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INQUIRY # 1

INQUIRY # 1

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NW# : 88608

DocId: 32989541



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Mr. W. J. Smith
Mr. W. C. Stevenson
Mr. George Hall

July 20, 1973

Addressee to the
Addressee to the
Divisional President
Divisional Vice-President
and Refer to Initials and Number -

MEMORANDUM FOR: Mr. Clarence M. Kelley
MEMORANDUM FOR: ~~Mr. Clarence M. Kelley~~
Director, FBI
-Director, FBI
FROM: William D. Ruckelshaus *(initials)*
FROM: ~~William D. Ruckelshaus~~ *(initials)*
SUBJECT: ~~Insubordinate Names Regarding~~
SUBJECT: ~~the Future of the Bureau~~ *(initials)*
~~the Future of the FBI~~

Pursuant to our conversation earlier this week, I hereby submit ~~bulletin~~^{7/13.} of issues that will undoubtedly be coming up thereby time to time regarding the growth and safety status of the FBI. This list is by no means exhaustive, but is a good starting point from which to go forward and come to grips with one or the problems that will have to be addressed in the near future in one form or another. The list, in no particular order, is as follows:

1. Wiretaps. The whole question of wiretaps should be reviewed with a view toward developing a firm Department-wide policy on the issues involved.

2. The issue of whether the function of intelligence gathering should be separated from the law enforcement function of the FBI. This issue should be studied with particular reference to those countries which have adopted this division and a clear analysis of the pros and cons developed. From this analysis again should grow a clear policy.

~~now a clear statutory basis for the FBI's intelligence gathering~~

~~functions. Is there any statutory basis? Is the whole function based on Presidential and Attorney General directives? Should we gather statutory basis for the FBI's intelligence gathering?~~

on Presidential and Attorney General directives? Should a firm-statutory basis be sought? REC-58 re-Aug. 6 '58

~~EC-58~~ ~~Rev. 5-2-58~~

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2025 RELEASE UNDER E.O. 14176

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Spec. No. 6-1972

2024 RELEASE UNDER E.O. 14176

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4. Should the FBI Director be appointed for a term of years? (All the issues surrounding the appointment and tenure of the Director should be explored.)

5. Should the FBI be an independent agency or continue as part of the Justice Department? The pros and cons of this recurrent question should be analyzed again with the purpose of adopting a firm policy.

6. Assuming the FBI remains a part of the Justice Department, what should be the relationship of the Director to the Attorney General? All the organizational and substantive relationships should be examined. All the organizational and substantive relationships should be examined.

7. Investigative techniques. The whole question of the variety of techniques from clearly legal to clearly illegal should be examined in some detail. In addition, the question of administration and Congressional oversight should be touched upon in this examination. Congressional oversight should be touched upon in this examination.

8. The whole question of files and their disclosure must be studied with a view toward understanding why files are kept, what categories of files there are, what information is contained in the files and whether the happens if maintaining files are being met under present policy. The basis for disclosure, when, where and to whom must also be thoroughly examined.

9. The question of a Civilian Review Board for the intelligence gathering activities of the FBI should be examined. This is an urgent suggestion which came up at the Princeton conference in addition to other forums which came up at the Princeton conference in addition to other forums.

10. What should be the relationship between the FBI and the other Departments and Agencies of the Federal Government? To what extent should the FBI keep tabs on other Departments and Agencies through the development of sources and informants in those Agencies?

11. Should the FBI have foreign officers reporting directly to the Director?

12. Should the FBI have foreign officers reporting directly to the Director?

This list is not exhaustive, but should get us started toward an indepth examination of some of the problems facing the Bureau in the future. This list is not exhaustive, but should get us started toward an indepth examination of some of the problems facing the Bureau in the future.

WDR:fhm

WDR:fhm

INQUIRY # 2

INQUIRY # 2

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DocId: 32989541

Mr. William D. Ruckelshaus
Mr. William D. Ruckelshaus
The Deputy Attorney General Designate
The Deputy Attorney General Designate

August 24, 1973
August 24, 1973

Director, FBI

Director, FBI

SCOPE OF FBI JURISDICTION
SUPERIOR JURISDICTION
AND AUTHORITY IN DOMESTIC
AND AUTHORITY IN DOMESTIC
INTELLIGENCE INVESTIGATIONS
INTELLIGENCE INVESTIGATIONS

- 1 - Mr. Mintz
1 - Mr. E. S. Miller
1 - Mr. E. S. Miller
3 - Mr. T. J. Smith
1 - Mr. T. J. Smith

Reference is made to my memorandum to the Attorney General August 7, 1973, captioned as above, which among other things proposed August 7, 1973, captioned as above, which among other things proposed that an Executive order be issued which would define FBI responsibilities concerning Federal statutes relating to the national security, concerning Federal statutes relating to the national security.

My memorandum made reference to new guidelines recently issued in memo from me to a study which was prepared in August, 1972, at the request of Acting Director L. Patrick Gray, III, in August, 1972, at the request of Acting Director L. Patrick Gray, III.

On August 15, 1973, Mr. Jack Goldklang, Office of Legal Counsel, Department of Justice, called Mr. Michael C. Gibbons, his assistant, regarding the guidelines and study mentioned above. He said that these documents are likely to be pertinent to his analysis of the proposal set forth in my memorandum, and he asked that the two documents be made available to him.

For your information, the guidelines referred to are the recently revised Section 87 of our Manual of Instructions concerning the investigations of Subversive Organizations and Individuals. As you know, our Manual of Instructions has not heretofore been disseminated outside the FBI, although this particular Section (87) was loaned to the Department for study recently in connection with a request made of the Department by Senator Edward M. Kennedy.

The study made in August, 1972, for Mr. Gray was written and intended purely for in-house use and deliberations and was not prepared for purposes of dissemination or use by any agency outside the FBI. The study made in August, 1972, for Mr. Gray was written and intended purely for in-house use and deliberations and was not prepared for purposes of dissemination or use by any agency outside the FBI.

SEE NOTE PAGE TWO

TJS:bjr (6) b7c

MAILED 3
8/27/73

SEE NOTE PAGE TWO

This document is provided in response to your request and is to be used only in connection with your Committee. Its use in any other official proceedings is prohibited. This document is prepared for your use and is not for distribution outside your Committee and the content may not be disclosed to unauthorized persons. It is your responsibility to keep this document confidential and to obtain the express approval of the FBI.

Mr. William D. Ruckelshaus
~~Mr. William D. Ruckelshaus~~
The Deputy Attorney General - Designate
~~The Deputy Attorney General - Designate~~

However, we recognize that these two documents may assist the Department in analyzing our proposal concerning the issuance of an Executive order and therefore I am enclosing a copy of the two documents requested by Mr. Goldklang. We request that these documents not be disseminated outside the Department of Justice; that the documents not be duplicated or photographed; and that, if possible, they be returned to the FBI after they have served their purpose.

If you, or members of your staff, feel that additional information would clarify our proposal, it is suggested that consideration be given to arranging conferences between members of your staff and the FBI officials in the Intelligence Division and our Legal Counsel's Office who have conducted considerable research into the matter.

Enclosures - 2

Enclosures - 2

NOTE:

NOTE:

See memo T. J. Smith to Mr. E. S. Miller dated 8/23/73, captioned as ~~above, prepared by TJS:bjr~~; Mr. E. S. Miller dated 8/23/73, captioned as above, prepared by TJS:bjr.

ISSUE: Should the Intelligence Gathering Function of the FBI Be Separated From the Law Enforcement Function of the FBI?

Note that the issue, as originally raised, referred to law enforcement and intelligence functions. What was meant by intelligence was the missions of internal security and counterintelligence. Criminal intelligence, e.g., against organized crime, was intended to fall within the law enforcement mission. However, the functions of the FBI do not neatly fall within "intelligence" and "law enforcement" categories. Internal security cases are both intelligence and law enforcement operations; and counterintelligence sometimes involves arrests and prosecutions, i.e., law enforcement. To most accurately reflect the diverse missions of the FBI the terms law enforcement, internal security, and counterintelligence will be used throughout this paper.

Preface

Preface

1. The Problem: revolves around the question whether the three missions can be accommodated by one agency. What is the division of responsibilities can be accommodated by one agency. That is, can we set up to perform one of the missions absolutely, can we perform the other, or can all three missions be accommodated but only to the detriment of the others? Can all the missions be adequately performed by one agency?

2. The Present Policy: is that all three missions are performed by the FBI. The FBI organizational structure is primarily a unitary one, i.e. there is one organization with a multiplicity of responsibilities, which can be broken down into three general missions, law enforcement, internal security (domestic) and counterintelligence (foreign). The organization's personnel are hired and categorized into one of three general functional categories, agent, steno, and to a lesser degree, clerks, without further differentiation based on mission, i.e., no employees, with rare exceptions, are criminal or counterintelligence specialists, all are generalists and are regularly interchanged among the three general missions. The administration of cases at headquarters and, to a lesser extent, the conduct of investigations in the field follow the same format in all three general areas of responsibility.

The underlying rationale for, and history behind, these concepts is:

Personnel - the generalist allows for a highly flexible, mobile force which can be deployed generally solely on the basis of manpower needs, i.e., any agent can do any job in the FBI. There are some exceptions; some employees have unique abilities which tend to make them less mobile in the eyes of administrators, e.g., language or technical factors in the case of agent deployment and promotion; they are more determinative in cases of clerks; special employees, translators, etc.

Administration of cases and conduct of investigation - these were originally geared to accommodate a relatively few criminal and civil investigative matters, and as the responsibilities of the organization grew they were modified and adapted, within the unitary structure, to accommodate the modified and adapted missions. Thus they are quite similar in all three missions.

3. The Issues Raised:

3. The Issues Raised:

- a. Are the missions of law enforcement, internal security, national intelligence, foreign intelligence, and counterintelligence separable?
- b. If so, is complete separation possible, practical or politically feasible?
- c. Can the three missions be accommodated in one organization?
- d. By doing so, do any of the missions suffer?
- e. If all three missions can be accommodated in one agency, is the FBI currently doing it the best way possible?
- f. If not, is it practically or politically feasible or desirable to change the FBI's way of performing the mission?
- g. Why are other Western intelligence services separate from law enforcement agencies?
- g. Why are other Western intelligence services separate from law enforcement agencies?

4. Options for Future Policy:

The missions of law enforcement, internal security, and counterintelligence are separate, distinct and distinguishable functions, even though each partakes a little of each other. Law enforcement is investigation after a crime has been committed to identify suspects and build a case for prosecution; counterintelligence is the identification, penetration and neutralization of foreign intelligence activity in the U. S.; and internal security is identification and thwarting of home-grown plots to subvert the government and activities within the U. S. in illegal support of foreign causes, whether by U. S. citizens or foreigners.

The missions overlap to some degree. For example, law enforcement is concerned with internal security crimes, e.g., kidnapping related to bombing, skyjacking, etc. and subversives like bombing, bank robbery, etc. and counterintelligence is kidnapping in criminal prosecution, etc. and some internal security groups are funded by and penetrate, behalf of, foreign intelligence services fundamental security is threatened if the latter's foreign intelligence activities in internal security are motivated, are being committed, violation of the U. S. political, etc. and aware that the criminal organization may be a continuing effort, based on continuing acts threatening the internal security without actually violating the criminal law and thus the investigation is more like a counterintelligence investigation than like the typical law enforcement closed cycle of crime, investigation and prosecution.

While counterintelligence could adequately, and with more success in some cases, be handled by an organization totally separate from one with law enforcement powers, internal security work, in many cases, is directly related to criminal prosecution. There has been little effort, and less success, in most English speaking western democracies in prosecuting domestic subversives even those with foreign ties; however, prosecution is often a principal, if not primary, objective in cases involving entire bombing and harassment of foreign diplomatic establishments, fund and arms procurement for foreign political groups, politically motivated terrorist acts, e.g., skyjacking, etc.

~~An examination of the services of the agencies mentioned above, viz., British, Australian and Canadian, reveal that all do distinguish between the pure law enforcement function and the counterintelligence/internal security function; however, there is not a total separation of the functions. For example, the British Security Service (MI-5) handles counterintelligence exclusively with MI-5 case officers, but places its internal security investigations in the hands of the Special Branches of the local constabularies (comparable to the intelligence divisions of local U.S. police departments). The Australian Security Intelligence Organisation (ASIO), modeled after MI-5, and of recent vintage (post W.W.II), handles all counterintelligence and internal security investigation with its own officers; however, it is rivaled to some extent in the internal security field by the Intelligence Bureau of the national Commonwealth Police. The Royal Canadian Mounted Police, a truly national police force, with extensive local and federal jurisdiction, has branched off its intelligence division into a new, semi-autonomous Security Service, with operational procedures more akin to MI-5 and ASIO than to traditional law enforcement.~~

In short, these countries recognise that the political, social and foreign policies necessitate which add the counterintelligence and internal security which distinguishes makes them so difficult to handle routine criminal investigation; that, at the same time, if the "intelligence" function is to be separated from the law enforcement function, it must have an adequate relationship with the law enforcement agency. and close working relationship with a law enforcement agency.

~~Complete separation, at least of the internal security function from law enforcement, does not appear to be a practical or feasible. MI-5 and ASIO were originated without law enforcement powers, and MI-5 candidly admits it would not like to become part of a national police force. The Security Service case officers would not consider surrendering their police powers.~~

~~Separation of the counterintelligence function would be more practically feasible; however, the commingling of counterintelligence and internal security interests, and would be more practically feasible; however, the commingling the threat of a merger of the counterintelligence function, or counterintelligence and internal security interests, and with the preexisting foreign intelligence collection agency, especially in the U.S., are both practical and political reasons militating against this course.~~

Separation of the internal security function also presents serious political considerations. Internal security or as some say, at least in reference to its "subversive" investigations, political intelligence is the most controversial of government's intelligence collection activities. In the U. S., this function was originally given to the FBI which had established for itself a reputation for being responsible, competent, and most importantly, politically neutral, and had the confidence of most Americans. It is recognized that this reputation is not etched in stone, and that because of the diversity of peoples, political views, and activities tolerated in the U. S. no internal security agency can, using human judgement, attempt to fulfill its responsibility without offending someone, sometime, someplace.

It is to the advantage of an internal security agency, which is subjected to intense political pressure by Congress and the Executive branch, to be separated from law enforcement which also by definition is a departmentalized investigation agency has the less politically complicated and fair administration and counterintelligence policies dealing with the individual as the tradition of FBI political independence, the somewhat lower is the tradition of FBI political independence, and independence. While the law enforcement and counterintelligence wings of the FBI dislike the controversies into which its internal security wings drag the FBI name, separation of internal security into a separate agency would probably subject it to more intense political pressures both from within the administration and without, which pressures it might not be capable of withstanding. Such separation appears politically unfeasible and undesirable.

Practical considerations against divestiture of the counterintelligence and internal security functions from the FBI are that basic criminal investigative experience of the counterintelligence and internal security functions from the FBI are that basic criminal investigative experience equips men in many areas to be intelligence officers; a pool of trained Criminal Investigators is available to the intelligence agencies to draw from, either on ad-hoc emergency basis, e.g., seizure of an embassy or political kidnapping or skyjacking, or as candidates for the position of intelligence officer; a divestiture might result in the possibility the counterintelligence and antiterrorist security wing posses the effective license of the FBI name, reputation, and contacts and sources built-up over years using the FBI name.

The RCMP has shown that all three missions can be accommodated in one agency, although the distinctive character of each mission requires internal adjustments of policy, structure, administration, personnel considerations, and operations.

Implementation of adjustments within the FBI is being considered at this time.

Consequently, based on above considerations, the FBI recommends that all three missions of law enforcement, internal security, and counterintelligence remain with the FBI.

Former Attorney General
William D. Ruckelshaus'

memorandum, 7/23/73, to F. B. I.
Director, Clarence M. Kelley,
setting forth the 11 areas of
inquiry.

Former Attorney General
William D. Ruckelshaus'
memorandum, 7/23/73, to F. B. I.
Director, Clarence M. Kelley,
setting forth the 11 areas of
inquiry.

SSC REQUEST OF 10/2/75
SSC REQUEST OF 10/2/75
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Mr. William D. Ruckelshaus
Mr. William D. Ruckelshaus
The Deputy Attorney General - Designate

Director, FBI
Director, FBI

SUBSTANTIVE ISSUES REGARDING
SUBSTANTIVE ISSUES REGARDING
THE FUTURE OF THE FBI
THE FUTURE OF THE FBI

- 1 - Mr. McVicker
1 - Mr. Mintz
1 - Mr. R. E. Miller
1 - Mr. T. J. Smith

September 20, 1973

- 1 - Mr. J. P. Miller

~~SECRET~~

T-70577X1
T-70577X2

Reference is made to your memorandum of August 20, 1973, detailing a format to be followed in setting forth our responses to your memorandum of July 20, 1973, captioned "Substantive Issues Regarding the Future of the FBI." Attached is an undated study of 17 pages with a five-page appendix captioned "Electronic Surveillance."

This study was prepared in response to your July 20, 1973, request, prior to the date when the format memorandum of August 20, 1973, was prepared to meet the questions raised in your August 20, 1973, memorandum. It is believed that points 1973, contained in this study, in addition to those mentioned herein prior to the issuance of the format memorandum of August 20, 1973, were read to you prior to the issuance of the format memorandum of August 20, 1973, concerning the future of the FBI. The study is dated September 14, 1973, and contains recommendations concerning the future of the FBI. It is a copy of a petition for rehearing in U.S. v. Iranov, and a July 11, 1973, memorandum concerning the Iranov case to that date. These attachments pertain to a discussion of foreign national security electronic surveillance in the September 14, 1973, paper.

CAUTION: THE APPENDIX TO THE UNDATED PAPER CAPTIONED "ELECTRONIC SURVEILLANCE," AND THE JULY 11, 1973, MEMORANDUM ARE CLASSIFIED SECRET, NO FOREIGN DISSEMINATION/NO DISSEMINATION. THE APPENDIX TO THE UNDATED PAPER CAPTIONED "ELECTRONIC SURVEILLANCE," AND THE JULY 11, 1973, MEMORANDUM ARE CLASSIFIED SECRET, NO FOREIGN DISSEMINATION/NO DISSEMINATION.

