERMAN. Congressman Drinan, we will respond under the Freedom of Information Act as we have already done so.

Mr. DRINAN. These 62 people have never heard of this report. I didn't hear of it until 2 days ago. These 62 so-called black extremists have no way of knowing that their economic life was seriously damaged by the FBI.

Mr. SILBERMAN. Well, first of all, let me say to you, Congressman Drinan, the Attorney General and I find that conduct—

Mr. DRINAN. Would you respond to the question. What are you going to do about the 62 black extremists, American citizens of African ancestry?

Mr. SILBERMAN. Mr. Chairman, could I have permission to respond to one question at a time?

Mr. EDWARDS. I am sure Congressman Drinan will allow you.

Mr. DRINAN. I want a response.

Mr. SILBERMAN. I would just like a chance to finish my answer.

I want to make it very clear to this committee that the Attorney General and I deplore this particular action, we do not sanction it, we believe it to be wholly inappropriate, and we have already made the determination with respect to certain requests that have been made by individuals who do know about this to reply under the Freedom of Information Act to any requests made by individuals against whom conduct was taken of this nature, and which is not within an investigatory file. That is to say, improper active or positive or negative conduct which was taken as against these individuals.

Mr. DRINAN. Well, I repeat my question, which hasn't been answered, do you have any intention of informing these 62 American citizens who are black, that they were spied upon and that people with whom they had commercial relationships were told about their alleged radicalism and presumably these 62 black citizens were hurt?

Mr. SILBERMAN. Well, I would like to take your suggestion, Congressman Drinan, up with the Attorney General.

Mr. DRINAN. When will we have an answer from the Attorney General?

Mr. SILBERMAN. As soon as I have a chance to take it up with him.

Mr. DRINAN. Can we have it in 72 hours? That is my request.

Mr. SILBERMAN. Your request is duly noted.

Mr. DRINAN. I have another point on page 15, that the FBI stooped to have religious leaders go to various landlords and tell the landlords about the alleged radicalism once again of 36 black extremists and the landlords were informed to the detriment of these various groups.

Mr. SILBERMAN. Which page?

Mr. DRINAN. Did you inform anybody who the religious leaders were who were used in this way?

Mr. SILBERMAN. Which page are you referring to?

Mr. DRINAN. Page 15.

Mr. SILBERMAN. Your question was would we inform you of those religious leaders?

Mr. DRINAN. Would you tell the 34 black extremists that religious and civic leaders were used and manipulated by the FBI to go to the landlords of these black extremists to presumably have them evicted or raise the rents or somehow cause them damage?

Mr. SILBERMAN. You mean identify to the black extremists who the religious leaders are?

Mr. DRINAN. Yes; they have a right to know. It is the same question put in a different way that now you have used American citizens, not FBI agents.

Mr. SILBERMAN. I didn't use anybody, Congressman, and I really resent your use of that pronoun.

Mr. DRINAN. I am sorry. The FBI before you were associated with it, Mr. Silberman, used American citizens to cause damage to 36 black Americans, and I am simply saying they have a right to know what has transpired in their life.

Mr. SILBERMAN. We will take that matter under consideration too.

Mr. DRINAN. On page 19 there is evidence of, it seems to me, obviously criminal activities on the part of FBI agents, and I cite on page 19 some of the things that were done at least in 20 instances that are noted here; that FBI agents forged a group's business card; they reproduced a group leader's signature stamp; and, they obtained tax returns of members of a group.

Does the Department of Justice have any intention of seeking out the FBI agents who engaged in this criminal conduct and bringing disciplinary or criminal action against them?

Mr. SILBERMAN. Excuse me a moment. There is one point that you mentioned I would like to ask Mr. Petersen about.

There is one qualification with respect to the tax return incident. Mr. Petersen informs me that that tax return may well have come to the Department or to the Bureau in the course of a legitimate inquiry, a legitimate law enforcement activity.

What was the rest of your question?

Mr. DRINAN. Does the FBI, does the Department of Justice have any intention of bringing disciplinary or criminal action against the FBI agents who forged a group's business card or who reproduced a group leader's signature stamp?

Mr. SILBERMAN. Well, we got a recommendation from Mr. Petersen that none of the matters that fell within this report should be criminally prosecuted.

Mr. DRINAN. Why?

Mr. SILBERMAN. I refer that question to Mr. Petersen.

Mr. DRINAN. My 5 minutes are up.

Mr. Chairman, if it is agreeable, Mr. Petersen can answer why the activity, limited only to the activity that I have mentioned, on page 19 are not crimes. Perhaps he could tell us why forging and reproducing signature stamps are not crimes.

Mr. PETERSEN. First, I want to make it clear, Mr. Drinan, I didn't say those were not crimes. What I did suggest, that since this program terminated in 1971, and since the possible violations would relate to alleged violations of statutory constitutional rights, which is really a very murky area of the law and subject to great change over the period of time this program was in existence, and it is far from clear now, and third, because this was a program not of corruption, it is clear that there was no personal aggrandisement or personal enrichment involved on the part of the individual agents, and finally because it was a program that was directed by the Director of the Federal Bureau of Investigation, that it would be somewhat incongruous to single out those few instances that are perhaps all under the statute of limitation and single out relatively few individuals for criminal prosecution for following the orders of their superiors.

My suggestion was that the country would be better served, the people first of all, the Government, by the institution of safeguards to see that this didn't happen again than by the prosecution of individual agents for the conduct here involved.

Mr. DRINAN. Mr. Chairman, may I ask Mr. Silberman, to answer the other part of my question, is any disciplinary action contemplated?

Mr. SILBERMAN. I think the rationale which Mr. Petersen set out suggests that if discipline were to be meted out it would have to be meted out to one who is no longer alive. But we have the entire matter under further review. We do not intend, however, to discipline agents, those few agents, involving some instances, for actions which indeed the entire Bureau and the Director were responsible.

Mr. DRINAN. I don't think you want to live by that principle. I yield back.

Mr. EDWARDS. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Mr. Petersen, I didn't fully understand your answer because an analogy as to whether or not—

Mr. PETERSEN. Mr. Rangel—

Mr. RANGEL. Because somebody has initiated a conspiracy the fact that other people are involved and received orders, if that was true we would not have the Watergate trials going on now.

Mr. PETERSEN. I am sorry I wasn't clear, Congressman. But with all deference may I suggest if someone initiates a conspiracy I agree with you wholeheartedly. My proposition is that, first, that we ought to be trying to correct what happened.

Mr. RANGEL. We should do that in our Government at all levels.

Mr. PETERSEN. Second, it seems to me to be most inequitable to single

out the grade 10 agent on the street level for doing what he was directed to do by the Director of the Federal Bureau of Investigation.

Mr. RANGEL. That is what Mr. Haldeman is saying.

Mr. PETERSEN. Well I submit that there is a difference.

Third, I think that the individual actions have to be analyzed.

I want to make one thing clear. This report, so-called Petersen report and its 39 pages, is not a prosecutive memorandum. It is not a study of a potential conspiracy. It was undertaken to investigate for the Attorney General and Director Kelley, because neither one of them knew what went on under that program. It doesn't purport to be a definitive statement with respect to the wisdom or not of criminal prosecution.

Mr. RANGEL. Obviously.

Mr. PETERSEN. It was the suggestion of the committee that it might be inappropriate to initiate criminal prosecution.

Mr. RANGEL. What committee?

Mr. PETERSEN. The committee that looked at the COINTEL program. It might be inappropriate to initiate criminal prosecution for the reasons that I have just stated. The question first of all has to be determined whether there is a violation of the law, the question—

Mr. RANGEL. That is the problem.

Mr. PETERSEN. It has not been finally determined.

Mr. SILBERMAN. Let me respond at this point.

Mr. RANGEL. I had a question I would like to ask Mr. Silberman and I am more limited in my time than you are with yours.

Certainly you are very sensitive to these wrongdoings or inappropriate action being attributed to you as a person. What bothers me is that we are dealing with a press release that was issued by the Attorney General. I have no idea the extent of the investigation that might be in the so-called Petersen report or what was deleted from this report and put into the release which I assume every newspaper person in the country has available to them as a part of the public record.

In order for us to have a better understanding of the problems, I just hate to believe just because Mr. Hoover died, it is still not the FBI. But without any lack of respect to you, I would hate to believe that the FBI would not want to share with us the problems that they had faced at some time in their career, so we have a better understanding as to what the Congress can do to help. But I am stuck here with a press release that is very sensitive to present members of the Bureau and I assume the Department, and I would want to know why can't we have at least the so-called Petersen report?

Mr. SILBERMAN. The Petersen report does not add any facts with respect to these five COINTEL programs.

Mr. RANGEL. Would the Petersen report tell me what criteria were used for extremists?

Mr. SILBERMAN. No.

Mr. RANGEL. White hate groups—

Mr. SILBERMAN. No, sir.

Mr. PETERSEN. No.

Mr. RANGEL. Would the Petersen report tell me 20 percent of what was available?

Mr. PETERSEN. Twenty percent of the raw files of the Bureau to determine that the summaries which are really—

Mr. RANGEL. Of all of the files or just the COINTEL?

Mr. PETERSEN. COINTEL control files, not all of the files of the Bureau. We won't be able to do—

Mr. RANGEL. How can I find out when you talk about known results only in 22 percent, what happened to the other 78 percent. Where would I go, that is not in your report either.

Mr. PETERSEN. When we say the known results that is what the file reflected. The others were either not acted on or turned down or no reports made. The latter, noting the Bureau agents propensity I should say to get credit for program activities, we feel is a small margin of error.

Mr. RANGEL. When you say that it is to disrupt and organize or that is anti-American or antinational security, does that disruption, could it lead to the assassination of the individual involved, would that be in any—

Mr. PETERSEN. No, sir.

Mr. RANGEL. You are protecting your informers and somebody would leak out information as to whom they might suspect as their informer, whether that information is true or not, would not these so-called violent groups be prone to destroy the lives of some of these people.

Mr. PETERSEN. We came across nothing to suggest that. I especially asked that question in connection with some of the more violent-prone organizations and obviously the answer was "no."

Mr. RANGEL. What is the Attorney General prepared to give us besides the press release so we would know what the problems are with this conduct which obviously was deployed by all people around today?

Mr. SILBERMAN. I am not sure I know what it is that you need, Congressman.

Mr. RANGEL. I would like to know really who these organizations are and some of the names. It is tragic, I have been described as an extremist by some people, but I don't know what the FBI language was in the late 1950's or the 1960's. I understand that some of the civil rights leaders that are dead were subject to this type of investigation. Maybe perhaps they still are, I don't know.

Mr. SILBERMAN. They are not. They are not now.

Mr. RANGEL. Maybe some of them should be. Because I may be using civil rights in a term which has nothing to do with civil rights. So I have to know who the people are and what was being done and I am restricted to this release.

My only question is, is there some report you are prepared to make available to the committee beside the press release?

Mr. SILBERMAN. The chairman, as he started this hearing made it very clear what the ground rules were. As I understand his position, you were not going to go into the names of individuals or groups.

Mr. RANGEL. I am not going into anything, Mr. Silberman, I asked whether or not your agency or the Department has any additional information you would be prepared to give to this committee. I am not asking for the names verbally. I assume that there are other reports that you sincerely believe would give us a better feel for what we are talking about.

Mr. SILBERMAN. No, I really don't think there is any report we have that would give you any better feel whatsoever for what went on other than what you have.

Mr. RANGEL. You think this release should be sufficient in order to guide us?

Mr. SILBERMAN. There is nothing we have, there are no reports that we have, which go into any factual data in excess of what you have.

Mr. RANGEL. Obviously the six people on the panel had to know who was being investigated.

Mr. SILBERMAN. Oh, yes. There are a number of raw files.

Mr. RANGEL. I am not asking for these names at an open hearing. Would your Department have any objections if this committee was able to review the names of the organizations that at some period in the history of the FBI they felt it was necessary to destroy?

Mr. SILBERMAN. Necessary to destroy?

Mr. RANGEL. That is your language, disrupt, destroy?

Mr. SILBERMAN. Well, we may well be able in executive session to go into the names of those groups which were targeted. I think this committee has a legitimate reason for knowing that.

Mr. RANGEL. Thank you. What vehicle would you suggest that would not do violence to your rules of confidence and protection.

Mr. SILBERMAN. I think the executive session might be a useful vehicle to do that. I firmly believe that this committee should know the names of those groups against which this conduct was directed. There are, after all, the rights of those members of the group who would feel defamed if the group itself were described. So I am quite anxious to accommodate you in that respect.

Mr. RANGEL. But the level of conduct that we are talking about has never reached a point of being above and appropriate. There was no criminal conduct that you saw Mr. Petersen, as you conducted your preliminary report on the parts of agents.

Mr. PETERSEN. That is, well let me put it another way, Congressman. The report adds a number of exhibits, two of which are legal memoranda.

One which suggests that there is a little likelihood of criminal prosecution and the other frankly a minority view, would suggest that there may be a possibility of criminal prosecution.

Now, the two memoranda were submitted not because the committee was trying to carry water on both shoulders but because the committee was attempting to advise Director Kelley and the Attorney General of the nature of the problems involved and we thought we ought to point out to him that while we as a committee thought that criminal prosecution may be inappropriate we had to concede that one may be able to fashion a potential criminal case.

Mr. EDWARDS. Time has expired.

Mr. SILBERMAN. Therefore the Attorney General ought to be aware of both those points of view.

Mr. EDWARDS. At least one nonviolent civil rights organization, by the FBI to disrupt organizations demonstrating against, for example, the Vietnam war?

Mr. PETERSEN. I am not sure of the specific nature of the demonstrations. I just can't answer that. It is conceivable that some of these groups have been demonstrating against some in favor of it, because the activities were directed at a broad span from far right to far left from the Klu Klux Klan—

Mr. EDWARDS. Some in the middle, too, thinking of the organization you mentioned at the press conference?

Mr. PETERSEN. I don't know what middle means but there are varying degrees.

Mr. EDWARDS. At least one nonviolent civil rights organization, that is correct?

Mr. SILBERMAN. You are absolutely right but we don't know that in that case whether the direction wasn't so much against that group but rather directed against another group derivatively.

Mr. PETERSEN. Or an individual.

Mr. EDWARDS. Do you have any evidence that the FBI was in operation with this program at any political conventions such as the 1968 Democratic Convention in Chicago?

Mr. PETERSEN. No, sir. We saw no evidence of that.

Mr. EDWARDS. Mr. Kelley, in your release of November 18 you expressed considerable approval of the program. Do you still feel that way and do you feel that there should be this type of program within the FBI?

Mr. KELLEY. My statement was that I felt that the Director and the members of the Bureau who participated in the program felt sincerely they were doing something for the betterment of the security of the Nation. I found no evidence in the review that I made that the intent was other than that.

Now, it may well be that critics will say this is not true because some things were done which were described as very reprehensible.

It will be up to those officials and authorities who review these matters to determine if the incidents described are subject to any criminal prosecution. This would involve the question of intent, of course.

Mr. EDWARDS. Can you think of any of the areas described in the Petersen report that you believe were appropriate for the FBI to engage in?