ABROOME
Enclosure

ENCLOSURE

JFM:rlc

(S) JFM:rlc

NOTE:

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SECRET MATERIAL ATTACHED

EXTRADITION INFORMATION

Unauthorized Disclosure

Subject to Criminal Sanctions

The above memorandum and enclosures are in response to the Deputy Attorney General Ruckelshaus' memoranda of 7/25 and 8/20/73 concerning "Substantive Issues Regarding the Future of the FBI" in response thereto. They relate to the general Ruckelshaus memoranda of 7/20 and 8/20/73 concerning "Substantive Issues Regarding the Future of the FBI." These materials are

in response to issue number one "Wiretaps."

NW# 88608 DocId: 32989541

ELECTRONIC SURVEILLANCE
ELECTRONIC SURVEILLANCE

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E. AUTHORIZATION OF CONSENSUAL, TITLE III, AND NATIONAL SECURITY ELECTRONIC SURVEILLANCES

~~The legal foundation for each of the above types of electronic surveillance differs, and in part as a consequence of that, the administrative procedure for securing authorization to use each type differs.~~

A. Consensual

~~The current law is that as long as one party to a conversation, whether over the telephone or in person, consents to a monitoring of that conversation by another or a recording of that conversation by another or by himself, such a monitoring or recording is legal, and may be introduced into evidence in a legal proceeding.~~

~~At present, the monitoring or recording of telephone conversations by the FBI with the consent of one of the parties, e.g., via a device attached to the consenting party's telephone or a monitoring via use of an extension telephone, is authorized internally within the FBI by either a Special Agent in Charge or, if the case is "sensitive," by a Headquarters official, generally the Director. On the other hand, the present policy with regard to concealed monitoring of nontelephone conversations, e.g., body or hidden recorders or transmitters, is that the Attorney General must approve these in advance, except in an emergency, at which time the Director (or someone designated by him) can approve them and then promptly notify the Attorney General. The method of requesting Attorney General approval, or of notifying the Attorney General of the exercise of the emergency authorization, is a memorandum to the Attorney General setting forth the identity of the target, the background of the case, and the reason for the request or authorization.~~

B. Title III

B. Title III

These electronic surveillances are permitted by act of Congress for the purpose of gathering evidence by electronic means for the requirement to gather evidence of a sufficient crime court finding probable cause to believe a crime has been committed and that evidence be obtained to further the investigation via the electronic surveillance unless otherwise can be obtained via the electronic surveillance is set

forth in the statute. Current procedure is to submit to the Attorney General a copy of the affidavit the FBI proposes to submit to the court, with a cover memorandum setting forth the background of the case. The affidavit has been worked out between FBI field personnel and the local United States or Strike Force attorney, and between FBI headquarters personnel and Department of Justice attorneys before submission to the Attorney General. The Attorney General either approves or disapproves proceeding with the application for court approval via a memorandum to the Director.

C. National Security

The continuous position of the Department of Justice and several Presidents has been that the President has the constitutional power to authorize warrantless electronic surveillances in the exercise of his Articles II and IV responsibilities to conduct foreign affairs and to protect the States against invasion. This power has generally been exercised by the Attorney General or the President, while most specifically approving and interpreting or initiating a grant of authority to any power within the lines, but without grant declaration of noninterference, Congress, when it passed Title II of the Electronic Communications Act of 1985 (47 U.S.C. § 2510(e)) that nothing in Chapter 4 of Title II, stated in U.S.C. § 2511, shall affect the Federal Communications Act of 1934 insofar as it authorizes the President (who may right the) communication apprehension to surveillance (to protect the Nation) to prevent acts of terrorism or potential attack; or (other hostile acts of) foreign power; (6) to obtain foreign intelligence information a communication apprehension (to the security of the United States); (7) to protect national security information, the United States; (8) to protect national security information, the United States; (9) to protect the information against espionage activities of the Government by force or other unlawful means; (10) to protect against any other clear and present danger to the overthrow of the Government; or (other lawful means); (11) to protect against any other clear and present danger to the structure or existence of the Government.

In United States versus U.S. District Court for the Eastern District of Michigan (407 U.S. 297), commonly called the Keith case after Judge Damon Keith, the Supreme Court held that the President did not have the power to authorize warrantless electronic surveillance directed against purely domestic organizations (and their members). The Court stated that the issue in Keith fell within the language of categories 4 and

5, as above, of 18 U.S.C. 2511(3), and that it was not deciding on cases involving individuals or organizations that had a "significant connection" with a foreign power.

Consequently, since Keith, the only requests for national security warrantless electronic surveillance referred to the Attorney General for approval involve individuals or organizations with a "significant connection" with a foreign power. The procedure for submitting these requests is uniform. The Director submits to the Attorney General a memorandum requesting approval for initiation or continuation of an electronic surveillance on a particular individual or organization; an attachment which is a summary of background information and the circumstances on which the request is based; and a memorandum from the Attorney General to the Director approving the electronic surveillance based on, and in the language of, one of nine categories based on, 18 U.S.C. 2511(3). If the Attorney General approves the electronic surveillance, he signs and retains this letter memorandum and keeps for his records a copy of the Director's memorandum addressed to him and a copy of the attached summary.

II. BACKGROUND OF FEDERAL ELECTRONIC SURVEILLANCE LAW

The term electronic surveillance encompasses both wiretapping (tap), i.e., the interception of a telephone conversation by a third party, and microphone surveillance (bug), i.e., the interception of a nontelephone conversation by means of a microphone which can lead either to a recorder or merely transmit the conversation to a third party, or both. Both wiretapping and microphone surveillance can be conducted with or without the knowledge and consent of the parties to the conversation. Consensual monitoring, i.e., tapping or bugging with the consent of one or both of the parties to the conversation, has generally been held to be legal, and is not considered in the following discussion, and is not considered in the following discussion.

The separate development of the law pertaining to wiretapping and microphone surveillance is, since passage of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 and the Keith decision, apparently of historical interest only.

Prior to Title III and Keith, the law that developed around electronic surveillance consisted itself primarily developed within the admissibility of evidence obtained from electronic surveillance rather than with due basis based on the electronic illegality of electronic surveillance itself. Evidence, or evidence obtained from a wiretap or microphone was, or evidence from any criminal prosecution, on the basis that presentation of such evidence was prohibited by pre-Sec. 605 of the Federal Communications Act and evidence obtained from a wiretap or microphone was excluded if it was determined the installation of a wiretap was excluded, gathered via a microphone, or seizure required a trespass and was thus an unlawful search and seizure. (These decisions often turned on technicalities such as minimal physical penetration by a "spike mike.")

Title III established the Congressional intention that electronic surveillance, under specific conditions, is to be lawful and the evidence obtained therefrom admissible.

Title III also, while not conferring any statutory authority on the President, indirectly recognized that he was authorizing warrantless electronic surveillances in matters

affecting national security, and stated that Title III or Section 605 of the Federal Communications Act did not affect any such powers he might have.

Title III did not distinguish between wiretaps and microphone surveillances, and court decisions since Title III involving both criminal and national security matters seem to be drifting away from the artificial bases that distinguished these electronic surveillances in the past and are looking at the real issue of governmental powers versus Fourth Amendment rights and the right to privacy. The requirement of prior judicial review, the element on which I will turn, is a new factor in judicial consideration of electronic surveillances, introduced by Title III, of electronic surveillances, introduced by Title III.

III. NATIONAL SECURITY ELECTRONIC SURVEILLANCE

A. Domestic

I. The Keith Decision

The case originated as U.S. versus Flamondon et al., and involved federal prosecution of defendants accused of bombing the CIA office in Ann Arbor, Michigan, in September, 1968. Pursuant to a defense motion, Federal Government electronic surveillance records were checked and revealed Flamondon had been intercepted via a national security wiretap on the Black Panther Party office in Oakland, California.

Under current court procedure regarding national security electronic surveillance, the Government is required to disclose to the court all information concerning the judge's determination whether the electronic surveillance was legal and if so, whether it was illegal, depending on the type of evidence obtained. It is available to the defense, all the logs and tapes pertaining to the interception so that the defense can determine if any of the case against it is based on illegally obtained electronic surveillance evidence.

The trial Judge Damon Keith held that the President had no power to authorize electronic surveillance of the Black Panther Party without prior judicial approval. He had no power to authorize electronic surveillance of the Black Panther Party without prior judicial approval. A warrant that therefore the wiretap was illegal and the prosecution had to turn the logs and tapes of the conversation over to the defense.

The Government appealed this decision to the Supreme Court, thus the case at that level was titled U.S. versus U.S. District Court for the Eastern District of Michigan, commonly called the Keith case. On June 29, 1972, the Supreme Court affirmed Keith's decision and held that the President has no warrantless, national security power to monitor electronic surveillance of domestic organizations for their members or agents. The Supreme Court defined a domestic organization as one having no "significant connection" with a foreign power, its agents or agencies.

The Justice Department, in the words of Deputy Assistant Attorney General Kevin J. Maroney before the Senate Subcommittee on Administrative Practice and Procedure on June 29, 1974, stated that it understands "significant connection to mean that the domestic organization must be substantially financed by, or in active collaboration with a foreign power for the purpose of committing unlawful activities against the United States Government."

2. Guidelines and Procedures Currently Used by the FBI and the Department of Justice in Determining Whether a Proposed National Security Electronic Surveillance Falls Within/Without the Keith Decision

The Keith decision applies solely to a domestic organization (and its members) "with no significant connection with a foreign power." The issues are what constitutes a "domestic organization" and "significant connection."

The Department of Justice has issued the FBI no formal oral or any written guidelines on these issues.

The reason is that the standard to be applied is a "facts ~~and circumstances~~" test ~~standards~~ which ~~is~~ the light of the Supreme Court's language in their Keith case and the light of the Supreme Court's position as stated by Mr. Maroney before the Subcommittee.

The Supreme Court in Keith said that while it was "attempting to ~~the Supreme Court's definition of a domestic organization~~ the scope of the decision was limited to a "domestic organization" composed of citizens of the United States which has no significant connection with a foreign power, its agents or agencies." The Court also recognized the difficulty in distinguishing between domestic and foreign unlawful activities directed against the Government of the United States where there is collaboration in varying degrees between domestic groups or organizations and agents or agencies of a foreign power."

The Subcommittee asked the Department of Justice what level of foreign dominance and control of a domestic group would be considered sufficient to bring the group into the area of foreign activities on which the Court has not yet ruled. Maroney replied:

~~"The Keith decision has suggested a standard of significant connection with a foreign power, its agents or agencies. We do not interpret this as meaning causal, unrelated contacts and communications with foreign governments or agencies thereof. We would not try to apply this standard without the presence of such factors as substantial financing, control by or active collaboration with a foreign government and agencies thereof; in unusual activities directed against the Government of the United States. Obviously such factors will be present in a very minimum number of situations.~~
~~(Emphasis added.)~~

~~I wish to assure the (sub)Committee on behalf of the Attorney General that the Department of Justice accepts both the letter and the spirit of the Court's ruling in the Keith case. In the future it is the intention of the Executive Branch to utilize electronic surveillance in present and future national security matters in full and in employing application of the rationale of the decision. (Emphasis added.)~~

The FBI carried on an informal dialogue with the Department of Justice ~~as regards assessment of the Keith decision with respect to establishing general guidelines in the abstract, but they discussed his eventual interpretation of the above language, and the commission that each agency tends to follow and encourage, standards to be used in exercise of the independent judgment of the Attorney General on the facts presented.~~

As a result, the FBI submitted some borderline cases, which it recognized as being submitted to the Attorney General in order to get a feeling of where, and the Department of Justice applied the ~~above~~ standard to specific fact situations. Some were approved, some refused. As a result, the FBI feels it has a fairly clear idea of the outer limits, beyond which no electronic surveillance will be approved.

The lack of formal guidelines beyond the Court's language and Maroney's testimony presents no practical or administrative difficulty within the FBI. As Maroney noted, the factors he related would be present in a very minimum number of cases. That is true. Prior to Keith, domestic national security electronic surveillances conducted by the FBI had been winding down for some time. At the time of the Keith decision only six, four telephone and two microphone, were in

effect. The few cases in which are present some of the factors noted by Maroney are subjected to joint scrutiny by, and discussion between, FBI field and Headquarters supervisory personnel, and only after these feel the FBI may have a case does the field initiate the request, which must be personally approved by the field supervisor and the Special Agent in Charge. Upon receipt, the Headquarters supervisor drafts a memorandum to the Attorney General, setting forth all pertinent facts, including those showing foreign involvement on which the request is believed justified. He must also be able to justify the request in the language of one or more of the first three categories of 18 U.S.C. 2311(3). The request is presented through channels (i.e., Headquarters unit chief, section chief, branch chief, Assistant Director of the Intelligence Division, Associate Director, and Director) to the Attorney General who must make an independent judgment.

There are arguments pro and con that the lack of formal written guidelines pose an added constraint to the search. ~~Where are documents produced can that the law enforcement guidelines be privacy added to a domestic organization~~ ~~and individual rights? The argument of privacy does not add a binding standard to the guidelines. The guidelines would be non-binding, and binding standards are not issued. However, probably the most illustrative of these guidelines is that they establish minimum standards of conduct and behavior. Both career professionals in operating without sufficient standards, however, they might operate in a manner that they consider vague, yet they might not trigger the Court's interest that they are and should, under circumstances that does not fit squarely within the guidelines, but could possibly be justified on a broader standard reasonably within the Court's language. It could be criticized for reasonably adhering to our own guidelines. Both career professionals in the FBI and Department of Justice attorneys review the electronic surveillance request for need, sufficiency, and legality. The Department of Justice has committed itself, and the FBI, to abiding by the letter, spirit, and rationale of the Keith decision (and has expanded upon the decision to the extent of abiding by the letter, spirit, and rationale of the Keith Maroney's testimony). If legal action ensues, whether criminal decision (and has expanded upon the decision to the extent of or civil, the courts in looking at the legality of a national security electronic surveillance are bound only by the Keith decision, regardless of any Department of Justice guidelines. In summary, then, the procedure is: the FBI does not submit a request to the Attorney General for approval of an electronic surveillance upon a domestic organization composed of~~

United States citizens, unless it has a "significant connection" with a foreign power, its agents or agencies; by "significant connection" the FBI and the Department of Justice understand that the domestic organization must be substantially financed by, controlled by, or in active collaboration with such foreign power for the purposes of committing unlawful activities against the United States Government. The FBI presents its request to the Attorney General with all the facts and circumstances on which the request is based, and he must exercise an independent judgment as to whether the request falls within this standard and the letter, spirit, and rationale of the Kalbfeld decision.

Senator Kennedy has expressed concern in the past that a political appointee, the Attorney General, rather than career professionals, is the final authority on these matters. This is a two-edged sword. If the ultimate authority were non-public career professionals, there would be less response from them than from the appointee of an elected official to public pressure criticizing procedures and decisions.

On the other hand, the Attorney General's decision could possibly be based more on personal political attitudes and motivations than his interpretation of the political attitudes and motivation than on his interpretation of the law.

The present procedure attempts to meet both shortcomings. The Attorney General tries to implement due diligence surveillance requests so they are reconsidered by immediate reassessments through several requests of the career professionals by what amounts to a panel of judges to determine whether the request fails with the standard at the request, just as the case is sent to the Attorney General who refers it to the Internal Security section, Activities Division, who bears it department for its independent judgment, before he makes the ultimate decision. Thus any electronic surveillance request is made to the Attorney General, has already been approved by the career professionals. It is arguable that a career professional might be more cautious if he and his agency bore the final authority and responsibility rather than passing both the final authority and responsibility to another agency. There is no airtight response to this; it is a question of human motivation, sense of obligation, duty and responsibility. The impulse to be less than diligent is countered by an employee's professionalism and career considerations.

3. ~~States~~

The President has no warrantless power to authorize purely domestic national security electronic surveillances. He may have the power to subject domestic targets to electronic surveillance, but these electronic surveillances must be subjected to prior judicial review, i.e. a warrant, before installation. Admissibility of evidence obtained from such electronic surveillances is a correlative question, not yet directly considered. Presumably, such evidence would be admissible.

B. Foreign
B. Foreign

The legality and admissibility of evidence issues have not yet been directly considered by the Supreme Court. ~~The issue of legality and admissibility of evidence issues have not yet been directly considered by the Supreme Court. The issue of legality, based on whether prior judicial review is required (key issue in Keith), was resolved in the ~~Government's favor by the United States District Court, District of New Jersey, in United States versus Ivanov. Following decision of past, in banks inspection of the surveillance logs by the ex-district court and argument on the legal issue by all parties, the court sustained the admissibility of legal intercept General parties, acquire foreign intelligence information by warrantless electronic surveillance for foreign intelligence information by warrantless electronic surveillance.~~~~

The United States Court of Appeals for the Third Circuit reversed and remanded ~~Court of Appeals for that the President did have authority and therefore any electronic surveillances in the case were legal and further the appellate court felt it had to assume "in the present posture" of the case, that the case was in fact built on electronic surveillance evidence. Consequently, the Appellate Court held that since the case was in fact built on electronic surveillance evidence. Consequently, the Appellate Court held that since the case arose prior to passage of Title III, Section 505 of the Federal Communications Act of 1934 applied, and it prohibited divulging of electronic surveillance results as evidence in court.~~ of the case, ~~the issue of the legality of foreign national security electronic surveillances is also currently under advisement by the United States Court of Appeals for the District of Columbia Circuit in the case of United States versus Enten. In Keith, the Supreme Court specifically noted that two lower courts (the Fifth Circuit Court of Appeals in United States versus Clay, the Supreme Court specifically noted that two lower courts (the Fifth Circuit Court of Appeals) in United States versus Clay,~~

~~The issue of the legality of foreign national security electronic surveillance is also currently under advisement by the United States Court of Appeals for the District of Columbia Circuit in the case of United States versus Enten. In Keith, the Supreme Court specifically noted that two lower courts (the Fifth Circuit Court of Appeals) in United States versus Clay,~~

430 F.2d 165 (1970) and the United States District Court, Central District of California in United States versus Smith, 321 F. Supp. 424 (1971) have held that "warrantless surveillance... may be constitutional where foreign powers are involved."