Mr. KELLEY. Yes, sir, I can think of a number of appropriate things that were done, and it is agreed by the Department and the committee that a number of things were done which were appropriate under the circumstances.

Mr. EDWARDS. For example, Mr. Kelley, for example—

Mr. KELLEY. I would refer that to Mr. Petersen who made the appraisal.

Mr. PETERSEN. I think we are talking about some of the areas directed at foreign intelligence activities.

Mr. EDWARDS. I don't believe we will pursue it at this moment. Perhaps at a later date.

Mr. Wiggins.

Mr. WIGGINS. Mr. Kelley, I want to talk to you about what is going on now.

The FBI does now engage in intelligence activities, does it not?

Mr. KELLEY. It does.

Mr. WIGGINS. Does it engage in counterintelligence activities?

Mr. KELLEY. Yes.

Mr. WIGGINS. At the present time?

Mr. KELLEY. Yes.

Mr. WIGGINS. I take it that that activity is conducted by agents in the field; is that true?

Mr. KELLEY. Yes, sir.

Mr. WIGGINS. Is there a special unit within the FBI which also conducts such activities, apart from your normal field agents?

Mr. KELLEY. I don't understand.

Mr. WIGGINS. Well, I am asking you if you have a group within the FBI that is solely devoted to the conduct of intelligence activities.

Mr. KELLEY. Yes.

Mr. WIGGINS. Can you generally, within the limits of propriety, characterize what is regarded as proper intelligence functions of the FBI? I want to know in general the kinds of activities which the FBI is now engaged in.

Mr. KELLEY. We are engaged in the investigation of matters which can be prosecuted as violations of existing statutes.

Mr. WIGGINS. Yes; stopping there for a moment, is that activity under the jurisdiction of U.S. Attorneys in the field or is it done independently of the U.S. Attorneys?

Mr. KELLEY. They are consulted but final review is with the Department here in Washington, D.C.

Mr. WIGGINS. Please continue.

Mr. KELLEY. And then, of course, we are engaged in gathering general intelligence. This is under the procedure that has long been binding on us that you don't wait until you are taken over, you do investigate to determine what probabilities exist.

Mr. WIGGINS. Stopping there. That type of intelligence activity is unrelated to a known or suspected crime; is that correct?

Mr. KELLEY. It could encompass a crime for which we have no known subjects at that point. I think that most of our investigations are directed toward prosecution.

Mr. SILBERMAN. May I interject at that point, Congressman Wiggins? I have reviewed this and as far as I can determine all of the intelligence activities—counterintelligence is really what we are talking about—of the Bureau are predicated on a statutory basis or Executive order base which goes back to 1939.

Mr. WIGGINS. Mr. Silberman, does the Bureau conduct general background intelligence with respect to certain categories of figures even though it may be unrelated to a known offense? Do you monitor, for example, activities of those whom I shall generally describe as underworld figures?

Mr. SILBERMAN. Well, I would divert to Henry on that. To the extent we are gathering criminal intelligence on underworld figures, it is predicated upon a statutory basis and indeed generated for the purpose of prosecution. Now, of course, sometimes the criminal intelligence you get is broader than what you can use in an actual prosecution.

Mr. WIGGINS. I understand.

Mr. SILBERMAN. The whole premise of the organized crime operation, which has been in existence since the 1950's, is based on the assumption that you marshal the resources of the Justice Department and other agencies in order to direct attention against organized crime operations.

Mr. WIGGINS. Did you wish to expand on that, Mr. Petersen?

Mr. PETERSEN. I do want to make a clarification that there are intelligence activities conducted, generally speaking, and by that we mean a gathering of factual material with respect to people who have the reputation of being involved in organized crime. That is not a willy-nilly choice. Those are people who have established reputations with police agencies for the conduct of illegal activity on a day-to-day basis over a long period of time. Marshaling of that activity is then analyzed to determine what specific violations are involved. That is a responsibility of not only the Federal Bureau of Investigation but all police agencies.

Mr. WIGGINS. In addition to those two broad categories, is there a third, is there a national defense category?

Mr. SILBERMAN. There is a counterintelligence effort on the part of the Federal Bureau of Investigation and in that respect it has some similarities to the intelligence gathering that Henry just referred to in the organized crime area, but it does have a statutory basis in prosecutable offenses.

Mr. WIGGINS. I would like to know, Mr. Kelley, what control you assert over these activities. Are field agents authorized at the present time to initiate any one of these three investigative activities?

Mr. KELLEY. Most of the investigations are initiated in the field where they are reviewed by supervisory staff and sent to Washington where they are again reviewed by supervisory personnel. If it appears to us that it has no possibility of success, or that it is something that we should not be wasting our time on, the investigation will be discontinued. On the other hand, additional information may be necessary before any decision can be made.

Mr. WIGGINS. At the present time your policy is an after the fact review?

Mr. KELLEY. Yes.

Mr. SILBERMAN. In most cases. In other cases, for instance, in the counterintelligence activities, my experience is that it is indeed the Washington office of the Bureau, in conjunction with the Criminal Division or the Internal Security Section of the Criminal Division, and with appropriate consultation with myself and the Attorney General, that oftentimes initiates activities in the counterintelligence field.

Mr. WIGGINS. I know my time is up but I would like to pin this down. Can the supervising agents in a field office institute a specific intelligence activity without prior approval from Washington, D.C.?

Mr. KELLEY. No; he cannot, not a general program of intelligence-gathering activities.

Mr. WIGGINS. Then you oversee the program initiated by the men in the field but they implement it without getting your approval of each specific act, am I correctly describing that?

Mr. SILBERMAN. The Bureau is one of the most highly supervised organizations in the Government, Congressman Wiggins. In my experience in various Government agencies I have never seen an organization which is more tightly controlled from Washington.

Mr. WIGGINS. My time has expired.

Mr. EDWARDS. Mr. Waldie.

Mr. WALDIE. Mr. Kelley, I have your statement of November 18 in hand. Do I presume that prior to the writing of this statement you

in fact had access to the Petersen report in its entirety, not the abridged edited form that is before our committee?

Have you seen the entire Petersen report?

Mr. KELLEY. I saw the first draft and subsequent drafts, yes.

Mr. WALDIE. In other words, you have seen more than is before our committee today?

Mr. KELLEY. Yes, sir.

Mr. WALDIE. Now, let me read something from your statement and ask if you agree that this is so:

For the FBI to have done less under the circumstances would have been an abdication of its responsibility to the American people. The study which I have made convinces me that the FBI employees involved in these programs acted entirely in good faith and within the bounds of what was expected of them by the President, the Attorney General, the Congress, and the American people.

Do you still believe that to be the case?

Mr. KELLEY. Yes, sir.

Mr. WALDIE. I have in my hand a memorandum for you from the Attorney General, William Saxbe. He says:

I am pleased that your memorandum of December 5, 1973 to FBI employees recognizes these concerns.

And states the Bureau policy to be that:

FBI employees must not engage in any investigative activity which could abridge in any way the rights guaranteed to a citizen of the United States by the Constitution and under no circumstances shall employees of the FBI engage in any conduct which may result in defaming the character, reputation, integrity or dignity of any citizen or organization of citizens of the United States.

Do you believe that that stated policy was in fact honored in the actions of the program that we are examining now?

Mr. KELLEY. You are reading from a memorandum that I prepared; are you not?

Mr. WALDIE. Yes.

Mr. KELLEY. Congressman, I am in a position where I came into the FBI as Director after this started. I look at the intent.

Mr. WALDIE. I know that.

Mr. KELLEY. I don't think under any circumstances that we should engage in this type of activity today and this is clear in instructions I have given throughout the Bureau. We should not do it but if circumstances change to the point that some type of lawful activity is appropriate in the future, we are going to go through the line of authority that we spoke of, that is, to the Attorney General.

Mr. WALDIE. If you believe we should not do it today, is that because you believe the circumstances that would warrant such action do not exist today?

Mr. KELLEY. That is right.

Mr. WALDIE. If those circumstances once again in your mind occur, you would construe the conduct of this program to be proper and within the policy guidelines that I read to you, developed by you.

Mr. KELLEY. Only if we go to the Attorney General and in turn to a further level of review, for example, to the President.

Mr. WALDIE. Would you ask authority under any circumstances for approval of activity which could abridge rights guaranteed to citizens of the United States by the Constitution.

Mr. SILBERMAN. It really—

Mr. WALDIE. Just a moment, would you permit the Director, let me explain why I am interested in the Director's responses rather than yours.

I think I pretty well know where you stand and Mr. Petersen.

Mr. SILBERMAN. And the Attorney General.

Mr. WALDIE. I knew where the Department of Justice stood during the days this program was in effect. The fact of the matter was the program was in existence because I didn't know where the Director stood. I am trying to find out where our present Director stands. I think that is important. I appreciate your not intruding in the inquiry.

Mr. SILBERMAN. Fair enough.

Mr. WALDIE. Mr. Kelley, would you respond, are there any circumstances when you would seek approval from the Attorney General for the right to abridge the rights and privileges guaranteed American citizens under the Constitution?

Mr. KELLEY. Congressman Waldie, this is, of course, a very broad concept about when do you abridge the rights.

Mr. WALDIE. It is a narrow concept.

Mr. KELLEY. I would not under any circumstances contemplate action without going to the Attorney General or to the President. I don't know of the situation which might suggest this. If it came up, I would have to consider my responsibilities under the circumstances.

Mr. WALDIE. I appreciate your candor, Mr. Kelley.

Mr. Silberman, one question to you. You have responded in answer to a question asked by Mr. Sarbanes, which was why do we not have the full report, and I did not know we did not have it and apparently no one knew we did not have the full Petersen report. One of the standards that you said dictated your determination to provide us an abridged report, I attempted to write it down specifically, you said, you were concerned about the philosophic framework in which this report would be examined—

Mr. SILBERMAN. No; that isn't what I meant.

Mr. WALDIE. That is what you said.

Mr. SILBERMAN. No; I said there was a discussion of philosophy in it, in one of the drafts of the Petersen report. There are various drafts. And there was a recommendation against criminal prosecution. There were other matters which were not strictly related to the facts of the COINTEL programs.

I can assure you—I want to make this quite clear—that with one exception of one sentence in the report it is a complete and factual summary. That one sentence was deleted because as I told you earlier, it revealed the identity, the Bureau felt, of an informant in the counter-intelligence field.

Every other description of what happened is in this report.

Mr. WALDIE. Then if that be the case, with the deletion of that one name you should have no objection to providing us with the original 40-page report.

Mr. SILBERMAN. Your assumption is incorrect.

Mr. WALDIE. Well, now, tell me why. That assumption would seem to follow the nature of today.

Mr. SILBERMAN. Because if we had thought it was appropriate to release the full discussion we would have done so at the time. There are a lot of internal working documents in the Justice Department which

go to the making of a final report. This is the Attorney General's report.

Mr. WALDIE. We are not asking for the work document. I want to address just this question to the Chair, since my time is up.

Mr. Chairman, will this committee be insistent upon its right to have in its possession the entire Petersen report, though its consideration be in executive session.

Mr. EDWARDS. This committee will require, I am sure, all of the information that is available and, of course, we will handle the matter in executive session.

Mr. SILBERMAN. In executive session I have a great deal less reluctance to disclose almost anything.

Mr. EDWARDS. Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman. I think the proceeding here today discloses that our failure to resolve the committee session into executive session has greatly hampered and limited our opportunities to secure information, and I think all we have done is to have a rehash of some press releases and public information which, if we are going to expand on this information, we are going to have to do it in executive session.

I am concerned myself and I feel that the Director asserts a very important position in indicating the protection of the interests of our citizens in taking steps to prevent revolution and to prevent violence that might otherwise occur, and I know that the former late Director was well intended even though he may not have always respected the individual constitutional rights of citizens.

I am sure, Mr. Director, that you would not support any principle which would deny individual rights on the mere pretext that you felt that a majority of the people of the Nation would have their position enhanced or protected by the denial of those constitutional rights, would you?

Mr. KELLEY. You are correct.

Mr. McCLORY. In other words, we endeavor to carry out our function of protecting the Nation and preserving the peace while at the same time respecting the individual rights and prerogatives which the Constitution guarantees.

Mr. KELLEY. Yes, sir.

Mr. McCLORY. I read from your statement that superior authorities were always informed as to this type of counterintelligence activity carried on by the FBI and that specific communications were directed to the Attorneys General in 1965, 1967 and 1969. I am also confused by the dates, but I gather that communications, that is reports from the FBI regarding at least some of these counterintelligence activities, were communicated to the late former Attorney General Robert Kennedy, former Attorney General Nicholas Katzenbach, and former Attorney General Ramsey Clark; is that correct?

Mr. KELLEY. Those were the ones, yes.

Mr. McCLORY. Now, reference was made somewhere at least to the intense danger because of the bombing of the Capitol. I recall the bombing of the Capitol; they set off a bomb in the men's room over on the Senate side and did cause some disruption. Actually has that ever been connected in any way with any revolutionary group that you know of?

Mr. KELLEY. Yes, sir.

Mr. McCLORY. It has?

Mr. KELLEY. It has. They have claimed credit for the act themselves.

Mr. McCLORY. Is that investigation completed?

Mr. KELLEY. No, sir.

Mr. McCLORY. That investigation is continuing?

Mr. KELLEY. Yes, sir.

Mr. McCLORY. And do you feel that is one reason for justifying counterintelligence activities against groups that purport to be anti-establishment or anti-Government?

Mr. KELLEY. I don't think just because they are antiestablishment or anti-Government, it warrants the use of any such program.

Mr. McCLORY. One more question. In the counterintelligence activities, have we engaged in any wiretaps without securing authority of the district courts as required by law in nonnational defense cases?

Mr. SILBERMAN. Congressman McClory, that is a subject I do not believe we should go into in open session.

Mr. McCLORY. Is that information which may be made available to us in the executive session.

Mr. PETERSEN. I don't think we understand the question.

Mr. SILBERMAN. You said counterintelligence did you not?

Mr. McCLORY. Yes.

Mr. SILBERMAN. I thought you did.

Mr. PETERSEN. Excuse me.

Mr. SILBERMAN. It is a matter that would be appropriate for this House in executive session. It has already been made available to the other House in executive session.

Mr. McCLORY. Thank you very much.

Mr. EDWARDS. Mr. Sarbanes.

Mr. SARBANES. Mr. Kelly, this truncated report states, among other things, some COINTELPRO activities involved isolated instances of practices that can only be considered abhorrent in a free society.

Do you agree with that statement?

Mr. KELLEY. I do not.

Mr. McCLORY. The Attorney General in his press release reiterated his November 18 news conference, statement that the materials released today disclosed in a small number of instances that some of these programs involve what we consider today to be improper activities. I am disturbed about those improper activities.

Do you agree with that stated position?

Mr. KELLEY. Some of the actions taken under these programs are under present review by the Attorney General and the Department of Justice. Some of these have been concluded to have been improper, and I agree with the Attorney General that some were.

Mr. McCLORY. Do you think they are improper or would you think them improper absent a determination by the Attorney General?