The argument that even foreign related electronic surveillances should be subject to initial judicial review is based on the argument that this is the only guaranteed method of protecting the Fourth Amendment rights and right to privacy of aliens and United States citizens who might be involved. The argument on the other side is that the nature and objective of the activity, viz., foreign intelligence gathering, the needs of security, the many nonprosecutive factors to be considered, and often the time element, do not lend themselves to effective and efficient initial judicial review; consequently, the Government must be granted a measure of confidence to utilize this technique on its own authority, with the safeguards of protection from conviction or the remedies of a civil action available to any target of an electronic surveillance, if the Government abuses this authority.

This area is still in limbo, the same condition as prior to Title III and such likely to remain the same, unless more likely tenth in post Section 4511(B) espionage case, actually more likely than electronic surveillance legislation, are decided by the Supreme Court, the Government, to be safe, must be decided by the Supreme Court in criminal prosecution to obtain electronic surveillance intelligence.

IV. VALUE OF NATIONAL SECURITY ELECTRONIC SURVEILLANCES

(See classified Appendix)

V. DOMESTIC "INTERNAL SECURITY" ELECTRONIC SURVEILLANCE:
ALTERNATIVES TO MURKIN PROHIBITION

There are several elements within United States society which pose a threat to the safety and tranquility of segments of that society, e.g., police officers, symbols of the "Establishment," etc. While some of these elements claim to be "revolutionary" and claim as an ultimate objective the overthrow of the United States Government, there is no responsible opinion that feels any of these elements have any chance of success in toppling the Government. Yet, they do pose a significant threat of inflicting serious, and sometimes extensive, damage on individuals and property.

In combatting these elements, law enforcement is confronted with the opposite of its usual task. Ordinarily, law enforcement is confronted with a completed crime and investigates to identify suspects and to prove guilt. In these cases it has to identify suspects and ~~prove guilty~~ ~~that they intend to~~ ~~the suspect~~, e.g., individuals or groups have said they intend to murder police officers, burn buildings, etc., so law enforcement gets the chance to draw conclusion of the crime. While an agent's ~~before investigation~~ ~~commissioned after the crime~~ ~~at threatened intel-~~ ~~criminal intent~~, notwithstanding the act, ~~conducts such a range as will stand~~ ~~looks into more facets of the suspect's behavior~~ ~~Yet, it is~~ ~~not~~ ~~possible to make a probable cause showing, as we understand~~ ~~that term today, to support a warrant for restricted types of~~ ~~investigation. Essentially what law enforcement has, or depending~~ ~~on your emphasis, all that law enforcement has, is a suspicion~~ ~~of criminal accomplishments, and indications from behavior and~~ ~~attitudes, that these elements may engage in destructive criminal~~ ~~activities sometime in the future.~~

Because of the exaggerated rhetoric of many of these elements, which ever ~~one actually commits a crime, they difficulties~~ ~~in identifying specific individuals as suspects, in showing faculties~~ ~~and effect relationship between the accused and, in showing group~~ ~~leaders and the set of the actual triggers or bases and in~~ ~~showing suspected imminence of the criminal act. It is almost~~ ~~impossible to make a probable cause showing, as we understand~~ ~~that term today, to support a warrant for restricted types of~~ ~~investigation. Essentially what law enforcement has, is a suspicion~~ ~~of criminal accomplishments, and indications from behavior and~~ ~~attitudes, that these elements may engage in destructive criminal~~ ~~behavior sometime in the future.~~

~~Because these elements threaten and commit crimes in furtherance of their stated goal of overthrowing the United States Government, investigation of them has often proceeded on a "national security" basis; and because there is no practical, immediate prospect of their accomplishing this goal, the "national security" foundation for investigation of them has, in many quarters, not been taken seriously, and is often suspect because of the latitude that has been allowed in "national security" investigations as opposed to simple criminal investigations.~~

~~The difficulty is that these domestic "internal security" cases lie somewhere between what is generally accepted as "national security" matters and plain, simple criminal violations. If one interprets national security to mean only matters which threaten the stability of the Government, either from within or without, then these cases are not national security matters; yet, they pose a threat to the safety and welfare of society they lie beyond this. Instituted the safety of crime, or even random sporadic criminal acts by anti-national forces. Or these cases may have some effect on national security if the elements S. involved, e.g., a general commitment, enforcement to protect society, elements stand wedged against, attack an' er l' these people are protecting society, and impasse, against an' attack is their only effective avenue of protest for change."~~

~~Consequently, law enforcement is confronted with a situation where it is threatened with criminal acts in furtherance of a claimed political goal, the mere condition of being so situated. Consequently, law enforcement is confronted with a situation wherein it is threatened with criminal acts in furtherance of a claimed political goal, the mere condition of being so threatened often having an impact beyond a completed routine criminal act (although many of these threats are eventually carried out); yet, this condition is generally insufficient to show probable cause to justify a warrant for an electronic surveillance.~~

~~Assuming that there is valuable intelligence to be obtained from electronic surveillance in these matters to be used in attempting to thwart these crimes, how can we fill the void created by Title III? Assuming that there is valuable intelligence to be obtained from electronic surveillance in these matters to be used in attempting to thwart these crimes, how can we fill the void created by Title III? It has very limited value in this area. Its stated purpose is to gather evidence of crimes that we have probable cause to believe are being, or are about to be, committed. It is doubtful whether gathering evidence of these elements, or even evidence of past attacks, would be sufficient probable cause to support a continuing electronic surveillance with no specific crime~~

In immediate view. Title III could perhaps be used in some of these cases where the investigation has developed to a point where we do have probable cause for a specific crime, but the probable cause would be momentary and would expire after the act or probability of the act. Title III also has limited value for continuing intelligence purposes because of its applicability only to specified crimes; the short time period (30 days per request); the requirement that the target eventually be given notice and the results of the electronic surveillance (this can be postponed but not indefinitely); and the number of people who could become involved with and thus aware of a recurring monthly application to a court.

After the Keith decision, there was extensive debate within the FBI and between the FBI and the Department of Justice on this effect, and how we could proceed. When Department of Justice restrictions in cases where purchases were made, was to issue ~~internal~~ ~~guidelines~~ which went undefined. In that there was electronic surveillance (which was undefined) it was accepted that if the ~~internal~~ guidelines were adopted that FRCrP 41 would be the mainstay and finally rejected that FRCrP 41 within the might be utilized as a way and routine search warrant FRCrP 41 might be used in surveillance where Title III was applicable instead. Assistant Attorney General Olson and Deputy Assistant Attorney General Harney disagreed, feeling that Title III was intended to preempt all other methods of securing electronic surveillances, besides Presidential approved surveillances.

The argument is largely theoretical. FRCrP 41, like Title III, requires a showing of probable cause, so it likewise is available only when specified criminal acts are believed to be going on or are imminent. FRCrP 41 warrants must also be executed forthwith, and notice must be given to the target and he must be served with an inventory of the items seized. Given a case which falls within both Title III and FRCrP 41, Title III procedures are preferable because they are less restrictive and more clear cut since they deal exclusively with electronic surveillances. Title III is fairly broad in specifying the crimes for which electronic surveillances can be authorized under its sections. It is difficult to think federally authorized by the FBI for significant national furtherance of the objectives would not sections involved in significant violations specified in Title III. If security so the FBI could be limited to having and requesting federal electronic surveillances based on Federal crimes enumerated in Title III. On the other hand, the FBI would be limited to basing its requests for electronic surveillances on Federal crimes enumerated in Title III, and the

~~threatened destructive acts might involve solely local offenses, e.g., murders of policemen. Title III provides for local authorities to use electronic surveillances in such cases.~~

~~Even assuming that there was a case falling outside of Title III, but within FRCrP 41, the FBI is still limited to using search warrants obtained thereunder to seize evidence of federal crimes; if the threatened act is a local violation only FRCrP 41 is of no value to the FBI.~~

~~Without a showing of probable cause of an ongoing or imminent crime, it is doubtful if either Title III or FRCRA 41 could be used to secure an electronic surveillance. It is believed that intelligence gathering electronic surveillance based on ~~surveillance~~ but not probable cause, that the target might engage in purely domestic criminal activity, that the purpose of ~~assessing~~ that ~~and doest~~ is to gather information by ~~electronic~~ ~~surveillance~~, of which requires that the ~~intelligence~~ information be ~~gathered~~ by ~~surveillance~~. Marbaetian ~~ly~~ is determinative, because ~~the~~ ~~surveillance~~ ~~is~~ ~~subsequent~~ ~~to~~ ~~the~~ ~~admission~~ ~~of~~ ~~Marbaetian~~ ~~ly~~ ~~testimony~~. But further, the ~~admission~~ ~~of~~ ~~Marbaetian~~ ~~ly~~ ~~testimony~~ ~~is~~ ~~not~~ ~~contingent~~ ~~on~~ ~~the~~ ~~admission~~ ~~of~~ ~~Keith's~~ ~~legislation~~ ~~because~~ ~~it~~ ~~is~~ ~~not~~ ~~contingent~~ ~~on~~ ~~the~~ ~~admission~~ ~~of~~ ~~Keith's~~ ~~legislation~~. The United States security interests that had been ~~assured~~ ~~by~~ ~~Keith~~ ~~that~~ ~~the~~ ~~Department~~ ~~of~~ ~~Justice~~ ~~will~~ ~~seek~~ ~~new~~ ~~legislation~~.~~

~~Chance for passage of such legislation at this time
is probably nil.~~

APPENDIX

IV. VALUE OF NATIONAL SECURITY ELECTRONIC SURVEILLANCES

A. Foreign

~~Electronic surveillances provide positive intelligence regarding the positions and activities of foreign nations, and this are of value to United States Government policymakers and diplomats, and also provide information of assistance in our counterintelligence efforts against foreign intelligence services operating against the United States.~~

1. Positive Intelligence

1. Positive Intelligence

Examples of positive intelligence obtained via electronic intercepts and positive intercepts by liaison obtained counter-intelligence responsibility are as follows:

At 7:40 p.m. on August 20, 1968, the New York Office called Headquarters to inform that our wiretap on New York Office was intercepting an incendiary amount of traffic; approximately 40 intercepts in the preceding 30 minutes. Traffic was calling representatives of many of the delegations to the United Nations stating they had a message which they desired to deliver urgently, and would meet the representatives anywhere, even on a street corner. The Headquarters duty supervisor thought this activity

~~The Headquarters duty supervisor thought this activity might relate to a recently completed full plenum of the Supreme Soviet on the Czechoslovakian question, reported on the UPI ticker. He relayed this information to Mr. Hoover, the White House Situation Room, and the State Department.~~

Classified by R. S. Miller

Except from GDS, Category 2, 3

~~Database friendless~~ RESTful interface

Exempt from GDS, Category 2, 3

Date of Declassification: Indefinite

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SECRET

SECURITY INFORMATION

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NATIONAL STANDARDS

NA ASSOCIATION FOR INFORMATION

~~Unauthorized Disclosure
Subject to Criminal Sanctions~~

~~SECRET~~

NO FOREIGN DISSEMINATION/NO DISSEMINATION ABROAD

JFK Act 5 (g)(2)(D)

SENSITIVE FOREIGN
INTELLIGENCE OPERATIONS
INTELLECTUAL PROPERTY
OPERATION

Later in the evening State Department informed us that Soviet Ambassador Dobrynin had visited the President that evening, left, and State was now urgently attempting to locate him. Via our wiretap on the Romanian Embassy we were able to inform State that Dobrynin was with the Romanian Ambassador at that time.

The first indicator the CIA received of abnormal activity regarding the Czechoslovakian question was a telephone call from the White House Situation Room at 9:30 p.m., August 20, 1968.

The Soviet invasion of Czechoslovakia occurred August 20, 1968.

There was a great deal of intercept activity during the days following the invasion, which reflected on various governments' positions and reactions. This raw material was relayed as fast as it came in to the State Department and the White House Situation Room.

This example indicates the potential value of such intercepts. This example indicates the potential value of intercepts affecting the United States, especially indications which affect official and diplomatic personnel from the United States, withdrawal of personnel and foreign nationals, cessation of trade with that country, or hostile military actions against the United States. Such information is a priority requirement of the United States Intelligence Board.

During the Arab-Israeli Six Day War and the India-Pakistan War, our intercepts in the United States provided early indications and to the interrelated parties, State's previous positions and sympathies and consequently assisted State Department and the White House in its dealings with these nations on that issue.

Via an electronic surveillance we obtained information concerning the location of Soviet ships removing missiles from Cuba in 1962.

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JFK Act 5 (g)(2)(D)

2. Counterintelligence

Electronic surveillances assist our counterintelligence efforts by providing personality data and information regarding the contacts and activities of known and suspected foreign intelligence officers. This information assists in planning counterintelligence activity, assessing defection potential, analyzing routines and patterns, conserving manpower, and in directing sources against these officers.

There are currently 14 known and 70 suspected Soviet intelligence officers, and 71 known and 43 suspected Soviet-bloc intelligence officers in the United States.

Examples of information obtained via electronic surveillance and value to our counterintelligence responsibility are as follows:

An individual was detected in contact with a hostile intelligence service in September 1972. In September 1972, he was furnished information regarding United States naval intelligence to which he had access, although the information did not give us him the specific sufficient information to conduct an investigation which established his identity. It was determined that he had been engaged in terrorist activities, communications intelligence, and disclosed that he was a fugitive wanted on local charges. He was arrested on November 23, 1972, wanted on local charges. He was arrested on November 23, 1972.

In one case, electronic surveillance furnished information, within four days of its installation, of a contact between an official of the Soviet Illegal Support Branch and an individual who appears to be a Soviet illegal agent.

Electronic surveillance furnished information concerning an attempt in 1969 by a United States serviceman to defect to the Soviets.

An example of the value of electronic surveillance coverage in foreign terrorist matters involved an Al Fatah-leader formerly in the United States. In the summer of 1972, he departed this country for a visit to the Middle East. He later applied for a reentry permit which was issued in November, 1972, a telephone surveillance disclosed a contact later by an individual suspected to be the Al Fatah-leader. In late November, 1972, a telephone surveillance disclosed a contact by an individual suspected to be the Al Fatah-leader. An

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Investigation was initiated and a second electronic surveillance revealed the Al Fatah leader had reentered the United States using a variation of his family name. This information enabled his arrest by the Immigration and Naturalization Service.

B. Domestic
Domestic

The primary value derived from intelligence gathering, as opposed to evidentiary electronic surveillances in this area, is in obtaining plans for carrying out threatened criminal acts, evidence of foreign influence or financing, and information which assists in planning apprehension of wanted individuals with less risk to the lives of officers and bystanders.

Examples: Via electronic surveillance of the Black Panther Party, Cleaver, New York City, the Black Panther in Portland, Oregon, and in New York City Black Panther Party, the following information was obtained.

On November 6, 1971, plans to kill New York Police Commissioner Murphy were discussed. Plans to kill New York Police Commissioner Murphy were discussed.

On September 14, 1971, use of police radios to monitor New York City Police Department activity was discussed to monitor New York City Police Department activity was discussed.

On April 26, 1971, electronic surveillance identified Robert Vickers as the assailant of a New York City police officer killed April 19, 1971. (Although this information was also identified, it identified Vickers as a triggerman for the group who could be used in the future.)

On December 28, 1970, electronic surveillance reported that Newton received \$1,400 from a Swedish group.

On December 28, 1970, electronic surveillance reported that Newton received \$1,400 from a Swedish group.

On September 26, 1971, electronic surveillance reported a communication between Newton and the President of Tanzania.

On September 26, 1971, electronic surveillance reported a communication between Newton and the President of Tanzania.

On September 28, 1971, electronic surveillance reported Newton's travel plans to China, and on October 19, 1971, it reported details of his visit.

On September 28, 1971, electronic surveillance reported Newton's travel plans to China, and on October 19, 1971, it reported details of his visit.

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~~During July, 1971, a conversation was intercepted, and when pieced together with previously monitored conversations and other background, enabled us to apprehend, without injury or incident, two Black Panther Party members wanted for the murder of a policeman.~~

~~Physical surveillance of a meeting to plan the murder of Black Panther Party rivals, the meeting site having been learned of via electronic surveillance, resulted in the apprehension of two fugitives. The apprehension caused a gun battle, however, the electronic surveillance information allowed for advance planning which cut the risk to arresting officers and bystanders.~~

~~Electronic surveillance of the Students for a Democratic Society Headquarters Chicago, Illinois, provided information on plans for the days of Rage violent demonstrations in Chicago during October, 1968. This advance information, relayed to Chicago police, enabled them to anticipate, to some degree, to disruptive activity, and to concentrate their force where needed, destructive activity, and to concentrate their force where needed.~~

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September 14, 1973

ELECTRONIC SURVEILLANCE

1. The Problem: 1. The Problem:

Use of electronic surveillance falls into three broad areas: ~~Use of electronic surveillance falls into three broad areas:~~ criminal, domestic national security, and foreign national security.

Little policy consideration need be given to use in criminal cases. Such use is prescribed and proscribed in Title III of the Omnibus Crime Control and Safe Streets Act of 1968, has been upheld by the courts, and has been used to great advantage under the current procedures and policy. In short, there is no policy problem in this area.