Mr. KELLEY. I do construe them as improper today, yes.

Mr. McCLORY. Absent that determination. In other words, it is your own perception that some of these activities are improper?

Mr. KELLEY. I make this determination personally.

Mr. McCLORY. Now, in your statement, and I take it this was a statement that you made subsequent to the Attorney General's press

conference of November 18; is that correct your statement of November 18?

Mr. KELLEY. Yes; that was simultaneous with his release of the information.

Mr. McCLORY. I see. You said "the study which I have made." Was that study put into written form?

Mr. KELLEY. No, sir.

Mr. McCLORY. Your study?

Mr. KELLEY. No, sir.

Mr. McCLORY. "Which I made convinces me that FBI employees involved in these programs acted entirely in good faith and within the bounds of what was expected of them by the President, the Attorney General, the Congress and the American people."

Is it your position that there was no action taken by the FBI that was not carried out within sanctioned bounds as transmitted to the FBI by either the President, the Attorney General, the Congress, or the American people? Is that your position?

Mr. KELLEY. My position is that it was considered by the former Director and the members of his executive staff that this was a type of activity that was sanctioned by those you mentioned, including the American people.

Mr. McCLORY. I am interested in that later sanction. I find it an interesting one because it is also referred by you at the bottom of page 3 of your statement, where you say in carrying out its counterintelligence programs the FBI received the personal encouragement of a myriad of citizens both within and without the Government. And I do not understand what is the legal authority that the FBI finds for these activities in terms of the encouragement of private citizens.

Do you perceive that to be some basis from which the FBI can draw authority for engaging in these activities?

Mr. KELLEY. In the context in which I view the situation now, I do not think it is proper to embark on such programs, and, as I said, I will not do so. But in that time, and with those troubles, and with the strong feelings that something should be done by somebody, the then leadership felt it was a manifestation of a need, and it was pursued.

Mr. McCLORY. Well, at such times, and I hope it would not happen, if such times were to again descend upon the land, is it your position that the FBI in response to those circumstances, comparable to what existed at an earlier time, should embark upon these activities, engage in these activities again?

Mr. KELLEY. I don't know, Congressman. We are talking about a hypothetical situation.

Mr. McCLORY. I did not say the Government. I said the FBI?

Mr. KELLEY. Yes, sir. We are talking about the Government when we talk about the FBI. I would not take any such action independent of the Attorney General or the President. I have even considered the possibility of legislation, and I know this would be extremely difficult to enact. If actions of the type we are discussing here are again needed, I want to be able to carry them out in accordance with proper statutes or executive orders; in other words, do it the way I am sure you would want it done.

Mr. McCLORY. Mr. —

Mr. SILBERMAN. May I add a point?

Mr. McCLORY. Surely

Mr. SILBERMAN. The crucial point for the Attorney General and myself, both of whom exercise supervisory responsibility over the FBI, is that we have the ironclad assurance, and with the capacity to monitor it, that the Bureau would never engage in such a program without coming to us. And in my judgment and I know it's the Attorney General's judgment, it should not only receive the ratification of the President, but also should be taken before the appropriate oversight committees of both the House and the Senate. And that is an ironclad procedural safeguard which I think is terribly important and I know this House will agree.

Mr. McCLORY. Obviously that is one of the things I think is imperative to evolve out of these hearings and this discussion. The one thing that concerns me in the Director's statement, and I will close on this because I see my time is up, is that we are considering a broad range of activities in terms of what was done by FBI agents directed against a broad range of groups and, of course, it is asserted that some of that was proper; I think it is conceded that some was improper, and obviously it points out the complexity of the problem, since obviously you have to consider, one, the nature of the kind of activities in which agents are engaged, some of which may well be precluded under any circumstances in a democratic society.

Mr. SILBERMAN. I think you are absolutely right on that point.

Mr. McCLORY. And, secondly, of course, you may well have to relate it with respect to the subjects against whom such activities are engaged, ones against perhaps giving between American citizens and agents of a foreign power, something of that sort.

Mr. KELLEY. I think you are quite correct. I think you put that in an analytical framework which makes a great deal of sense.

Mr. McCLORY. Thank you.

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. Mr. Kelley, I am more and more distressed at the content of your statement of November 18 of this year, as Mr. Sarbanes said, that you now infer that the Attorney General has statutory power to allow the FBI to go beyond investigating, beyond monitoring, go beyond counterintelligence, and actually take an affirmative action to disrupt the activities of a particular organization.

Where is the statutory basis for the executive order base for such an affirmation?

Mr. KELLEY. I will admit that it does not come from easily identified sources.

Mr. DRINAN. You mean some uneasily identified sources.

Mr. KELLEY. It is inherent, I think, in the need for the protection of the constitution and the rights of the citizens which are guaranteed by law.

Mr. DRINAN. No activities, sir, to disrupt the activities of American citizens by law enforcement officials can be imputed to any inherent activity or inherent power of the Department of Justice. I mean, I don't think that we can understand that. We are lawyers. We have to say that you do or do not have the statutory power from the Congress or from the Department of Justice.

Absent some executive order that is related, clearly, I frankly

don't see how you can judge, as you have, everything that has been revealed to us this week. You say sometimes the FBI in the past wanted to neutralize the activities of certain groups, then you say that these activities of the FBI were made to disrupt these plans. How can you judge such activity?

Mr. KELLEY. I am not trying to judge them. I am saying that if it comes up again we will go to the Attorney General and the President for guidance.

Mr. DRINAN. What power does the Attorney General have? Let us take the case that you go to the Attorney General this week or next week, what power does he have from the Congress or the Constitution or anything? I want Mr. Kelley's answer.

Mr. SILBERMAN. It seems to me you are asking—

Mr. DRINAN. I am asking him the question. This is very essential. I want people in America to trust their government, and their faith in government has been eroded and when this came out I had letters from constituents and they are in horror what the FBI did and you say that for the FBI to have done less under these circumstances would have been an abdication of its responsibility to the American people.

I have a letter received this morning saying how can the FBI Director say that when these outrageous things are coming out.

All I say, I want all of us to prevent this in the future and yet you are fudging on it and saying I will go to the Attorney General and he has that inherent power to give me the power to disrupt the activities of a group. Where is that power?

Mr. KELLEY. I ask that we refer this to Mr. Silberman. I have already stated what I thought was this power. I will not pursue a course of action unless there is an approval given by higher authority speaking of there being an approval or disapproval of these past activities, I have had numerous people tell me they feel that the activities of the FBI in light of the problems of that day were completely right and just. But I do not want to argue about anything that happened in the past. We are talking about what may happen in the future. If I see a situation where I think some extraordinary analysis is needed or some extraordinary moves are needed to counteract a clear and present danger, I am going to present it to the Department of Justice.

Mr. DRINAN. Well, the Congress clearly has the power to enact a statute that would forbid any Federal law enforcement agency from ever disrupting an organization's activities. You have the power to arrest if you see a crime. You obviously have the power of gathering intelligence, but you must bring this to another branch of Government.

When you say counterintelligence that is an euphemism, it is almost, if you will, in the form of official anarchy; you are engaging in the same activities that these people tend to engage in. All I can say, sir, is that if it is, the Congress would pass a bill saying that the FBI and the Department of Justice may not disrupt the citizens or groups.

Do you want such a statute. Do you think it is needed?

Mr. KELLEY. In the event such statute is passed we will completely abide by it.

Mr. DRINAN. Do you think that such statute is necessary?

Mr. KELLEY. No, sir, I do not.

Mr. DRINAN. In other words, that there is no power of the Department of Justice now to authorize that?

Mr. KELLEY. Mr. Silberman.

Mr. SILBERMAN. My answer to that question is you are using the word disruption and I think I am using it in the same way. We do not have power to authorize the Bureau to disrupt domestic groups.

Mr. DRINAN. Therefore, Mr. Kelley is being told in effect don't come to the Attorney General under any circumstances to try to get permission to disrupt activities.

Mr. SILBERMAN. Frankly, Congressman Drinan, I would rather he came to the Attorney General and myself whenever there was a questionable point so we would make it absolutely certain that we were applying the constitutional law of the United States.

Mr. DRINAN. I am relieved of this, Mr. Silberman, because Mr. Kelley was claiming a power which you concede, as I understand it, you don't possess. Thank you.

Mr. EDWARDS. Would you not agree, Mr. Silberman, in addition, neither Congress nor the Executive has the right by Executive order or by law to authorize unconstitutional activities such as are described in the Petersen report?

Mr. SILBERMAN. I think it follows as the night follows the day, that neither the executive branch nor the Congress can authorize unconstitutional activities.

Mr. EDWARDS. Mr. Rangel.

Mr. RANGEL. Thank you.

I think one of the problems that we have is that the panel doesn't trust the Congress, because it is coming over pretty clear that Mr. Kelley believes that these agents are wrong now and it was wrong then. I suppose there are reasons why at any level of the executive government that you have to select your words very carefully.

Many of the acts described in the release are clearly unconstitutional and illegal.

Mr. Petersen says it is a question as to whether there is substantial evidence to prosecute.

Mr. PETERSEN. I just want to qualify that. This is not a prosecution report.

Mr. RANGEL. I understand that.

Mr. PETERSEN. I was talking about the policy—

Mr. RANGEL. You have really given me the substance of my next question.

If there is some feeling that this committee is operating on a vendetta to embarrass the Federal Bureau of Investigation, I could clearly understand why one might say, well, let's see that it doesn't happen again and forget the past.

But you have to appreciate that the members of this subcommittee don't have the slightest idea what the past is. We are not convinced, and I just can't think of a better word, but I am not using the word coverup in the sense that it has been used. But we are not convinced, since Mr. Petersen was not instructed to find out whether anyone violated the law, but was asked to give a very general report in order to see that some of these illegal and immoral acts do not occur in the future. And I just trust that when we go into executive session, not for the purpose of filing indictments, that we will have a better understanding as to what we are talking about, and it bothers me, as it

bothers Father Drinan, there is nothing that you are saying, Director Kelley, today that doesn't allow all of us, I think, to believe that you think these acts were wrong in the past. I don't know why it is difficult to say it and why it has to be, but with all the American flag-waving they did, the best they could with what they had to work with. It is frightening if these things occur in this decade that you feel that you can find any authority to say that this thing would happen again and I think it would make us all feel a lot easier if you show we can rephrase the statement and say that it was wrong then. We are not saying the people were acting with criminal intent, but it is wrong and there is no constitutional basis for this type of conduct, and I hope that when we go into executive session that we can go in with the framework that we are not charging anybody with this wrongdoing, sitting at this panel, but you can't be sensitive at one hand because it may appear that as one is charging you with this conduct, and then at the same time say but we find nothing wrong with that conduct when it, too, plays.

Mr. SILBERMAN. Congressman Rangel, the Director of the Federal Bureau of Investigation is subordinate to the heads of the Department of Justice. The Attorney General and myself and Henry Petersen all regarded this report as listing acts which we believe to have been wrong.

Mr. RANGEL. Well, I don't know whether that really comes through in Director Kelley's statement, written statement, but it certainly comes through in his testimony today.

Mr. SILBERMAN. The crucial point is that Director Kelley has made a flat commitment that nothing will be undertaken without our approval.

Mr. RANGEL. I can appreciate that and I am just saying that it is just one last hurdle that I think we have to overcome and that is I sincerely believe, and I am not asking a question, Director Kelley believes it was wrong when it was done. I turn back the balance of my time.

Mr. DRINAN. Would the gentleman yield?

Mr. RANGEL. I yield.

Mr. DRINAN. I would be very happy and I take it the members of the panel would, and I think American citizens would, if Mr. Kelley would say that he won't use this power to disrupt activities even if the Attorney General gave it to him. [Laughter.]

I think that is what you want to say from the way I hear you, and that you haven't said that, and Mr. Rangel has brought it out very well, and that all I say is that Mr. Silberman has conceded that he or the Attorney General has no power to authorize under any circumstances disruptive activities of the FBI, and I really feel that it follows like the night, the day, that the FBI should say that even if some Attorney General told us that we could use this power, we won't use it, this power, because the Attorney General doesn't have the power to transmit.

Mr. SILBERMAN. The problem is we are using an expression disruptive activities, which I think I understand what you mean, and if I do understand it I agree with you. But it is in fact a very general phrase and indeed ordinary criminal law enforcement activities targeted against organized crime groups do in fact "disrupt" their

activities and we intend that. The problem I think you refer to are such as the matters referred to in some sections of the report which go beyond what are normal criminal investigative matters and which are targeted to disruption in a broader sense and in that broad sense I would agree with you 100 percent.

Mr. DRINAN. Thank you very much. I yield back the balance of my time.

Mr. EDWARDS. We are going to adjourn in a few minutes but Mr. McClory would like to question you.

Mr. McCLORY. I know we are about to adjourn and I do not want to engage in any further questioning. However, I do wish to make one observation, and that is while we have addressed a lot of questions and inquiries and voiced suspicions and doubts I want to applaud the Attorney General's initiative, his action, in giving assurance in public statements and supplemented by the statements here today that there is a recognition that a number of the activities were improper, they will be discontinued, they will not be countenanced in the future. I myself feel reassured from the appearances made here today that we are going to be protected against this type of offensive, in my opinion, unconstitutional counteroffensive activities which do impair, do deny individual constitutional rights, and I want to commend the Attorney General and I want to commend the Director and the Assistant Attorneys General for their statements and their positions as expressed before this committee.

Mr. SILBERMAN. Thank you, sir.

Mr. WALDIE. I have really quite a bit of confidence in yours and Mr. Petersen and the Department of Justice ability to reflect the needs we are discussing here of protecting constitutional liberties and I do not share the same confidence in the Director, Mr. Kelley's abilities or sensitivities, and I don't say that in criticism of him. He has not been trained in that field. He is a policeman. And that field is not necessarily involved deeply in those sort of responsibilities.

Therefore, I suggest this to you. The pattern in the past has really been to situations we are all confronting now, generally the Department of Justice under the Attorneys General, particularly under which the abuse too plays, were quite cognizant to civil liberties and quite cognizant of the needs of protecting, with an exception or two, the abuse occurred within the Department because of the insensitivities of the former Director to those problems. I don't expect you to acquiesce or dissent. My only personal view of the matter leads me to that conclusion. Where I am fearful is that the structure that we seek to establish to prevent a recurrence of this sort of abuse will be dependent upon Mr. Kelley recognizing the need of coming to you for approval. I don't think Mr. Kelley is capable of recognizing that need and again I don't reflect on Mr. Kelley. I think a machinery has to be set up that it is not Mr. Kelley who initiates this inquiry to receive approval for actions that are questionable. The machinery has to be set up that there is oversight of Mr. Kelley so that he does not unwittingly undertake these sort of activities. I found absolutely no confidence in the response he gave to questions that he is capable of recognizing the need of going to you for approval for such actions.

Mr. SILBERMAN. I think that is terribly unfair, Congressman Waldie.

Mr. WALDIE. I hope it is inaccurate.

Mr. SILBERMAN. It is inaccurate. The Attorney General and I have absolute confidence.