Electronic surveillance in both domestic and foreign national security cases is primarily used for ~~intelligence purposes; counterintelligence produces information of evidentiary purposes; however, it often produces information of evidentiary value.~~

The only Congressionally approved electronic surveillance is for the sole purpose of obtaining ~~evidence of stated crimes (Title III)~~ ~~is for the sole purpose of obtaining evidence of stated crimes (Title III).~~

Foreign national security electronic surveillances produce a good deal of ~~foreign national security electronic surveillances produce a good deal of positive intelligence value to U.S. foreign policymakers, a good deal of information necessary for counterintelligence activity, and rarely information of evidentiary value.~~

Domestic national security electronic surveillances produce information valuable to law enforcement in thwarting murders, serious injury to persons, and extensive damage to property, and also, rarely, information of evidentiary value.

Electronic surveillance in domestic national security cases which was previously approved by the Attorney General for the President utilizing his Constitutional powers has been prohibited by the Supreme Court in the Keith case, i.e., held illegal without prior judicial approval.

This document is prepared in response to your request and is ~~not for disclosure outside your Committee. Its use is limited to official proceedings by your Committee and the content may not be disclosed to unauthorized persons without the express approval of the FBI.~~ EM

EM

~~The issue of the legality of warrantless, Presidentially approved electronic surveillance in foreign national security cases has not yet been decided by the Supreme Court; this issue is now pending in two Circuit Courts of Appeals.~~

~~Thus the specific problems with regard to domestic national security electronic surveillance are that it produces information of value not obtainable by other means; it has been prohibited without prior not obtainable by other means; it has been prohibited without prior judicial approval; there is no mechanism to obtain prior judicial approval. Consequently, we conduct no domestic national security electronic surveillances.~~

~~The specific problems with regard to foreign national security electronic surveillance are that it produces information of value not obtainable by other means; the legality of the President to authorize its use without prior judicial review is being challenged; if it is held illegal there probably will also be no mechanism to obtain prior judicial review; illegal electronic surveillance requirements based on disclosure of the intelligence review; disclosure of security electronic surveillance to other officials and assistance illegal disclosure of the contents of wire intercept in the defense and intelligence agencies; security leads foreign policy interests can usually be overridden for overriding security and foreign policy reasons can usually not be made.~~

3. Present Policy

3. Present Policy

Domestic National Security Cases:

Domestic National Security Cases:

We do not conduct electronic surveillance in these cases.

We do not conduct electronic surveillance in these cases.
Foreign National Security Cases:

Foreign National Security Cases:

Pending Supreme Court consideration of the "legality" of electronic surveillance in these cases, they continue to be approved by the Attorney General, and utilized without warrant.
Pending Supreme Court consideration of the "legality" of electronic surveillance in these cases, they continue to be approved by the Attorney General, and utilized without warrant.

3. The Issues

~~The main issue in both domestic and foreign national security electronic surveillance cases is the right and need of the Government to obtain intelligence information in cases involving (1) U.S. foreign policy considerations; (2) threats to our security as a nation from without; and (3) threats to the tranquility and safety of U.S. society from within, policy considerations; (1) threats to our security as a nation from without; and (3) threats to the tranquility and safety of U.S. society from within, versus 4th Amendment rights and the right to privacy.~~

The specific issues with regard to domestic cases are: (1) Is the threat to the safety and tranquility of U.S. society posed by certain domestic groups of such magnitude to justify electronic surveillance as an intelligence-gathering device to be used against them? (2) If so, is the threat of national, i.e., Federal dimensions, or is the threat primarily to local or regional interests? (3) If this coverage is needed, has Keith presented obstacles; and if so, how can they be overcome? (4) If enabling legislation is the answer to (3), should the electronic surveillance intelligence-gathering authority be given to the Federal or local intelligence-gathering authority be given to the Federal or local government, or both as in Title III? What should enabling legislation entail? (5) Is there any option other than enabling legislation?

The primary issue with regard to foreign cases is: Is Presidentially approved, warrantless electronic surveillance in cases involving a significant connection with a foreign power constitutional, involving a "significant connection" with a foreign power? In constitutional, etc., "legitimacy" of warrantless surveillance in all other cases, disclosure in "silence" of criminal proceedings; and if held illegal, any disclosure, refit they are deemed of sufficient importance to overturn them in the face of additional risks inherent in a judicial review.

4. Options for Future Policy

4: Options for Future Policy

The chief issue for future policy consideration is, will the Department support the argument for the need for intelligence electronic surveillance? In foreign cases? In domestic cases?

If so, then the discussion centers on Department policy regarding the means to effect such surveillance.

If so, then the discussion centers on Department policy regarding the means to effect such surveillances.

Foreign national security cases: Hopefully, the examples of intelligence value set out in the classified appendix of the attached study carried the argument that electronic surveillance in these cases is highly desirable, if not essential, to our counterintelligence efforts and to our foreign policy considerations. Even without specific examples of value derived from these surveillances, to our counterintelligence efforts and to our foreign policy considerations. The bottom line argument is that electronic surveillance of foreign intelligence services is at least an inconvenience to them, and makes it more difficult for them to carry on their intelligence activities. The bottom line argument is that electronic surveillance of foreign intelligence services is at least an inconvenience to them, and makes it more difficult for them to carry on their intelligence activities.

The present policy is to support the legality of the President's authority to conduct this surveillance without warrant, to restrict disclosure of the existence or contents of such surveillances, and presumably to support the argument that any evidence obtained from such surveillance is admissible in a criminal proceeding.

These issues are discussed very well in the Government's petition for rehearing in U.S. v. Ivanov, attached. Also attached is a classified memorandum summarizing the case up to the petition for rehearing. These issues are discussed very well in the Government's petition for rehearing in U.S. v. Ivanov attached. Also attached is a classified memorandum summarizing the case up to the petition for rehearing.

Until these issues are resolved, consideration of future policy options would be speculative, and may be unnecessary. Until these issues are resolved, consideration of future policy options would be speculative, and may be unnecessary.

Domestic national security cases:

Domestic national security cases:

The FBI Intelligence Division feels there is something of intelligence value FBI be granted from electronic surveillance coverage of domestic groups. The opinions of Assistant Attorney General Stein and Deputy Assistant Attorney General Marquisian that there is General need to allow this type of electronic surveillance and therefore no need to seek enabling legislation at this time, but that if a need does appear the Government will seek such legislation, but that if a need does appear the Government will seek such legislation.

The examples set out in the classified appendix to the attached study show the value that can be derived from intelligence coverage of domestic groups. Is information of this type worth the financial man-power expenditure (which is considerable) to obtain it? Is it worth the task of trying to write enabling legislation (providing for judicial review power expenditure (which is considerable) to obtain it? Is it worth the task of trying to write enabling legislation (providing for judicial review cases? Is it worth the fearsome battle such a bill would cause in Congress to satisfy Keith) to allow intelligence electronic surveillance in domestic Does such a bill have a chance at this time, or in the foreseeable future?

Upon reconsideration, the blanket pessimism on chance for passage of such legislation in the attached study seems extreme. It is believed that the Department and the FBI should attempt to write a bill, passage of such legislation in the attached study seems extreme. It is with as restrictive judicial control as necessary in order to obtain Congressional approval, to permit intelligence electronic surveillance against domestic groups which threaten death or "extensive damage" (to be either defined or specifically enumerated), e.g., plane hijackings, bombings,

~~murders of officials or police, etc). A restrictive enumeration of specific acts which if threatened, but not to the extent of producing probable cause, would justify appeal to a court or magistrate for an intelligence electronic surveillance, might have some chance for passage. The judicial review would satisfy the 4th Amendment requirements; and a specific list of acts limited to major contemporary concerns would allow for item deletions and additions as conditions change. Such a specific section to the bill would allow for not only effective judicial review, but also effective Congressional review.~~

~~Such a bill, in our opinion, should avoid mention of controversial and difficult to define terms such as "domestic national security," "internal security," threats to the existence or structure of the Government, and all terms with political connotations; and should use terms emphasizing the type of preventing serious criminal acts which threaten life and limb (without mention of motivation, whether political or otherwise).~~

~~In our opinion, such a bill should make intelligence electronic surveillance available to both local and Federal agencies if envisioned that such a bill would have coverage of local groups which, e.g., Greater number of local police officers, and groups national in scope, e.g., Black Liberation Army.~~

~~As discussed in the attached study, Title III and FRCrP 41 do not seem to offer practical alternatives for this type of coverage.~~

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,

Appellee,
Appellee,

v.
IGOR A. IVANOV,

Appellant,
Appellant.

No. 72-1741
No. 72-1741

PETITION FOR REHEARING
PETITION FOR REHEARING

HERBERT J. STERN
UNITED STATES ATTORNEY
HERBERT J. STERN
UNITED STATES ATTORNEY

This document is presented to you and your subject and is not for disclosure outside your Committee. It may be used in official proceedings by your Committee or its agents or members in your behalf and is not to be disclosed outside your Committee. Its use in United nonofficial proceedings by your Committee and the subject may not be disclosed in unauthorized persons.

On the subject:

JOHN HANNAH GOLDSTEIN

JOHN J. BARRY

Assistant United States Attorney

NW# 63369 DocId:32989541 Page 45

ENCLOSURE

Assistant United States Attorney

NW# : 88608 DocId: 32989541

ENCLOSURE

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,
UNITED STATES OF AMERICA,

Appellee,
Appellee,

v.

IGOR A. IVANOV,
IGOR A. IVANOV,

Appellant.
Appellant.

NO. 72-1741
NO. 72-1741

PETITION FOR REHEARING

PETITION FOR REHEARING

The United States petitions the Court to grant a

The United States petitions the Court to grant a rehearing in this case and modify its opinion and decision. We rehearing in this case and modify its opinion and decision. We limit our request to that portion of the decision which relates limit our request to that portion of the decision which relates to the disclosure to defendant of the logs of electronic surveillance initiated with the express authorization of the Attorney to the disclosure to defendant of the logs of electronic surveillance initiated with the express authorization of the Attorney General to obtain foreign intelligence information.

General to obtain foreign intelligence information.

In our view, the decision, insofar as it relates to said disclosure, is not in accord with the Supreme Court's prior said disclosure is not in accord with the Supreme Court's prior mandate in this case and has misapprehended relevant precedent relating to disclosure in instances where there has been no violation of Fourth Amendment rights. In our view, the decision, insofar as it relates to said disclosure, is not in accord with the Supreme Court's prior mandate in this case and has misapprehended relevant precedent relating to disclosure in instances where there has been no violation of Fourth Amendment rights.

STATEMENT OF THE CASE

In its initial decision in this case, the Court affirmed appellant's conviction of conspiracy to violate the espionage statute, 18 U.S.C. §§ 794(a) and (c), 304 F.2d 554 (1962). When appellant's certiorari petition was pending, the Solicitor General informed the Supreme Court that appellant had been electronically overheard. The Supreme Court considered the effect of such disclosure in this case and in one arising from the Tenth Circuit in Alderman v. United States, 394 U.S. 165 (1963) and remanded both cases to the respective District Courts; and remanded both cases to the respective District Courts;

"for a hearing, findings, and conclusions (hearing, findings, and conclusions with respect to any petitioner there was no electronic surveillance which would establish Fourth Amendment violations which would result from any such surveillance, with respect to any petitioner, even if there had been any disclosure to this conviction of any conversations which may have taken place through such surveillance."

304 U.S. 166 (emphasis added) surveillance.

The Supreme Court, in elaborating on its instructions,

repeated again that the scope of inquiry was to be confined to possible Fourth Amendment violations. It ordered that:

The District Court should confine the evidence presented by both sides to the fact which is pertinent to the question of the proper position of a defendant under the Constitution and to the possible Fourth Amendment violations committed by surveillance which violated those rights and to the relevance of such conversations to the petitioner's subsequent conviction. The District Court will make such findings of fact on those questions as may be appropriate. The District Court will make such findings of fact on those questions as may be appropriate.

~~In light of the further evidence and
of the entire existing record. If the
District Court agrees on the basis
of such further evidence, then the
Court will issue a writ of habeas corpus
to the State of New York, directing it
to release petitioner from confinement
unless it can be shown that he has
been surveillance in violation of one or
more of the petitioner's Fourth Amend-
ment rights. The conviction of such
petitioner was not tainted by the use
of evidence so obtained. In addition,
new legal judgments of conviction based
on the existing records may be passed
on the further findings, thereby pre-
venting further affected parties the
right to seek further appropriate the
available review further improved.
(emphasis added). 394 U.S. 185~~

On remand, the Government conceded for purposes of the hearing that one set of electronic surveillances, contained in logs designated 4001-S* and 4002-S*, violated appellant's Fourth Amendment rights and voluntarily disclosed those logs to him.

Amendment rights and voluntarily disclosed those logs to him (1095a). A taint hearing resulted in a finding by the District Court that appellant's conviction was not tainted from these logs and that finding was unanimously upheld by this Court. (Opinion and that finding was unanimously upheld by this Court. (Opinion pp. 12, 22).

pp. 12, 22) The Government further disclosed that there existed a second set of logs, designated Government Exhibits A-1, A-2 and A-3. The Government represented that these logs were only obtained by the Department of Justice in the exercise of the President's right to obtain foreign intelligence information and that the President's right to obtain foreign intelligence information and that

although certain conversations of Ivanov were overheard, he was not the subject of the electronic surveillance reflected on these logs (14a, 20a). These logs were submitted to the Court for an in camera inspection, along with an affidavit of Attorney General Mitchell, designated Government Exhibit B. A copy of the affidavit was made available to Ivanov. Upon review of these materials, the District Court made the following findings:

1. that the surveillances here under attack were expressly authorized by the Attorney General shown in the exhibits;
2. that they were not made pursuant to a surveillance of the defendant Ivanov;
3. that said surveillances were directed against certain premises in which Ivanov had no interest, the description and location of said premises being set forth in the exhibits;
4. that said surveillances were conducted and maintained solely for the purpose of gathering foreign intelligence information;
5. that it was reasonable and necessary to authorize such surveillances in the national interest; and
6. that it would prejudice the national interest to make a disclosure of the particular facts concerning said surveillances. (20a)

Based on these findings, the Court concluded that

Based on these findings, the Court concluded that

disclosure need not be made because the surveillances were lawful and not in violation of any Fourth Amendment rights of Ivanov (20a). Although not directed to do so by the Supreme Court's mandate, the Court also concluded that disclosure was not required by reason of the provisions of the Communications Act of 1934, 47 U.S.C. § 605 because that Act was inapplicable to the situation disclosed by the withheld material (23a).
the situation disclosed by the withheld material (23a).

On appeal, this Court reversed the District Court holding in a split decision (per Aldisert, J.) that 47 U.S.C. § 605 barred "any use of the intercepted material beyond the confines of the Executive branch" (Opinion pp 20-21), that, in the present procedural posture of the case, "it must be assumed that the conversations of Ivanov overheard on the wiretaps led to evidence used at this trial" (Opinion p. 13) and, therefore that appellant is entitled "to disclosure or an evidentiary hearing" (Opinion p. 21). In reaching this conclusion, the majority accepted, for purposes of analysis, the proposition that the interceptions were a lawful exercise of the Presidential power vested by Article II of the Constitution. (Opinion p. 19)

II of the Constitution (Opinion p. 15) the majority did not even consider the question of whether Ivashov's family and ethnic rights have been violated. In his minority, Justice Adams concluded noting that the proposition violates Article 15 of the Constitution for protection of family rights, protection against land and that Ivashov's ethnic and cultural rights were not violated.

~~In this case apparently it tends, that since there has been no determination of the issue which the Supreme Court is asked to decide, disclosure to be determined and disclosure is being preferred as a noncompliance of the legal necessity for such disclosure.~~

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POTERI

~~ASSISTING THE CORRECTORS OF THE COURTS
CONSTITUTIONAL OR OTHERWISE, IN THE
IS NOT ENTITLED TO THE DISCHARGE OF
BREVILLIAGE DOGS OR THE ANTI-SLAVERY
HEARTS WITH REGARD TO THE BREVILLIARY~~

In remanding this case the United States Supreme Court was very careful and very specific as to the scope of its mandate. It ordered the District Court to determine whether or not there has been any electronic surveillance which violated Appellant's Fourth Amendment rights. It did not ask the District Court to consider whether or not there may have been a violation of § 87(2)(B) or any other federal statute. It is in this context that the Court's language as to disclosure must be understood because there exists no precedent which requires the United States to turn over the logs of a foreign intelligence surveillance where such surveillance has not violated any Fourth Amendment rights of a defendant.

10. The following table shows the number of hours worked by 1000 employees in a company.

~~The necessity for the disclosure of the records of electronic surveillances only arises where such disclosure is necessary to protect a defendant's Fourth Amendment rights.~~

~~necessary to protect a defendant's Fourth Amendment rights.~~
~~Allison v. United States, 394 U.S. 165, 180-81 (1969).~~

~~Alderman v. United States~~, 394 U.S. 316, 365, 170 F.2d 1255, 753 F.2d 1255.

~~certiorari opinion of Stewart, U.S., in Sidoroff v. Goldfarb, 336 U.S. 316 (1952); see also the dissenting opinion of Stewart, U.S., in Shaw v. Shultz, 336 U.S. 317 (1952).~~

~~394 U.S.A. 370 (1958), the opinions of Burton v. United States~~

-6-

way in Alderman v. United States, U.S. , 394 U.S. 182 (1969) and arising from the denial of a petition for certiorari in that case, 400 U.S. 1013 (1972).

As stated by the Court in Tenetoski:

Nothing in Alderman v. United States, Ivanov v. United States, or Butenko v. United States, ante, p. 165, requires an adversary proceeding and full disclosure for resolution of every issue raised by an electronic surveillance. On the contrary, an adversary proceeding and disclosure were required in those cases, not for lack of confidence in the integrity of government counsel or the trial judge, but only because the information was so sensitive that it had been held in confidence from the defense attorney. (Emphasis added.)

U.S. at 317 (Emphasis added.)

As stated by Mr. Justice Stewart in Giacalone:

As we made explicit in Alderman, Butenko, and Ivanov, the requirement that certain products of governmental electronic surveillance be turned over to defense counsel was expressly limited to situations where the surveillance was violated to such gravity as would trigger the application of the exclusionary rule. (Emphasis added.)