Mr. WALDIE. It is not intended to be fair or unfair, it is intended to be a description of my impression as to his responses to questions asked by this committee and I will review the transcript and refer it to you to demonstrate why I possess these doubts. It is not intended as any evaluation of Mr. Kelley in terms of this field. Maybe you need that sort of individual to be the Director of FBI. The fact of the matter is he is there and the fact of the matter is we had an individual of that kind there under which all of these terrible abuses took place, and you concur they are terrible.

You are interested, as is this committee, in making certain they don't occur in the future, and I only suggest to you that to depend upon Mr. Kelley to recognize a situation where they might occur and come to you for consent is placing a great deal of responsibility upon Mr. Kelley to even recognize the need of such permission.

Mr. SILBERMAN. May I respond to that?

Mr. WALDIE. Yes.

Mr. SILBERMAN. First, I would like to tell this committee that the Attorney General and I have absolute confidence in Clarence Kelley. He is put in a very awkward position here and you all ought to realize it. He was not there when these acts were engaged in and he has an obvious personal reluctance it seems to me to have to be in a position to condemn his predecessor. That is not Director Kelley talking, that is me talking. There is and has been in motion for the months that Attorney General Saxbe and I have been in the Department a much closer working relationship between the rest of the Department and the Bureau. We don't any longer refer to them as two separate entities. I have absolute confidence that any matter, indeed any policy initiative of the Bureau, even if it was clearly within its statutory authority but was nonetheless a new policy initiative, would come to the Attorney General and myself. We have absolute confidence in that.

Mr. WALDIE. Well I feel reassured by the strength of your convictions in this regard and apparently you have been exposed to a more indepth knowledge of the Director than have we today been exposed.

Mr. PETERSEN. I would like to add something more. Over the past few years, the relationships between the Federal Bureau of Investigation and the rest of the Department of Justice have, in my estimation, improved 1,000 percent. There is more communication than in the past. There is a spirit of cooperation which I am frank to say did not always exist in the past. I don't mean to say that we regard them as perfect any more than they regard us as perfect and we quarrel and quibble and debate on a professional level, which is healthy, and we have no disagreement with you at all. I share your concerns that that improvement needs to continue. We would like to see a mechanism to insure that it does continue. We have no panacea to offer in this regard. It is always going to be headed by an individual and there is always going to be, because it is a large organization with wide responsibility, a great deal of independence accorded to that individual.

Mr. WALDIE. I appreciate that.

Mr. EDWARDS. Thank you very much, gentlemen. We will adjourn the committee subject to call of the Chair.

[Whereupon, at 4:55 p.m. the subcommittee adjourned subsequent to the call of the Chair.]

SUPPLEMENTAL INFORMATION

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., November 22, 1974.

Hon. DON EDWARDS,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: During my appearance before your subcommittee on November 20th, several references were made to the statement which I released to the press on November 18, 1974, regarding the FBI's counterintelligence program. I am enclosing a copy of this statement along with some background material for your ready reference and for inclusion in the transcript of the hearing.

With best wishes,
Sincerely yours,

CLARENCE M. KELLEY,
Director.

STATEMENT OF HON. CLARENCE M. KELLEY, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Attorney General William B. Saxbe today has released a report regarding FBI counterintelligence programs. The report was prepared by a Justice Department committee which included FBI representatives that was specially appointed early this year to study and report on those programs.

Since taking the oath of office as Director on July 9, 1973, I also have made a detailed study of these same FBI counterintelligence programs.

The first of them—one directed at the Communist Party, USA—was instituted in September, 1956. None of the programs was continued beyond April, 1971.

The purpose of these counterintelligence programs was to prevent dangerous, and even potentially deadly, acts against individuals, organizations, and institutions—both public and private—across the United States.

They were designed to counter the conspiratorial efforts of revolutionary elements in this country, as well as to neutralize extremists of both the Left and the Right who were threatening, and in many instances fomenting, acts of violence.

The study which I have made convinces me that the FBI employees involved in these programs acted entirely in good faith and within the bounds of what was expected of them by the President, the Attorney General, the Congress, and the American people.

Each of these counterintelligence programs bore the approval of the then-Director J. Edgar Hoover.

Proposals for courses of action to be taken under these programs were subject to approval in advance, as well as to constant review, by FBI Field Office and Headquarters officials.

Throughout the tenure of these programs, efforts admittedly were made to disrupt the anarchistic plans and activities of violence-prone groups whose publicly announced goal was to bring America to its knees. For the FBI to have done less under the circumstances would have been an abdication of its responsibilities to the American people.

Let me remind those who would now criticize the FBI's actions that the United States Capitol was bombed; that other explosions rocked public and private offices and buildings; that rioters led by revolutionary extremists laid siege to military, industrial, and educational facilities; and that killings, maimings, and other atrocities accompanied such acts of violence from New England to California.

The victims of these acts of violence were human beings—men, women, and children who looked to the FBI and other law enforcement agencies to protect their lives, rights, and property. An important part of the FBI's response was to devise counterintelligence programs to minimize the threats and the fears confronting these citizens.

In carrying out its counterintelligence programs, the FBI received the personal encouragement of myriad citizens both within and without the Government. Many Americans feared for their own safety and for the safety of their Government. Others were revolted by the rhetoric of violence and the acts of violence that were being preached and practiced across our country by hard-core extremists.

I invite your attention to the gravity of the problem as it then existed, as well as the need for decisive and effective counteraction by the criminal justice and intelligence communities.

I want to assure you that Director Hoover did not conceal from superior authorities the fact that the FBI was engaging in neutralizing and disruptive tactics against revolutionary and violence-prone groups. For example, in a communication concerning a revolutionary organization that he sent to the then-Attorney General and the White House on May 8, 1958, Mr. Hoover furnished details of techniques utilized by the FBI to promote disruption of that organization.

A second communication calling attention to measures being employed as an adjunct to the FBI's regular investigative operations concerning this same revolutionary organization was sent to the Attorney General-designate and the Deputy Attorney General-designate by Mr. Hoover on January 10, 1961.

Mr. Hoover also sent communications to the then-Attorneys General in 1965, 1967, and 1969 furnishing them information regarding disruptive actions the FBI was employing to neutralize activities of certain Rightist hate groups.

I have previously expressed my feeling that the FBI's counterintelligence programs had an impact on the crises of the time and, therefore, that they helped to bring about a favorable change in this country.

As I said in December, 1973:

"Now, in the context of a different era where peace has returned to the college campuses and revolutionary forces no longer pose a major threat to peace and tranquility of our cities, some may deplore and condemn the FBI's use of a counterintelligence program—even against hostile and arrogant forces which openly sought to destroy this nation.

"I share the public's deep concern about the citizen's right to privacy and the preservation of all rights guaranteed under the Constitution and Bill of Rights."

My position remains unchanged.

COUNTERINTELLIGENCE PROGRAM—BACKGROUND MATERIAL

I. INTRODUCTION

The FBI's counterintelligence program was developed in response to needs at the time to quickly neutralize organizations and individuals who were advocating and fomenting urban violence and campus disorder. The riots which swept America's urban centers, beginning in 1965, were quickly followed by violent disorders which paralyzed college campuses. Both situations led to calls for action by alarmed Government leaders and a frightened citizenry.

II. TENOR OF THE TIMES

An Associated Press survey noted that, during the first nine months of 1967, racial violence in 67 cities resulted in 85 deaths, injuries to 3,200 people and property damage of over \$100,000,000. The February, 1970, issue of "Security World" stated that during the period January 1 to August 31, 1969, losses specifically traced to campus disorders amounted to \$8,946,972.