In Alderman, the Court concluded that although in certain circumstances procedures were sufficient to vindicate statutory rights, such as

those under the Jencks Act and certain due process rights, such as the right to the disclosure of the identity of an informer (384 U.S. at 182-83, f.n. 14), such procedures "are unable to provide the scrutiny which the Fourth Amendment exclusionary rule demands" in those circumstances where there exist "a large volume of factual materials". 384 U.S. 183-84.

Thus, Alderman cannot be read to require disclosure

where there has been no violation of Fourth Amendment rights. Indeed, even in cases involving a possible violation of Fourth Amendment rights, Alderman can be read as not requiring disclosure of such rights.

where there exist compelling reasons for nondisclosure and the factual materials involved are neither voluminous nor require complex judgments. United States v. Lemondras, F.2d

No. 71-2745, D.C. Cir. or App., June 29, 1973, pp. 35-44.

In the Lemondras case, the Court, like the majority of the Court in the case at bar, pretermitted the constitutional issues involved in the executive authorization of foreign intelligence gathering by means of electronic surveillance and held, based on its own in camera examination of the logs in question, that that material contained therein had no relevance to the issues or evidence in appellant's trial and that, because of the national interest involved in the revelation of logs of foreign intelligence operations, the logs need not be revealed. Id. intelligence operations, the logs need not be revealed. Id.

If the teachings of both Alderman and Lemondras be applied to the case at bar in its present posture, it is clear that the logs in question need not be disclosed for two reasons. First, as the Court has assumed, there has been no Fourth Amendment violation. Second, as the Court can readily ascertain from its own examination of Government Exhibits A-1, A-2 and A-3, the logs are not voluminous and the task of evaluating them is not voluminous and the task of evaluating them is neither burdensome nor complex. 1/

neither burdensome nor complex.

2/ In this connection, it should be noted that the Supreme Court has not yet directly addressed the question of whether disclosure of logs of electronic surveillance is relevant. It has not yet directly addressed the question of whether disclosure of logs of electronic surveillance is relevant. In United States v. United States District Court, No. 14-1845, 14-1846, 14-1847, in which the Court expressly reserves to the constitutional issues involved in foreign intelligence to the constitutional issues involved in foreign intelligence

20

Therefore there is no legal justification for disclosure sensitive logs of a foreign intelligence surveillance program for a foreign power. This would not only be inconsistent with the narrow and specifically drawn mandate of the Supreme Court in this case but would, in addition, make a mockery of the assumed conclusion by this Court that the surveillance itself was lawful. The procedural question of whether and under what circumstances disclosure should be made is fully as sensitive and delicate as the constitutional question of the presidential power to conduct the surveillance, and procedures ought not to be employed which would emasculate the constitutional power.

Surely the considerations which compel the conclusion that the President is vested under Article II of the Constitution of the United States to conduct foreign intelligence operations by means of electronic surveillance equally compel the conclusion by means of electronic surveillance equally compel the conclusion

V (cont'd) :
surveillance, the Court also found it "unnecessary at [that] time and on the facts of [that] case" to decide the basic [and the time and on the facts of [that] case] question "whether as respects to the related to the disclosure on the records of surveillance testimony on Plaintiff's claim that it had been violated. of Invasion of Privacy in Missouri, 439 U.S. 1069 (1972) to the Court yet again in the Ninth Circuit's decision which is 1972, 500 F.2d 1221, same question involved in the trial court that the record held an arguably foreign intelligence information bearing on defendant's counsel's brain with the same language as the one in the Washington trial. Disentitled to do so to file certiorari by Justice Rehnquist opinion that Mr. Justice Douglas brought the case to the Ninth Circuit's ruling. Mr. Justice Douglas dissenting (1972), of the Ninth Circuit's ruling. W.S.J., 34 L.Ed. 30. (1972).

that the results of such surveillance should not be disclosed where no Fourth Amendment rights of any individual have been violated because to do otherwise would reveal information which would make the surveillance valueless in the future.

To conclude otherwise would be to put the Government to an untenable situation. It would have to elect between disclosure of a vital and proper intelligence operation, on the one hand, and prosecution of a criminal who may have bugged or even intruded himself on the other. Such a construction would even give to a criminal the power to prevent his prosecution by even giving to a criminal the power to prevent his prosecution by simply taking steps to ensure that a conversation of his is overheard during the course of a foreign intelligence surveillance, overheard during the course of a foreign intelligence surveillance.

POINT II
POINT II

PRIOR JUDICIAL CONSTRUCTIONS OF
47 U.S.C. § 605 REINFORCE THIS CONCLUSION THAT DISCLOSURE OF THE
CONVERSATION LOGS DISCLOSED IN THE
CONVERSATION LOGS DISCLOSED IN THE
MURKIN CASE LOGS IS NOT REQUIRED
IN THIS CASE

The correctness of the conclusion that disclosure is inappropriate in circumstances where there has been no Fourth Amendment violation is further reinforced by the considerations which underlie prior judicial constructions of 47 U.S.C. § 605, which underlie prior judicial constructions of 47 U.S.C. § 605. In those cases, courts have made it clear that wiretap evidence and its fruits are to be suppressed only in those instances where the wiretap was utilized by law enforcement officers properly to obtain evidence. In those cases, courts have made it clear that wiretap evidence and its fruits are to be suppressed only in those instances where the wiretap was utilized by law enforcement officers properly to obtain evidence.

As stated by the United States Court of Appeals
for the Second Circuit in United States v. Gwin, 247 F.2d 25.

860, 864 (1957):

Wiretap evidence is excluded by the federal courts in order to discourage law enforcement officers from undertaking the proscribed activities in an effort to obtain evidence for use in those courts. Where general laws in those courts where exclusion would not serve this purpose, the evidence is admitted.

If the Government was acting lawfully in conducting

the surveillance, there is no illegal conduct to deter and hence no reason for applying the remedy of suppression in this case. If there is no reason for suppressing, there is no reason for either disclosure or for an evidentiary hearing.

It is clear beyond cavil, that, in construing § 605 to bar either testimony as to the contents of an intercepted conversation or the derivative use of an intercepted conversation to obtain evidence, the Supreme Court did so, solely to deter law enforcement personnel from utilizing wiretapping to deter law enforcement personnel from utilizing wiretapping as a means of obtaining evidence. Nardone v. United States, 332 U.S. 389 (1937); Nardone v. United States, 308 U.S. 338 (1939).

302 U.S. 389 (1937); Nardone v. United States, 308 U.S. 338 (1939).
Nardone II.

Nardone II. In Nardone I, the Supreme Court held that the Communications Act of 1934 barred testimony by federal agents as to the contents of messages intercepted by wiretaps by application of the principle of secrecy, interdicted by the sovereign as expressed by the general words of a statute intended to prevent injury and wrongs. James v. Warden of the State Prison, at page 309. The "injury and wrong" which the Court referred

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and it is anticipated that, in enacting § 605, "Congress can have thought it more important that some offenders should go unpunished or justice than that officers should resort to methods less ~~than~~ consistent with personal liberty". Id. at 383.

In Hardesty II, the Court, to further the policy expressed in Hardesty I, held that where "a substantial portion of the case" against a defendant is proven by him to have been developed by means of illicit wire-tapping, his conviction cannot be permitted to stand. In so holding, the Court rejected the argument that § 605 only barred testimony as to the content of an intercepted message stating that:

Such a reading of § 605 would largely obviate the policy which would largely curtail if not banish the inopportune use of technical means of eavesdropping. The product of a wantonlyitious and needlessly technical analysis would be the translation into practicality of broad considerations of practicability and public well-being. This Court found that the logically relevant ground upon which Congress had outlawed its own methods and destructive of personal liberty, 302 U.S. 375, 386, to forbid the direct use of methods thus characterized but to put no curb on their full indirect use would only invite the very methods but no curb on their full indirect use, inconsistent with ethical standards and destructive of personal liberty. 308 U.S. at 390.

In other words, the principle of analysis in both Hardesty

decisions is the perceived Congressional rejection of wiretapping. The decisions is the perceived Congressional rejection of wiretapping.

for the purposes of obtaining evidence - wiretapping which was in the Court's view "illicit". Diligence was held to include use in obtaining evidence and was comprehended by the statute.

solely because the Court determined that such a construction was necessary to discourage officers from wiretapping to obtain evidence.

In the case at bar, the wiretap was not for the purpose of obtaining evidence but rather for the purpose of obtaining foreign intelligence information. The "broad considerations of morality and public well-being" deemed relevant to the former purpose are not mutatis mutandis translatable to the latter purpose.

If those considerations are not so translatable then the exclusionary rule forged by the Court in Nardone II is not so translatable. As the Court makes clear, the derivative use of intercepted messages is prohibited not because of the statutory language but solely to preclude illicit wiretapping.

language if, solely to preclude illicit wiretapping, the wiretap in issue in this case was not illicit but was, instead, a proper exercise of presidential power pursuant to Article III of the Constitution.

For this reason, we urge the Court to reconsider those decisions cited at pages 11-17 of our main brief and at pages 22-23 of Judge Amen's Post-hearing opinion which hold that the McCoy decision is applicable to the type of wiretapping undiscovered in Walker. See also United States v. Schlesinger, which held that § 605 has no applicability to the type of wiretapping in issue here. See also United States v. Gandy, supra, at 35-40. The rule is thus identical to that with respect to the Fourth Amendment exclusionary rule. In this belief, that the McCoy rule is ineffective deterrent to police misconduct to Ferry v. Chicago, 302 U.S. 1, 12 (1935); Harr v. Chi, 21 U.S. 643, 655 (1851); Letter v. Walker, 381 U.S. 613, 630 (1965).

there exists no rational purpose for holding such a mandatory hearing to determine whether the wiretap has been discriminatory used against Juaney.

None of the cases cited by the majority are authority for the proposition that such a hearing is required in cases where the interception was not illicit. Benanti v. United States, 355 U.S. 96 (1957), does not carry the absolutist implications which the majority reads into it. (Opinion, p. 14) The Benanti decision simply holds that the provisions of § 605 cannot be superseded by state law and that state agents as well as federal agents are included within its coverage. In the course of its opinion, the Court made clear that it was dealing with the kind of wiretapping, it had earlier characterized as "illicit" in both Hardone decisions, i.e., wiretapping for the purposes of obtaining evidence. The opinion does not suggest that a divulgence of a lawful interception would constitute a violation of § 605. Moreover, it expressly refused to reach the issue reached by the majority in this case -- i.e., whether both interception and divulgence are necessary elements of a § 605 violation. 355 U.S. at 100, f.n. 5. Thus, all that Benanti stands for is the at 100, f.n. 5. Thus, all that Benanti stands for is the

47 In advancing this contention, we do not mean to be understood as implicitly stating that there was, in fact, no lawful interception and no implied discriminatory intention. Whether substantial portion of the evidence is illicit or not wiretapping of the right of the defendant Court or the District Court can readily determine in form. The wiretap material is not wholly relevant to the issues and evidence in this case.

proposition that § 605 applies uniformly to state and federal officers.

Indeed, the very same day the Court decided Benzanti, it also decided in Patterson v. United States, 355 U.S. 107 (1957), that not every interception is an "interception as Congress intended the word to be used" in 47 U.S.C. § 605, stating that "(e)very statute must be interpreted in the light of reason and common understanding to reach the results intended." 355 U.S. at 108. In that case, over a strong dissent, the Court held at 109: "In that case, over a strong dissent, the Court held that where one party to a telephone conversation gives the police authority to listen in on an extension, there has been no interception "as Congress intended the word to be used." Id. (Emphasis added). See also United States v. Bugden, 226 F.2d 281 (9th Cir. 1955), aff'd per curiam 351 U.S. 916 (1956) (holding it would defeat the policy of § 605 to bar testimony as to the content of an intercepted illegal private broadcast). Therefore, neither Benzanti nor United States v. Coplon, 185 F.2d 629 (2d Cir., 1950), also relied upon by the majority require a hearing in this case because neither case addressed the legality of the wiretaps in question. Instead, as Judge Adams correctly notes with specific reference to Coplon, "the court merely assumed that the surveillance itself was illegal under section 609." Id. Such an assumption is not proper under section 605." Id. Such an assumption is not proper under the facts of this case and, indeed, is flatly inconsistent with the assumption of legality made by the majority.

Therefore, neither Benzanti nor United States v. Coplon, 185 F.2d 629 (2d Cir., 1950), also relied upon by the majority require a hearing in this case because neither case addressed the legality of the wiretaps in question. Instead, as Judge Adams correctly notes with specific reference to Coplon, "the court merely assumed that the surveillance itself was illegal under section 609." Id. Such an assumption is not proper under section 605." Id. Such an assumption is not proper under the facts of this case and, indeed, is flatly inconsistent with the assumption of legality made by the majority.

COMMISSION

The Court should amend its decision to require
that disclosure of the surveillance logs not be made.

Respectfully submitted,
Respectfully submitted,

MERRILL J. STEPHEN

MERRILL J. STEPHEN

United States Attorney

United States Attorney

On the Plaintiff
On the Plaintiff

JONATHAN L. GOLDSTEIN
~~JONATHAN L. GOLDSTEIN~~

Assistant United States Attorney
Assistant United States Attorney

Memorandum

1 F MMrJ. S. SMILauer
1 F MMrJ. A. ABrennig
1 F MMrJ. J. Mista

Mr. H. G. Miller

DATE: 7/13/1993

FROM T. J. Smith.

Mr. T. T. J. Smith
Mr. J. T. Miller

SUBJECT: U. S. VS. JOHN WILLIAM BUTENKO AND
SUBJECT: U. S. VS. JOHN WILLIAM BUTENKO AND
IGOR A. IVANOV, IGOR A. IVANOV,
IGOR A. IVANOV, APPELLANT
APPELLANT

On June 21, 1973, the U. S. Court of Appeals for the Third Circuit reversed the conviction of Ivanov for violations of 18 U.S.C. § 1951, and the court remanded the case for further proceedings.

BACKGROUND

BACKGROUND

Ivanov, an Amtorg Trading Corporation chauffeur, and Butenko, a Dnarsovetskantsego Trudigallypovuchedchaffeur, and withdrawal of U.S.S.R. Siz 294 (a demand for immediate cessation of a conspiracy violation of 1940 (a) C art 251(d) by (causing Butenko to act as a spy agent of the Soviet Union without previous notification to the U. S. Secretary of State Union without prior notification to the U. S. Secretary of State).

On appeal the Supreme Court found the electronic surveillance issue in their cases was "nearly identical" to the electronic surveillance issue in Alderman et al v. U.S. and considered it in conjunction with that case (194 U.S. 165). (Alderman had been convicted of conspiracy to transmit murderous threats in interstate commerce.)

In Alderman the Supreme Court, noting that no evidence or evidence obtained from leads which were obtained from an illegal electronic surveillance i.e., one which violated a defendant's 4th Amendment rights, could be utilized in a criminal trial, disregarded the Government's contention that a trial court's in camera inspection of electronic surveillance records was sufficient, and held that the defendant was the only one in a position to adequately knowingly review such records to determine if the case against him was built on electronic surveillance. Consequently the defendant was to be given access in a discovery hearing to illegal electronic surveillance records. Subsequently in his case and dissenting in part, distinguished between routine criminal cases and foreign intelligence-espionage criminal cases, arguing that while it distinguished between defendant was acceptable in foreign intelligence-espionage criminal cases, arguing that **SECRET** full disclosure to the defendant **CONTINUED** in the (6) NO FOREIGN DISSEMINATION/NO DISSEMINATION ABROAD

(6) NO FOREIGN DISSEMINATION/NO DISSEMINATION ABROAD

SECRET

CONTINUED - OVER

~~CONTINUED~~
Memorandum to Mr. E. S. Miller
Re: U. S. vs. John William Butenko and
Igor A. Ivanov, Igor A. Ivanov,
Appellants

former, it was not in the latter and might prejudice on-going
~~former, it was not in the latter and might prejudice on-going~~
~~intelligence operations vital to the national security. In~~
~~these cases, he argued on behalf of disclosure to the defendant~~
~~of only those portions which the trial court in Canada found~~
~~"arguably relevant" to the Government's case against the defendant.~~
~~The Ivanov and Butenko cases were remanded to the~~
~~District Court, 1) to determine whether there was electronic~~
~~surveillance which violated either defendant's 4th Amendment~~
~~rights and 2) if so, to determine whether any of the intercepted~~
~~conversations were relevant to his conviction. The Supreme~~
~~Court stated that if the District Court found 1) that there~~
~~was electronic surveillance but it did not violate the defendant's~~
~~4th Amendment rights, or 2) there was electronic surveillance~~
~~which did violate the defendant's 4th Amendment rights but his~~
~~conviction was not tainted by evidence obtained from that surveil-~~
~~lance, the District Court should issue new judgments of conviction~~
~~based on the District Court's findings, along with its further findings~~
~~preserving the defendant's right to further appeal.~~

On remand in Ivanov the case revolved around two sets of FBI electronic surveillances the which ~~remained as secondary sets~~
~~during his trial~~
~~surveillance at other houses of Ivanov and Saratskaya,~~
~~a KGB officer and neighbor of Ivanov, if for the sake of argument, Saratskaya,~~
~~the District Court neighbor both to be directed to state Ivanov's~~
~~and 2) District Court on the basis of the evidence obtained from the United~~
~~Nations, and a wiretap and a microphone at Amtorg.~~

The residence microphones, which at that time Department procedures did not require to be authorized by the Attorney General, were conceded by the Government to be illegal, thus ~~the residence microphones, which at that time Department~~
~~procedures did not require to be authorized by the Attorney~~
~~General, were conceded by the Government to be illegal, thus~~
~~falling within the disclosure requirement of Alderson. The~~
~~District Court held that the Government, on remand, made full~~
~~disclosure on these microphones, after some argument, and~~
~~ruled that the defendant had not shown, and the Government~~
~~had carried its burden to refute, that Ivanov's case was~~
~~built on evidence from these microphones.~~

The more important issues related to the other set of surveillances. The Government contended that those surveillances were duly authorized under the President's national security. The more important issues related to the other set of surveillances. The Government contended that those surveillances were duly authorized under the President's national security

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Memorandum from DE.S.S. Miller
Re: U. S. v. Iwan William Butenko and
Igor A. Ivanov, Igor A. Ivanov,
Appellant

powers to obtain foreign intelligence thus were legal and therefore it was not required to disclose the logs to the defense or to participate in an evidentiary hearing regarding these surveillances. The District Court, by reference to its finding on remand in Butenko (318 F. Supp. 661) agreed, finding that these surveillances and the Government's use of the logs from them did not violate Section 605 of the Communications Act of 1934 or the 4th Amendment, and upheld the Government's refusal to disclose or participate in an evidentiary hearing.

The District Court in Butenko found that 4th Amendment rights are not absolute, that there are exceptions to the warrant requirement, and that the President's responsibility for foreign affairs and national security do not preclude him from authorizing electronic and national security intercepts. It was also found that since Title III of the Warith Office Control and other statutes abut section 605, specifically numbers 12 and 13, control of foreign intelligence intercepts by limit of Congress (3), with the President's power of commanding foreign intelligence fare electronic surveillance, which also must get involved in order to eliminate this surveillance, Section 605 also must not have intended to limit this power.

OPINION OF THE THIRD CIRCUIT COURT OF APPEALS, JUNE 21, 1973.

OPINION OF THE THIRD CIRCUIT COURT OF APPEALS, JUNE 21, 1973.

The Court of Appeals makes it clear at the outset that it is ~~not~~ considering Title III since the interceptions in issue occurred prior to passage of that Act. Both the Government and the appellant agreed that the governing statute at the time of the interceptions in issue was Section 605 of the Communications Act of 1934. The appellant agreed that the governing statute at the time of the interceptions in issue was Section 605 of the Communications Act of 1934.

The Court of Appeals found no error in the District Court's ruling that the Government had given full disclosure on the concededly illegal microphones, and that these did not taint Ivanov's conviction. The Court of Appeals cites Alderman for the proposition that the question of whether or not the Government's evidence was obtained from electronic surveillance could be resolved only by an evidentiary hearing, and because the Government would not participate in a hearing on the second set of surveillances. The Court of Appeals felt it had to assume "in the present posture of this case" that the Government had intercepted com-

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Memorandum to Mr. R. S. Miller
Re: U. S. vs. John William Estes and
Dwight A. Iverson, Ira Carl Iverson,
Appellant

communications and utilized the results from them in the criminal proceedings against Iverson. (The District Court made an in camera review of the second set of surveillances, but never made a written finding that none of the Government's case was based on information from these surveillances; he only found in camera that they did not violate the 4th Amendment or Section 605 and therefore could not "...properly be considered on the taint issue" (342 F. Supp. at 931).)

(Note that Alderman ruled only on "illegal" electronic surveillances, and instructed the District Court that if, on remand, it found the defendant's 4th Amendment rights had not been violated, it should reimpose judgment of conviction. The Supreme Court did not discuss the effect of Section 605 on the cases before it in Alderman.)

The Court of Appeals states that it is not defining the parameters of the President's national security surveillance powers under Section 605, but that the limited issue before it, with respect to the second surveillance is: assuming a constitutional power by the President to have ordered electronic surveillances of foreign agents, was the permissible electronic surveillance of under Section 605, to utilize the products of such surveillance in a criminal prosecution.

The Court of Appeals then decides the case on this evidentiary issue. It finds that the decision of the Amendment this issue of whether or not the President has the power to authorize foreign intelligence warrantless electronic surveillances authorizes foreign intelligence warrantless electronic surveillances.

The Court of Appeals recognizes that the President has constitutional powers to defend against foreign intelligence activities and to obtain foreign intelligence, and assumes sole power for the sake of argument, that he had the constitutional power to authorize these surveillances; however, the Court of Appeals draws the distinction that was drawn by the Government for years, between the President's power to authorize such surveillances and the power of the Congress and Court to make an evidentiary rule excluding evidence obtained from such surveillances in criminal proceedings.

The Court of Appeals holds that the Supreme Court opinion in U. S. vs. Wardone (309 U.S. 338), interpreting Section 605 as being a complete bar to the introduction of electronic surveillance results into evidence in a Federal criminal proceeding, was governing. The Court of Appeals notes that the Supreme Court opinion in U. S. vs. Wardone (309 U.S. 338), interpreting Section 605 as being a complete bar to the introduction of electronic surveillance results into evidence in a Federal criminal proceeding, was governing.

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Plaintiff in Error, U. S. Marshal
Def. U. S. vs. John William Baskett and
Peter A. Ivanoff, Defendants,
Appellant.

~~"Section 605 states that "... no person not being authorized by the sender shall intercept any communication and divulge...the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person." The Supreme Court in *Nexon* held that "no person" encompassed federal agents, and "divulge...to any person" barred testimony in court.~~

~~This Court accepts the interpretation that what Section 605 prohibits is the interception and divulging, i.e., that both elements must be present to incur the prohibition of section 605. Thus, the President is not violating Section 605 if he only intercepts the conversation, but he is prohibited from also divulging the contents of the interception in court.~~

~~Since this Court assumed that intercepted electronic surveillance information was used in the trial and therefore was admitted in violation of Section 609, Ivanov's conviction was reversed and the case remanded for further proceedings; viz., to conduct an evidentiary hearing to determine if in fact any of the Government's witnesses had used electronic surveillance information. Government's case was built on electronic surveillance information.~~

In further defining "divulging" the Court of Appeals accepts the ~~argument~~ that in the ~~considering~~ ~~intended~~ ~~form~~ of Appendix the ~~interceptions~~ ~~are~~ but that agents of the Executive Branch conduct ~~any~~ ~~such~~ ~~representatives~~ visits and that many others within the Executive Branch also be his representatives others receive in the ~~result~~ ~~of~~ such surveillance ~~and~~ ~~therefore~~ ~~it~~ receive not inconsistent with Section 605 to consider the Executive is Branch for at least all persons within the Executive Branch with a right to such information) as "in person" so that disclosure within the Executive Branch does not violate the Section's prohibition against divulging the contents of such interceptions.) MINORITY OPINION, THIRD CIRCUIT COURT OF APPEALS, JUNE 27, 1973

MINORITY OPINION, THIRD CIRCUIT COURT OF APPEALS, JUNE 27, 1973

~~Judge Adams, disagrees that Section 603 on its own, or as interpreted by Wardone, requires the exclusion of evidence obtained from a presidentially approved warrantless foreign intelligence electronic surveillance in a Federal criminal proceeding.~~

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Memorandum to Mr. E.S. Miller
Re: U.S. vs. [redacted] and
Igor A. Ivanov, Igor A. Ivanov,
Appellant

He argues that Section 605 itself, its legislative history, and subsequent case law do not indicate that Section 605 intended to prohibit the President from utilizing electronic surveillance to gather foreign intelligence or to use the information gathered in cases involving a defendant's foreign intelligence gathering. He traces the legislative history of the Communications Act and finds its main purpose was to establish a Communications Commission and that it extended to wire communications almost the identical provisions of Section 27 of the Radio Act of 1927, which was thought neither to apply to federal officers nor to bar testimony relating to the contents of radio messages intercepted by them. Judge Adams notes there was no congressional debate over the meaning of the provisions of Section 605, implying that if it had been intended to limit the President's foreign intelligence powers, there probably would have been debate.

Similarly, Judge Adams finds that in response to the Government's argument that a constitutional provision like Section 605 which would exclude Federal Agents since it is given impeachable Congress intended like Federal agents the identicals and purpose of criminal cases, the Supreme Court concluded that the question is one of policy, the Supreme Court argued that where the question is one of policy, the Supreme Court argued that where Congress intended to exclude electronic surveillance evidence in favor of the more familiar domestic criminal cases, there is no evidence of foreign intelligence. Additionally, this surveillance was not aimed solely at securing evidence to convict a person of crime, but at gathering foreign intelligence deemed essential to the security of the U.S. He thus concludes that the Supreme Court's interpretation of section 605 is not applicable to this kind of case, and argues that in view of the breadth of the President's authority in foreign affairs, Section 605 should be interpreted to limit that power only if Congress' intent to do so is clearly manifest, which he argues it is not.

Judge Adams then addresses the constitutional question avoided by the majority, viz., does the 4th Amendment allow the President to authorize warrantless electronic surveillance in foreign intelligence cases. He concludes that the 4th Amendment does not address that question because the 4th Amendment prohibits unreasonable searches and seizures. The 4th Amendment prohibits only unreasonable searches and seizures.

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Memorandum to Michael S. Miller

Re: U. S. vs. John William Butenko and
Igor A. Ivanov, Igor A. Ivanov,
Appellant

Judge Adams finds that the constitutional responsibility to conduct foreign affairs is vested in the President; that the gathering of foreign intelligence and the protecting against foreign intelligence activities is concerned with the very existence of the nation; that as a result the President has great latitude in this area; and that to require a judicial warrant prior to his use of electronic surveillance presumes that a warrant could be denied, thus interfering the courts into foreign affairs decisions, in effect over ruling the President in a field where he has the responsibility and they do not.

Thus concluding that the 4th Amendment does not prohibit the President from conducting foreign affairs; Judge Adams argues that electronic surveillance is a right of the President under the 4th Amendment and that it can not be judicially prohibited. The judge further states that the surveillance must be reasonable and that the surveillance must be conducted in accordance with the 4th Amendment. He also states that if the surveillance is unreasonable, it would be unconstitutional and its results excluded from a criminal trial.

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Plaintiff in the U.S. vs. William Butenko and
Agent A. IVANOV, Ilya A. IVANOV,
Appellant

ANALYSIS

As previously noted, Alderman dealt exclusively with illegal electronic surveillances, i.e., surveillances in violation of a defendant's 4th Amendment rights. It did not distinguish between routine criminal cases and foreign intelligence-spionage cases when it required that full disclosure of all interceptions of the defendant be made to him so that he, in an adversary proceeding, might determine if the Government's case against him was tainted. Justice Harlan, objecting to full disclosure in foreign intelligence-spionage cases, and on behalf of disclosure only of portions deemed arguably relevant to the Government's case by the trial court after an en banc review, did not raise the issue of "legal" vs. "illegal" electronic surveillance, as presumably he was also talking about and intending to limit disclosure even on surveillances which violated the 4th Amendment disclosure even on surveillances which violated the 4th Amendment.

The Third Circuit Court of Appeals assumes the Ivanov surveillances ~~are~~ ^{which} ~~illegal~~ ^{but} ~~do not violate the~~ ^{legal} ~~4th Amendment~~ ^{and} ~~therefore do not violate the~~ ^{but} ~~constitutional~~ ^{constitutional} ~~rights~~ ^{rights} of the defendant. Introduction of evidence based on electronic surveillance to defendant, introduction of which must be excluded under Section 605, introduction of which must be excluded under Section 605.

At the conclusion of Alderman, when remanding Ivanov, the Supreme Court instructed the District Court that if it found the surveillance in question did not violate the defendant's 4th Amendment rights, it should reimpose judgments of conviction. The Supreme Court did not consider the effect of Section 605 on the cases before it in Alderman.

The case has been remanded for further proceedings, apparently an evidentiary hearing on the second set of surveillances. The Government can opt to save Ivanov's conviction by participating in such a hearing, since none of his case was actually built on surveillance information; however this would require disclosure to Ivanov of his intercepted conversations actually built on surveillance information; however this would require disclosure to Ivanov of his intercepted conversations at the Mission and Antrogy, a disclosure concession we don't want to have to make because of the impact it would have on diplomatic relations, ongoing counterintelligence operations, and possibly on future prosecutions. Additionally, the salvaging of Ivanov's conviction fails far short of the original purpose of continuing the appeals in this case, viz., to obtain

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~~a Supreme Court ruling on the legality of Presidential warrantless foreign intelligence electronic surveillances. Consequently, the Government probably will either ask for dismissal of the case or appeal the Third Circuit's ruling to the Supreme Court.~~

If Ilyanov is appealed the Supreme Court will face three possible issues, the 4th Amendment issue of the legality of warrantless foreign intelligence electronic surveillance, the disclosure issue, and the Section 605 evidentiary issue. The Court could seize onto the Section 605 evidentiary issue, not considered by the trial judge, to dispose of the case without reaching the 4th Amendment or disclosure questions; or it could stand on its instructions to the District Court and rule on the District Court's remand finding that the surveillance did not violate the 4th Amendment.

If the Supreme Court found the surveillance illegal, presumably ~~the Massachusetts right of access to full disclosure would apply~~, and ~~the whole AEDPA would be rendered inapplicable~~ affidavit disclosure would apply, exclude any selective surveillance evidence under the Section 605 issue, and the Section 605 issue would be avoided.

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Missouri and 102 Ex. 55. Miller v. U.S.
U. S. v. John William Petachko and
John M. Irwin, Jr., and A. Irwin,
Appellants

electronic surveillance evidence, presumably the convictions would be reimposed; however, supposedly the Supreme Court does not know this, and it would conclude that if the District Court found electronic surveillance evidence to be involved, it would be bound by the Third Circuit's finding that the Section 605 bar did apply, and the case would find its way back to the Supreme Court for a final determination on this point. Thus if the Supreme Court chose to rule on the 4th Amendment issue and found the surveillance legal, it would have to rule on two issues immediately, the 4th Amendment issue and the disclosure issue, and might eventually have to decide the third issue, the Section 605 evidentiary issue; if the Supreme Court affirmed the Court of Appeals, it would have to decide only the Section 605 evidentiary issue.

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RECORDED AND INDEXED BY S.S. MANAGER
Date: 11. 26. 1968 by John William Bunker and
Igor A. Ivanov, Igor A. Ivanov,
Appellant

CONCLUSION

The constitutional issue here is as was the issue so far done, a policy question. Given today's climate and public attitude towards electronic surveillance in general, unchecked Presidential (White House) power, the distinction between use of electronic surveillance for intelligence purposes vs. use for criminal prosecution, and the Supreme Court's tradition of avoiding constitutional issues if it can decide a case on lesser issues, I am inclined to think the Court would grasp the "net" of the Section 605 evidentiary issue, thus leaving the constitutional issue unresolved and allowing Presidentially approved foreign intelligence electronic surveillances to continue for the time being.

The practical result of this of course would be only to reverse the conviction of one man, Ivanov, presumably at home to the Soviet Union. This ruling would not preclude post 1968 phone prosecutions based on foreign intelligence electronic surveillance information, since 2511(3) probably expressly encompasses surveillance information to negate 2511's application of Section 605 with respect to such information. The contents of any interception and communication transmitted by authority of the President in the course of the investigation for the statute presumably in relation to foreign intelligence and efforts the unlawfully overruling or endangering the structure of the Government may be received in evidence in any trial, hearing or other proceeding only where such interception was reasonable..."

With the Section 605 evidentiary obstacle presumably disposed of by 2511 (3), it would seem that a post 1968 case on facts similar to Ivanov, or preferably one actually built on electronic surveillance information, would be the best vehicle for eventually getting a ruling on the 4th Amendment issue.

ACTION:

ACTION: For information.

For information.

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INQUIRY # 3

INQUIRY # 3

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NW# : 88608

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~~Mr. William D. Ruckelshaus~~
~~The Deputy Attorney General - Designate~~
Brennan, FBI
~~Attala, FBI~~

1 1 Mr Mr Baker
1 1 Mr Mr E. S. Miller
1 1 Mr Mr T. T. Smith

September 17, 1973

1 - 1 Mr. Simeo

**SUBSTANTIVE ISSUES REGARDING
SUPPLEMENTAL ISSUES REGARDING
THE FUTURE OF THE FBI**

^oF.B.I.

Reference is made to your memorandum to me captioned "Substantive Issues Regarding the Future of the FBI" dated July 20, 1973, enumerating issues on which you desired the Bureau's comments.

Concerning Issue Three in your memorandum, I call your attention to memorandums from me to the Attorney General captioned "Scope of FBI Jurisdiction and Authority in Domestic Intelligence Investigations," dated August 7, 1973, as well as my August 24, 1973, memorandum to you above the same caption.

My August 7, 1973, memorandum proposed an Executive order to define FBI responsibilities concerning Federal statute relating to national security. FBI regional directors, Office of Legal Counsel, Department of Justice personnel in the Office of Legal Counsel, August 19, 1973, informed me they requested my copy of Section 67 publication of August 7, 1973, concerning investigations of suspicious organizations and of relationships among foreign intelligence agencies in August 1973, and the request of former acting director study batchelor Gray in August 1973 were at furnished with my August 19, 1973, memorandum.

Inasmuch as this Bureau's extensive analysis regarding authority for our intelligence gathering was previously furnished to the Department's consideration in August 1 and 24, 1973, mentioned in the Department's consideration in August 1 and 24, 1973, mentioned, I assume that your needs to study Issue Three can be met by reference to those communications without additional submissions.

NOTE: See memorandum T. J. Smith to Mr. E. S. Miller dated 9/13/73, captioned as above, prepared by JMB:slc.

NOTE: See memorandum T. J. Smith to Mr. E. S. Miller dated 9/13/73, captioned as above, prepared by JMB:slc.

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MAIL ROOM

The Attorney General

Director, FBI

**SCOPE OF FBI JURISDICTION
SOME OF FBI JURISDICTION
AND AUTHORITY IN CRIMINAL
AND AUTHORITY IN DOMESTIC
INTELLIGENCE INVESTIGATIONS
INTELLIGENCE INVESTIGATIONS**

During our meeting on July 26, 1973, you referred to a discussion you had with Senator Charles McC. Mathias, Jr., of Maryland during your confirmation hearings as to the statutory authority of the FBI and the Department of Justice in the field of domestic intelligence investigations. You then asked Mr. William D. Ruckelshaus to work with the FBI in weighing the pros and cons with regard to statutory authority in this area. I mentioned that research was being performed on this subject at the present time and that we would be in touch with Mr. Ruckelshaus with regard to this matter when we have completed the results of our consideration and findings within the FBI.