In March, 1965, then Senator Robert F. Kennedy predicted more violence in the South and North after Congress passed voting rights legislation. Kennedy said, "I don't care what legislation is passed—we are going to have problems . . . violence."

A United Press International release on December 5, 1967, quoted Pennsylvania's Governor Raymond P. Shafer as warning that "urban disaster" in the form of "total urban warfare" is waiting in the wings to strike if the race problem is not solved in the Nation's cities.

Attorney General Ramsey Clark reported to President Johnson on January 12, 1968, according to the "Washington Star," that extremist activity to foment "rebellion in urban ghettos" has put a severe strain on the FBI and other Justice

Department resources. Clark called this "the most difficult intelligence problem" in the Justice Department.

A United Press International release on February 13, 1968, stated that President Johnson expected further turmoil in the cities and "several bad summers" before the Nation's urban problems are solved.

III. CALLS TO ACTION

President Lyndon Johnson said in a television address to the Nation on July 24, 1967, in describing events that led to sending troops to Detroit during that city's riot, "We will not tolerate lawlessness. We will not endure violence. It matters not by whom it is done, or under what slogan or banner. It will not be tolerated." He called upon "all of our people in all of our cities" to "show by word and by deed that rioting, looting and public disorder will just not be tolerated."

In a second address to the Nation just three days, President Johnson announced the appointment of a special Advisory Commission on Civil Disorder to investigate origins of urban riots. The President said that this country had "endured a week such that no Nation should live through; a time of violence and tragedy." He declared that "the looting and arson and plunder and pillage which have occurred are not part of a civil rights protest." "It is no American right," said the President, to loot or burn or "fire rifles from the rooftops." Those in public responsibility have "an immediate" obligation "to end disorder," the President told the American people, by using "every means at our command. . . ."

The President warned public officials that "if your response to these tragic events is only business-as-usual, you invite not only disaster but dishonor." President Johnson declared that "violence must be stopped—quickly, finally and permanently" and he pledged "we will stop it."

House Speaker John W. McCormick said on July 24, 1967, after conferring with President Johnson that the President had told party leaders that "public order is the first business of Government." The next day, Senator Robert C. Byrd advocated "brutal force" to contain urban rioting and said adult looters should be "shot on the spot."

On April 12, 1968, Representative Clarence D. Long of Maryland urged J. Edgar Hoover in a letter and in a public statement to infiltrate extremist groups to head off future riots and said FBI Agents "could take people like Negro militants Stokely Carmichael and H. Rap Brown out of circulation."

The "St. Louis Globe—Democrat" in a February 14, 1969, editorial entitled, "Throw the Book at Campus Rioters," described campus disorders then sweeping the Nation as "a threat to the entire university educational system. This newspaper called on the Attorney General to 'move now to stop these anti-American anarchists and communist stooges in their tracks. He should hit them with every weapon at his command. The American people are fed up with such bearded, anarchist creeps and would applaud a strong drive against them. They have been coddled and given license to run roughshod over the rights of the majority of college students far too long. It is time to hit them hard with everything in the book.'"

On October 2, 1969, Senator Byrd said that "events in the news in the past few days concerning activities by militant radical groups should alert us to the new trouble that is brewing on the Nation's college campuses and elsewhere." Senator Byrd said that "all of us would do well to pay heed now, and law enforcement authorities should plan a course of action before the situation gets completely out of hand."

After the August 24, 1970, bombing at the University of Wisconsin, Madison, a group of faculty members called for disciplinary action against students involved in disruption and violence. In a statement delivered to the Chancellor, 87 faculty members said "the rising tide of intimidation and violence on the campuses in the last few years has made normal educational and scholarly activities increasingly difficult. There has been a steady escalation of destructiveness that has culminated in an act of homicide. Academic freedom, meaning freedom of expression for all ideas and viewpoints, has been steadily eroded until now many are questioning whether it exists on the Madison campus." The faculty members said that "the acts of a few must not be allowed to endanger the rights and privileges of all members of the academic community."

"The New York Times" reported on October 11, 1970, on "The Urban Guerrillas—A New Phenomenon in the United States" and noted that the Senate

Subcommittee on Internal Security recently heard four days of testimony on four bills aimed at "crushing the urban guerrillas," including one "that would make it a crime to belong to or aid organizations advocating terrorism, and would prohibit the publication of periodicals that advocate violence against police and the overthrow of the Government."

The President's Commission on Campus Unrest in detailing "the law enforcement response" noted that "it is an undoubted fact that on some campuses there are men and women who plot, all too often successfully, to burn and bomb, and sometimes to maim and kill. The police must attempt to determine whether or not such a plot is in progress, and, if it is, they must attempt to thwart it."

Finally, Allan C. Brownfeld, a faculty member at the University of Maryland, writing in "Christian Economics," February 11, 1970, on "The New Left and the Politics of Confrontation" noted that "in many instances, those extremists who have fomented disorder have been in violation of state and Federal statutes." But, Mr. Brownfeld noted, "What is often missing is the will to prosecute and to bring such individuals before the bar of justice." Mr. Brownfeld's article was subcaptioned "A Society Which Will Not Defend Itself Against Anarchists Cannot Long Survive."

IV. APPROPRIATIONS TESTIMONY

On February 10, 1966, FBI Director J. Edgar Hoover testified regarding the Ku Klux Klan, saying that "the Bureau continues its program of penetrating the Klan at all levels and, I may say, has been quite successful in doing so. The Bureau's role in penetrating the Klan has received public attention due to the solution of the brutal murders of Viola Luizzo in Alabama, Lieutenant Colonel Lemuel A. Penn in Georgia and the three civil rights workers in Mississippi. We have achieved a number of other tangible accomplishments in this field, most of which are not publicly known but are most significant." Discussion off the record followed.

V. PUBLIC SUPPORT OF THE COUNTERINTELLIGENCE PROGRAM

Following acknowledgement that the FBI had a counterintelligence program, syndicated columnist Victor Riesel wrote on June 15, 1973, "no apologies are due from those in the highest authority for secretly developing a domestic counter-revolutionary intelligence stratagem in early 1970." Mr. Riesel detailed the record of "dead students," "university libraries in flames," and "insensate murdering of cops," and concluded "it would have been wrong not to have attempted to counter the sheer off-the-wall terrorism of the 1969-70 bomb seasons. And it would be wrong today. No one need apologize for counterrevolutionary action."

"Our reaction is that we are exceedingly glad he ordered it," wrote the "St. Louis Globe—Democrat" in a December 11, 1973, editorial on the counterintelligence program. This newspaper noted that "the Federal Bureau of Investigation under the late J. Edgar Hoover conducted a three-year campaign of counter-intelligence 'to expose, disrupt, and neutralize' the New Left movement . . ." and that "many of these New Left groups were doing everything they could to undermine the Government and some of them resorted to bombings, street riots, and other gangster tactics. Others waged war on police across the Nation and on our system of justice. Still others disrupted the Nation's campuses. The Nation can be thankful it has a courageous and strong leader of the FBI to deal with the serious threats posed by New Left groups during this period."

On June 18, 1974, Eugene H. Methvin, Senior Editor, "The Reader's Digest," testified before the House Committee on Foreign Affairs regarding terrorism and noted, ". . . the FBI's counterintelligence program against the extremist core of the New Left was a model of sophisticated, effective counter-terrorist law enforcement action first developed and applied with devastating effect against the Ku Klux Klan in the mid-1960's. In that context the strategy won great publicity and praise; yet now we have the Attorney General condemning it. In the current climate of justifiable revulsion over Watergate, we are in danger of crippling law enforcement intelligence in a hysteria of reverse McCarthyism in which we close our eyes to evidence and some compelling necessities of domestic and international security."

END