Actually, a study has been going on in the FBI for more than two years as to the scope of FBI jurisdiction and authority in domestic intelligence investigations. When Mr. J. PATRICK Gray, III, was designated as Acting Director of the FBI, he instructed that a position paper be prepared concerning the jurisdiction and authority of the FBI to conduct domestic intelligence investigations. A position paper was prepared which it was determined that authority of the FBI in this field is based on legislative enactment, even though we may have probably relied heavily on Executive directives as the basis for such authority. Mr. Gray directed that a copy of this study and of the position paper be submitted to him. A detailed report was furnished to him. The following is a summary of that report.

Over a period of several months there were a number of public statements questioning the validity and junkardship of the FBI's financial domestic intelligence, particularly its ethnicity particularity, where there was no such domestic legislation with party representation. One of the most searching inquiries ever contained in a paper presented by Professor Michael T. Murphy, a leading conference at Princeton University in October, 1971, sponsored by the Committee for Public Justice, at Princeton University in October, 1971, sponsored by the Committee for Public Justice.

Justice. The document is considered to be responsive to your request and is not for disclosure
to the public outside your office. It is the property of the State of New York and must be returned to the
Attala County Sheriff's Office or the Office of the Clerk of the Court of Appeals when you are no longer
in office. Your signature certifying the content will not be disclosed to unauthorized persons.
(8) That without the express written consent of the State NOTE PAGE EIGHT

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The Attorney General

A major thrust of Professor Ellif's paper concerned FBI authority derived from legislative enactments as opposed to that derived from Presidential directives, beginning with a directive issued by President Roosevelt in September, 1939. Professor Ellif is of the opinion that the 1939 directive, which was reiterated on three subsequent occasions, was magnified by the FBI from its original purpose to a definitive order to conduct intelligence-type investigations.

Senator Sam J. Ervin, as you know, had been probing into the nature and extent of FBI intelligence-type investigations. Senator Ervin had even announced that he intended to propose legislation to prohibit the FBI from investigating any person without that individual's consent, unless the Government has reason to believe that person has committed a crime or is about to commit a crime. Other Congressmen indicated a similar interest in FBI investigative activities. Other Congressmen indicated a similar interest in FBI investigative activities.

Our study revealed that the FBI had declared publicly over a long period of time that its responsibilities in the domestic intelligence field are authorized under legislative enactments. Presidential directives and field instructions of the Attorney General. The Presidential directives are obviously the 1) directive dated September 6, 1939, and addressed January 6, 1940; July 24, 1950; and December 15, 1953; and 2) Executive Order 10450 dated April 27, 1950 (and amended but not yet implemented by Executive Order 11605 dated July 2, 1971).

In carefully analyzing the language of the first directive, dated September 6, 1939, and considering that the subsequent directives are all hinged on that one, we believe that there is a misconception as to the extent of jurisdiction or authority conveyed to the FBI by these directives. It appears that while the 1939 directive fixed responsibility on the FBI to handle espionage, sabotage, and neutrality matters, it did not convey any authority or jurisdiction which the FBI did not already have from legislative enactments. It is difficult to read into this directive or in any of those which followed any or jurisdiction which the FBI did not already have from legislative enactments. It is difficult to read into this directive or in any of those which followed any authority to conduct intelligence-type investigations which would or could not be conducted under an umbrella of legislative enactments.

The Attorney General
The Attorney General

As a matter of historical fact, President Roosevelt in August, 1936, did request former Director J. Edgar Hoover to conduct investigations of subversive activities in this country, including communism and fascism. This request, however, was a confidential oral request and there is doubt that any record of it was made outside the FBI. This request, or Presidential mandate, was based, incidentally, on the fact that the law provided that the FBI could conduct such investigations if the Secretary of State should so request.

The study revealed that while the 1939 et seq. directives did not grant any special intelligence-gathering authority to the FBI, we were responsible under those directives to collect all intelligence information necessary by local, state, and Federal law enforcement agencies and patriotic citizens and local associations to obtain information concerning subversive activity covered by Federal statutes. The study also obtained information for indications of subversive activity covered by Federal statutes.

The study concluded that the FBI has the responsibility to conduct whatever investigations necessary to determine if certain acts, to commit espionage, sabotage, insurrection, rebellion, sedition, inciting or creating espionage, advocacy of overthrowing the Government, and other such crimes affecting the national security have been violated. In this connection we note that in a letter dated September 14, 1937, the Department of Justice advised that the FBI is continually alert to the problem of recurring riots and is submitting intelligence reports to the Department of Justice concerning such activity. This letter enumerated several Federal statutes and stated these could be applicable in using maximum available resources, the question of schemes or conspiracies to plan, promote or aggravate riot investigative and intelligence, to collect and report all facts bearing on activity.

In other words, the Department was requesting all possible intelligence-type investigative activity based on the existence of certain statutes. We see this as being no different from our intelligence-type surveillance-type investigative activity based on the existence of certain statutes. We see this as being no different from our intelligence-type investigations relating to plans of groups or individuals to overthrow, destroy, interfere with or threaten the survival of effective operation of national, state, and local governments.

The Attorney General
The Attorney General

Based on this study, we believe that had there never been a single one of the Presidential directives in question the FBI would have conducted and will, through necessity, continue to conduct the same intelligence-type investigations as were conducted from 1939 to the present date. We also believe, however, that in order to counter the criticism and skepticism of such individuals as Professor Ellif and Senator Sam J. Ervin that an up-to-date Executive order should be issued clearly establishing a need for intelligence-type investigations and demarcating a clear authority for the FBI to conduct such investigations based on guidelines established by the Attorney General and adhering to constitutional principles, established by the Attorney General and adhering to constitutional principles.

The study concluded with two basic recommendations.

- 1) That the Department of Justice be requested to sponsor a comprehensive legislation updating title 18 U.S.C. investigative authority in the executive intelligence spionage section relating to national security and the classification of Department of Justice regulations to the national security which would cover any possible gap between statutory authority and Executive necessity in protection of the national security.

At first glance these recommendations may appear to contradict our position that we already have statutory authority to conduct security-type investigations. But this being the case we do not need additional legislative enactments, nor do we need an Executive order. But being realistic we think that the basic statutes upon which we rely for our authority to conduct intelligence investigations need to be updated to fit 1971 needs. At first glance these recommendations may appear to contradict our position that we already have statutory authority to conduct security-type investigations, that this being the case we do not need additional legislative enactments, nor do we need an Executive order. But being realistic we think that the basic statutes upon which we rely for our authority to conduct intelligence investigations need to be updated to fit 1971 needs. Title 18 U.S.C. Sections 2383, 2384, and 2385 relate to the national security, domestic intelligence investigation need to be updated to fit 1971 needs, but the legislative history of 2383 and 2384 indicates that they were designed for the Civil War era, not the Twentieth Century, and Section 2385 has been, but the legislative history of 2383 and 2384 indicates that they were designed to a fragile shell by the Supreme Court. These statutes are unique as H.R. 6046 and S. 1400 in the 93rd Congress appear to contain language which is still valid, but updating is certainly indicated. The bills introduced should fit our statutory needs, except perhaps for those groups, such as the Ku Klux Klan, which do not seek to overthrow the Government, but nevertheless are totalitarian in nature and seek to deprive constitutionally guaranteed rights.

The Attorney General

As to the need for an Executive order, we think that two issues are involved. We have statutory authority, but what we need is a definitive requirement from the President as to the nature and type of intelligence data he requires in the pursuit of his responsibilities based on our statutory authority. In other words, there is a need, from our standpoint, for both authoritative and definitive guidelines. The statutes give us the authority. The Executive order would define our national security objectives.

Members of Congress, including such men as Senator Robert C. Byrd of West Virginia, have proposed legislation to spell out jurisdiction and authority of the FBI in this field. It would appear that the President would rather spell out his own requirements in an Executive order instead of having Congress tell him what the FBI might do to help him fulfill his obligations and responsibilities as President.

The political climate of suspicion and distrust resulting from disclosures coming out of the Watergate hearings could present an obstacle to getting any such Executive order signed in the immediate future. However, the rationale is nevertheless valid and when scrutinized closely, the language in the Executive order we ultimately propose establishes definitive guidelines in the Executive order we subsequently propose establishes definitive guidelines which have heretofore been unclear. It is my belief that we should go forward with this.

We therefore propose and recommend that an Executive order along the following lines be submitted to the White House with a strong recommendation for approval. The language which follows is merely to illustrate the type of Executive order which we think would be appropriate and does not necessarily represent an ideal format or style which should be submitted to the White House.

EXECUTIVE ORDER
EXECUTIVE ORDER

"Whereas the Constitution of the United States was established to insure, among other things, ~~the safety, tranquility, and protection of the United States; and to establish~~ to defend; and to promote the general welfare for the people of the United States; and to promote the general welfare for the people of the United States; and

The Attorney General
The Attorney General

"Whereas the President of the United States has the constitutionally imposed responsibility of defending the Constitution and the existence of the Government thereunder; and

"Whereas there have been continuing unlawful acts of violence perpetrated against the Government of the United States or against citizens of the United States or against persons entitled to the protection of the United States thereby endangering the domestic tranquility, threatening the United States thereby endangering the domestic tranquility, threatening the common defense, and jeopardizing the general welfare of the people of the United States; and

"Whereas the Congress has enacted laws prohibiting acts such as treason, sedition, espionage, treason, and rebellion, as well as conspiracy, sedition, espionage, kidnapping, bigamy, depredations of civil rights, willful obstruction to justice, maladministration, kidnapping, deprival of civil rights, and conspiracies to commit such acts; and

"Whereas the President of the United States as Chief Executive in the maintenance of the Government thereunder must have intelligence information for appropriate decisions in the discharge of his constitutionally imposed responsibilities;

"Now by authority vested in me by the Constitution and statutes of the United States and in the interest of orderly operation of this Government and in furtherance of the domestic tranquility, common defense, and general welfare of the people of the United States it is ordered that:

"The Attorney General prepare and issue guidelines, conforming to the principles of the Constitution and the Bill of Rights, and outlining the necessary direction, coordination, and guidance of investigations to assure that the Federal Bureau of Investigation provides on a continuing basis intelligence information essential to the execution of laws pertaining to subversive activity and other such activity affecting the national security, domestic tranquility, and general welfare of the United States."

The Nation has been going through a time of terror. The concept of urban guerrilla terrorism has been adopted by various extremist elements in the United States. Bombings of public buildings and national institutions, concept of urban guerrilla terrorism has been adopted by various extremist elements in the United States. Bombings of public buildings and national institutions;

The Attorney General

~~Killing of police officers who, by their uniform, are a symbol of the democratic establishment; hijacking of aircraft in furtherance of revolutionary movements; terrorist assaults on foreign diplomatic personnel and establishments; and open declaration of war on our form of government are only a few of the violent acts which have been perpetrated by domestic subversives who seek to destroy or seriously cripple our Government. Terrorist guerrilla attacks which were once confined to far away places and related to problems of no immediate concern of ours are now possible in this country. Foreign terrorist groups in collusion with domestic terrorists have laid plans for an airport massacre of the type which recently occurred in Israel. Other foreign terrorist elements have laid plans for terrorist attacks on American soil. Already one foreign official has been assassinated, possibly by terrorists.~~

~~It would be folly to adopt an investigative policy based on the concept of investigation only when there is reason to believe a crime involving the national security has been committed. The FBI must obviously anticipate the crimes described above. We believe that in order for the Government to be in position to defend itself against revolutionary and terrorist efforts to destroy it, the FBI must have sufficient investigative authority, if conducted intelligently, to conduct investigations not normally associated with enforcement of the statutes the other agencies think the President had the inherent Executive powers to defend his country defining the FBI's investigative authority to include this new jurisdiction. We believe that the plain anticipations of security and intelligence information relating to the national security, its Government's defense evaluation belief that such expanded authority must be firmly set forth in an Executive order and that this recommendation is responsive to the Attorney General's expressed interest in laying more formal guidelines to our work in areas where definition is not now clear.~~

We consider the issuance of a new Executive order delineating our jurisdiction, authority, and responsibility to gather and report intelligence information relating to the national security to be a very important and high priority matter. We believe the issuance of guidelines by the Attorney General under Title 28, Section 533, United States Code, to be equally important. We believe the issuance of guidelines by the Attorney General under Title 28, Section 533, United States Code, to be equally important.

The Attorney General
The Attorney General

For your information, our own investigative guidelines as contained in our Manual of Instructions relating to domestic subversive investigations have been completely rewritten to conform with the concept that our domestic intelligence-type investigations are based on Federal statutes. These guidelines provide that in each instance, the domestic intelligence investigation must be predicated on information indicating that the organization or individual is engaged in activity which could involve a violation of specific statutes relating to the national security. A copy of the new guidelines was previously provided to the Department of Justice in connection with the request of Senator Edward M. Kennedy to obtain a copy of the FBI's Section 87 of the Manual of Instructions. The effective date of the new guidelines was August 1, 1973.

The effective date of the new guidelines was August 1, 1973.

- 1 - The Deputy Attorney General
1 - The Deputy Attorney General

NOTE :

NOTE :

See memorandum T. J. Smith to Mr. E. S. Miller dated 8/6/73, captioned as above, prepared by TJS:bjr; to Mr. E. S. Miller dated 8/6/73, captioned as above, prepared by TJS:bjr.

Mr. J. E. Adams
Mr. J. D. Adams

5/9/74
5/9/74

W. R. Wannall
W. R. Wannall

MICHAELSON ISSUE #2
MICHAELSON ISSUE #2
SHOULD THE INTELLIGENCE GATHERING FUNCTION
OF THE FBI BE SEPARATED FROM THE LAW
ENFORCEMENT FUNCTION OF THE FBI?
SHOULD THE INTELLIGENCE GATHERING FUNCTION
OF THE FBI BE SEPARATED FROM THE LAW
ENFORCEMENT FUNCTION OF THE FBI?

Reference my memorandum, 4/16/74.

Reference my memorandum, 4/16/74.

Referenced memorandum enclosed a lengthy analysis of the above issue, which ~~describes recommendations and in-house considerations of the above issue that an abbreviated version be prepared for referral to the Department of Justice, containing the conclusions of the all three functions of the FBI: law enforcement, internal security, and counterintelligence be retained by the FBI; law enforcement, internal security, and counterintelligence be retained by the FBI.~~

ACTION:

ACTION:

Attached is abbreviated position paper for referral to the Department of Justice.

Attached is abbreviated position paper for referral to the Department of Justice.

Enclosure

Enclosure

This document is prepared in response to your request and is not for distribution outside your Committee. Its use is limited to official proceedings by your Committee and ~~is prepared in response to disclosure of the contents of this document outside your Committee, of the FBI limited to official proceedings by your Committee and the content may not be disclosed to unauthorized persons~~ without the express approval of the FBI.

JFM: vb

(4)

JFM: vb

1 - Mr. W. R. Wannall

1 - Mr. A. B. Fulton

1 - Mr. J. D. Adams

TO
1 - Mr. A. B. Fulton
1 - Mr. J. D. Adams

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1 - Mr. J. D. Miller

INQUIRY # 4

INQUIRY # 4

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NW# :88608

DocId:32989541

The Deputy Attorney General

~~After assuming the office of Director I have had an opportunity to afford further thought to this question and appreciate that there are some substantial considerations that question whether the Director of the FBI should be restricted to a given term of office. From a practical standpoint, it is conceded that legislation to specifically restrict the term of office of a Presidential appointee is necessary. We know of no clear-cut authority to remove an official who has received a Presidential appointment. However, in the final analysis, the President would likely get his way because he has the power to appoint a successor, in this case the Director. In effect, in absence of tenure, the Director will be serving at the pleasure of whoever is President.~~

~~FBI is not political.~~ Experience has shown that cooperation by other law enforcement agencies and the general public has been instrumental in FBI investigative success. While it cannot be precisely measured, enforcement agencies and the general public has been instrumental the degree of confidence inspired by the individual serving as Director in FBI investigative success. While it cannot be precisely measured, influences the quality and quantity of such cooperation. The Office of the Director, a non-political one, has been charged with the responsibility of providing factual information upon which administrations of diverse political persuasions could formulate prosecutive policy and look after the internal security interests of the country. Singling out the position political persuasions could formulate prosecutive policy and look after the internal security interests of the country. Singling out the position

The Deputy Attorney General
~~The Deputy Attorney General~~

~~of Director of the FBI for a restricted term of office could suggest that perhaps the confidence parameters placed in the FBI is no longer merited. Whether this would have any impact on the confidence and cooperation by the public would be problematic.~~

~~After weighing the foregoing and considering the unique role of and regard for the Director of the FBI, it is my conclusion that the Nation would best concur with tenure for the Director of the FBI, and hence would contribute toward assuring the Director's independence of any influence this president or the agency that the Director may hold. This would tend to assure that the Director would not necessarily change loyalties with each administration. I feel the incumbent senses a greater independence through tenure.~~

~~I feel that tenure should be for a period such as nine years to minimize the chances when a new administration should coincide with a change in administration. Such a period would also provide the incumbent a qualified feeling of independence. However, this Bureau defers to the Department on the subject of length of time.~~

INQUIRY # 5

INQUIRY # 5

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NW# : 88608

DocId: 32989541

The Deputy Attorney General
The Deputy Attorney General

October 16, 1973
October 16, 1973

Director, FBI

CFB:17

Should the Federal Bureau of Investigation
be an independent Agency?
Should the Federal Bureau of Investigation
be an independent Agency?

In response to your request, the following is submitted
regarding question #6, "Should the FBI be an independent agency
or continue as part of the Justice Department?" or
continue as part of the Justice Department?"

1. Problem: Should the FBI be an independent agency or continue
as part of the Department of Justice? independent agency or continue
as part of the Department of Justice?

2. Policy: At the present time the FBI is a bureau within the Department of Justice, pursuant to the Attorney General's responsibility to the Attorney General's Department of Justice and, as such, is responsible to the Attorney General.

3. The Issues Raised: The question has arisen on several occasions whether the FBI, with its vast experience and knowledge, should be under the control of a political appointee, the Attorney General, or separated from the Department of Justice and established as an independent agency within the Executive Branch.

4. Options for Future Policy: The main options for the future of the

FBI are two: (1) Remove it from its position as an integral part of the Department of Justice and establish it as an independent agency, or (2) maintain the present status of the FBI in its role as the investigative arm of the Department and, as such, responsive to the directives of the Attorney General.

A brief look at history indicates that in 1908 Congress created the Bureau of Investigation and designated it as a part of the Department of Justice. A brief look at history indicates that in 1908 Congress created the Bureau of Investigation and designated it as a part of the Department of Justice. The main reason for this action was that a certain void existed prior to this time in the enforcement function performed by the Attorney General. While the Department traditionally bore the responsibility of enforcing the laws of the United States and prosecuting violators of those laws, there existed no permanent group of individuals who could be relied upon to perform this function. While the Department traditionally bore the responsibility of enforcing the laws of the United States and prosecuting violators of those laws, there existed no permanent group of individuals who could be relied upon to perform this function.

10/4/73 re "Issues Raised by Mr. Gandy, Baker, Garrison, (JFA:ch)

10/4/73 re "Issues Raised by Mr. Rutledge, re future of FBI" (JFA:ch)

MAIL ROOM
TELETYPE UNIT
N.W. # 88608 DocId: 32989541

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The Deputy Attorney General
The Deputy Attorney General

conduct the fact-finding investigations necessary to sustain successful prosecutions. The creation of this "detective" force by Congress aimed to fill that void.

Over the years the responsibilities of this agency, which eventually became known as the Federal Bureau of Investigation (FBI), have increased tremendously. From a small agency charged with the task of conducting investigations regarding relatively few matters, the FBI has developed into an agency held accountable for investigating violations of over 180 categories of Federal Laws. In addition, the FBI has become more than just an investigating agency, due to its maintenance of various data in certain areas indispensable to a criminal justice system.

The proposal to make the FBI an independent agency within the Executive Branch has been a topic of several discussions to begin with in the White House. Various bills were introduced in the Congress, some of which were introduced in the Senate and others in the House. In addition, consideration was given to separating the FBI as an independent agency. Congressional sentiment existed to separate the FBI as an independent agency.

The proponents of this move have made it clear that the possibility of a politically motivated FBI has caused them great concern and led to the introduction of measures which they feel would go a long way toward preventing undue political influence. The argument is made that the Attorney General is almost always a political appointee of the President, whose views generally conform with his own. Those supporting this argument point to recent events as examples of how an Attorney General could use his position to political advantage and fear that because of this motivation he could easily manipulate an agency possessing vast amounts of sensitive information and substantial resources, such as the FBI, and easily misuse this organization which is subject to his directives as a part of the Department he heads.

The question arises at this point whether removal of the FBI from the Department of Justice is the proper means of assuring its justifiable degree of independence and freedom from undue political pressure. The

The Deputy Attorney General
The Deputy Attorney General

designation of the FBI as an independent agency would simply mean designation of the FBI as an independent agency would simply mean that the Director would no longer report to the Attorney General, but that the Director would no longer report to the Attorney General, but would instead be responsible directly to the White House, as is the case with existing independent agencies. There appears to be some serious doubt whether an FBI Director would be more or less subject to political pressure when placed in this posture. The FBI must be responsive to the desires and needs of the American public and in this sense only should it be considered politically responsive. The danger of becoming enmeshed in partisan political hearings might easily be increased by removing the additional layer of Executive Branch responsibility which now exists in the person of the Attorney General, responsibility which now exists in the person of the Attorney General.

Opponents of these proposed Senate bills note that, while some danger does exist in the FBI reporting to a political appointee, the far greater danger would exist if the FBI, purporting itself as an independent agency, became the arm of a politically motivated Director who was responsible to no one but the White House.

When one considers the possibility of an independent FBI, it is difficult to ignore the specter of a national police force at the disposal of the incumbent administration, a condition generally repugnant to our citizens.

The relationship between the investigator and the prosecutor is a very delicate, yet vital one. Neither can properly fulfill his role without the wholehearted assistance of the other. So it is with the FBI and the Department of Justice. A close working relationship has developed and must be maintained if the responsibilities of each are to be met.

The FBI does need a certain amount of independence and this fact has been recognized by even its most severe critics. In addition, Congress, in creating a new Subcommittee on FBI Oversight, has in effect insured a certain degree of FBI independence. In addition, Congress, in creating a new Subcommittee on FBI Oversight, has in effect insured a certain degree of FBI independence.

The Deputy Attorney General

In consideration of all the foregoing, it is believed the FBI
should remain a Bureau within the Department of Justice where it can
properly perform its function to investigate violations of various
Federal laws and report its impartial findings to those who will conduct
the prosecution of these violations in our judicial system.

INQUIRY # 6

INQUIRY # 6

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The Deputy Attorney General

October 16, 1973

Director, FBI

~~SUBSTANTIVE ISSUES REGARDING
THE FUTURE OF THE
FEDERAL BUREAU OF INVESTIGATION
FEDERAL BUREAU OF INVESTIGATION~~

Reference is made to your memoranda to me, captioned
~~Reference is made to your memorandum to me, captioned
as above, and dated July 29 and August 29, 1973,~~
as above, and dated July 20 and August 20, 1973.

Attached hereto is the FBI response to Issue #6.
Attached hereto is the FBI response to Issue #6.

Enclosure

Enclosure

JFH:CSE (6P)

JFH:CSH (6B)

NOTE: Mr. Rockelshaus' memorandum of 7/20/73 enumerated 11

issues regarding FBI organization and operation being studied by him.

~~NOTE: Mr. Rockelshaus' memorandum of 7/20/73 enumerated 11 issues regarding FBI organization and operation being studied by him. The 7/20/73 memorandum forth the format for response. Issue #6 concerns the relationship between the Director and the Attorney General, assuming that the Bureau remains a part of the Justice Department.~~

that the Bureau remains a part of the Justice Department.

1 - Mr. Callahan

1 - Mr. Baker

1 - Mr. Callahan

1 - Mr. Einery

1 - Mr. Baker

1 - Mr. Einery

ENCLOSURE

ENCLOSURE

REC-55 62-24172-349
REC-55 62-24172-349
EX-11 6 OCT 19 1973
EX-11 E OCT 15 1973

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56 URGENT 10/16/1973 TELETYPE UNIT

NW# : 88608 DocId: 32989541

Issue #6: Assuming the FBI remains a part of the Justice Department, what should be the relationship of the Director to the Attorney General? All the organizational and substantive relationships should be examined.

1. The problem: By Congressional enactment, the Attorney General has been designated the head of the Department of Justice and has been charged with the responsibility of supervising and directing the administration and operations of that Department. Further, the Federal Bureau of Investigation has been placed in the Department of Justice with the Director of the FBI as its head. The FBI through Congressional enactment, Executive Order, and Directive of the Attorney General, has been charged with the responsibility of performing certain specific subject to the general supervision and direction of the Attorney General. The Director of the FBI, as Bureau director within the Department, having been granted the Director of the FBI responsibility, must attain a proper balance between independence and responsiveness in regard to properly discharge this responsibility.

2. The present policy: Disclosures of political and business corruption and white collar crimes during the investigation of land fraud and antitrust cases in the early 1920's, coupled with the recognition of the need for an investigative arm within the Department of Justice subject to the control, led to the creation of the Bureau of Investigation (forerunner of the Federal Bureau of Investigation) within the Department in 1903. In an effort to reverse a trend of political influence within the Bureau and the Department, Attorney General Harlan Fiske Stone in 1924 appointed J. Edgar Hoover as Acting Director of the Bureau. Shortly thereafter Attorney General Stone dictated that the Director of the FBI be directly responsible to him with respect to the operations of the Bureau as a whole. In addition, it was understood that the Director of the FBI be directly responsible to him with respect to the operations of the Bureau as a whole. In addition, it was understood that the Bureau was to operate free of political influence and limit its investigative activity to certain violations over which the Bureau had jurisdiction.

This pact was formed to give the Director, charged primarily with delegated investigative responsibility, a degree of independence recognized as so necessary for him to properly discharge his duties and responsibilities as so necessary for him to properly discharge his duties and

JFH:CSH (6) Attachment to memo to Deputy Attorney General, 10/16/73, captioned "Substantive Issues re Future of the FBI".

Attachment to memo to Deputy Attorney General, 10/16/73, captioned "Substantive Issues re Future of the FBI" ENCL

62-2472-34j

62-2472-34j

ENCLOSURE

~~still remain subordinate to the Attorney General, who had been charged primarily with a prosecutive function. Codification of duties to be performed by the Attorney General as head of the Department of Justice, and the Director as head of the FBI within that Department, plus recognition that both must attempt to perform their related duties within the criminal justice system to the optimum, has led to the necessity for a substantial degree of independence on the part of the Director, balanced with a responsiveness by him to reasoned counsel, guidance, supervision and control by the Attorney General.~~

3. The issues raised:

- (a) During the "Princeton Conference" it was said that time and practice have made the FBI a totally separate power answerable to no one. More specifically, the Attorney General, Presidents and Congress have granted power and responsibility to the FBI but have failed to direct, guide and control it.

(b) During the course of the FBI investigation of the "Watergate break-in," allegations were made that the FBI was too responsive to demands made upon it, particularly those of a political nature.

4. Options for future policy: The Director of the FBI, as head of the principal investigative Bureau within the Department of Justice, must be permitted to discharge his responsibility for investigation without fear of political punishment. To this end he has ample with his responsibility to maintain responsibility for the actions of General's leadership and direction of the Department, having the principal function of enforcement of the Federal statutes through prosecutions. A first step would be for Congress, or at all, to give the FBI research, guidance and direction, could greatly assist the FBI in achieving and maintaining this balance.

~~There must be an efficient working relationship, with free and open channels of communication between the Director and the Attorney General, due to their mutual and interlocking responsibilities in the criminal justice field, primarily investigative on the part of the FBI and prosecutive on the part of the Department. This relationship should generate, at descending levels in the Department and the FBI, a commitment to accomplish an efficient work flow, in appreciation of the impact of this interaction on the~~

~~entire criminal justice system. Because of the multiple and varied responsibilities of the FBI, the Attorney General-Director relationships and the counterpart division relationships should insure a smooth and coordinated effort which will enable the accomplishment of major objectives, while at the same time providing necessary FBI services to other elements of the criminal justice system.~~

~~That we are well aware of our role and responsibilities in this regard, and to cite only one of several examples, is evidenced by the operation of the Computerized Criminal History Program which provides much needed data to all branches of the system. Thus, to the extent possible, these relationships should be such that both objective achievement and mutual assistance between components of the systems are enhanced.~~

~~With regard to other continuing relationships having a bearing on the Attorney General-FBI Director relationship, the FBI head must communicate directly with the President on occasion, and with the recent establishment of a Congressional oversight committee, direct contact will be maintained with this group. Concerning ultimate alternatives in the relationship, the FBI Director shall be in a position to register reasonable disagreement at times and, if the situation arises, to take his position before a congressional hearing with the President and with the Congressional oversight committee.~~

INQUIRY # 7

INQUIRY # 7

NW#88608 DocId:32989541 Page 100

NW# : 88608

DocId: 32989541

1-1 Mr. Miller
1-1 Mr. Wrenall
1-1 Mr. Minz
1-1 Mr. T. Smith

The Acting Attorney General

December 11, 1973

SP-114 REC-33

Director, FBI

62-2-244722-3562

December 11, 1973

STUDY OF FBI PROGRAMS AND POLICIES

Reference is made to your letter of December 5, 1973,
captioned as above.

I fully support the idea of a study being launched for the purpose of considering the need for additional legislation to enable the FBI to counter violence in the time of crisis such as existed at the time the FBI implemented the COINTELPRO - New Left.

As you know, the FBI has conducted an in-depth study of the scope of its jurisdiction and authority and it was concluded that additional legislation is needed to enable us to more fully discharge our responsibilities relating to the national security. Copies of this study have been furnished to the Department.

As for the general study of programs and policies of the FBI which was initiated by former Deputy General Counsel and the former Deputy Attorney General, Rockefellers, we have completed our study of the information requested. However, as pointed out during the meeting on December 5, 1973, information requested in Item No. 7 relating to Investigative Techniques was not broadly requested by Mr. Rockefellers but it encompasses extremely sensitive foreign intelligence collection techniques. Such information is so closely held in the FBI that it is handled on a strictly need-to-know basis. We therefore do not feel that the information should be included in a study of this type which will be beyond the control of the FBI.

Mr. Petersen noted at the meeting that such information is needed if we expect to get legislation which would give us the authority we need in the sensitive foreign field. We recognize this is needed if we expect to get legislation which would give us the authority we need in the sensitive foreign field. We recognize this.

TJS:man (7)

SEE NOTE, PAGE TWO

TJS:man (7)

SEE NOTE, PAGE TWO

58 JAN 8 1974

FBI

JAN 8 1974

REC'D 1/11/74

REC. UNIT

REC. UNIT

Telephone No.

NW# 88608 MAIL ROOM DocID# 2989541

~~The Acting Attorney General~~

but we feel that such could be handled during oral briefings during
~~but we feel that such could be handled during oral briefings during~~
high-level conferences. In this regard, you have designated
~~high-level conferences. In this regard, you have designated~~
Messrs. Henry E. Petersen, Robert Dixon, J. Stanley Pottinger,
~~Messrs. Henry E. Petersen, Robert Dixon, J. Stanley Pottinger,~~
and Irving Jaffe to be available for consultation and advice.
~~and Irving Jaffe to be available for consultation and advice.~~

I am designating Assistant to the Director-Deputy
~~I am designating Assistant to the Director-Deputy~~
Associate Director Edward S. Miller; Assistant Director W. R. Wannall,
~~Associate Director Edward S. Miller; Assistant Director W. R. Wannall,~~
Intelligence Division; Inspector John A. Minz, Legal Counsel, and
~~Intelligence Division; Inspector John A. Minz, Legal Counsel, and~~
Inspector Thomas J. Smith, Intelligence Division, to meet with the
~~Inspector Thomas J. Smith, Intelligence Division, to meet with the~~
attressor for the purpose of resolving issues bearing on FBI programs
~~aforesaid for the purpose of resolving issues bearing on FBI programs~~
and policies.
~~and policies.~~

I feel that it would be highly profitable if the Department
~~I feel that it would be highly profitable if the Department~~
and FBI representatives could arrange a two- or three-day conference
~~and FBI representatives could arrange a two- or three-day conference~~
near from Washington, possibly at our Quantico facilities, where conference
~~nearby. The objective would be to discuss problems, both internal and external,~~
and during which recommendations for positive action could be held
~~and during which recommendations for positive action could be held~~
formulated. If circumstances permit, I will try to arrange something for soon
~~if circumstances permit, I will try to arrange something for soon~~
after the first of the year.

NOTE:

NOTE: A conference was held 12/5/73, between Mr. Bork and the
Director. Also present were Assistant to the Director Edward S.
~~A conference was held 12/5/73, between Mr. Bork and the~~
Miller and Inspector Thomas J. Smith from the Bureau and
~~the Director. Also present were Assistant to the Director Edward S.~~
Mr. Henry E. Petersen. Relet was discussed at the conference.
~~Mr. Henry E. Petersen. Relet was discussed at the conference.~~
The letter was deemed necessary because of the Carl Stern suit.
~~The letter was deemed necessary because of the Carl Stern suit.~~
involving his request under the Freedom of Information Act for
~~involving his request under the Freedom of Information Act for~~
documents relating to the COINTELPRO - New Left. Mr. Bork feels
~~documents relating to the COINTELPRO - New Left. Mr. Bork feels~~
that the Bureau and Department should study need for future
~~that the Bureau and Department should study need for future~~
legislation in connection with issues relating to the COINTELPRO.
~~legislation in connection with issues relating to the COINTELPRO.~~

Memorandum

TO : Clarence M. Kelley, Director
Federal Bureau of Investigation

DATE: December

FROM : Robert H. Bork, Acting Attorney General

RHB

SUBJECT: Study of FBI Programs and Policies

As you know, a general study of the programs and policies of the FBI was initiated in July by former Attorney General Richardson, former Deputy Attorney General Shuckburgh, and yourself.

As Acting Attorney General, I have continued to support this effort and you and I have discussed various approaches to further implementation of the study. In addition, I have discussed with the members of the study committee what steps should be taken to assure that he has properly advised me of on-going matters pending before the Department, particularly as a result of our conversations with him, before the completion of the study without causing unnecessary delay. What the new Attorney General measures will be the highest priority when the new Attorney General assumes office.

A new dimension was added, however, as a result of a suit filed against the FBI and the Nixon administration for the disclosure of information about its reporter for the National Press Club. This demonstrates the importance of the study information, capacity as Solicitor General. I decided that the law and the public policy expressed in the Freedom of Information Act did not warrant appealing the district court's decision that the documents in question must be provided to Mr. Stern. I understand that the material is in the process of being turned over to Mr. Stern. ST-114

Meanwhile, it is appropriate - indeed imperative - that you complete as rapidly as possible the inquiry into investigative techniques that you and Mr. Ruckelshaus had begun. As you and I have agreed, the study should focus in particular on the programs and activities referred to in the report. As you and I have agreed, the study should focus in particular on the programs and activities referred to in the report on these matters as expeditiously as possible, and that your report include a detailed summary of conduct in the 1973 period under such programs and actions taken to insure that the rights of individuals are not violated while essential FBI investigations are pursued. In terms of priority, I think that the program COINTELPRO - New Left should receive first investigations are pursued. In terms of priority, I think that the program is supposed to receive the highest priority. This document is supposed to remain in your possession and to not be disclosed to unauthorized personnel without the express approval of the FBI.

1. Identification	2. Authorization
3. Configuration	4. Affiliation
5. File & Com.	6. Check In
7. Ident.	8. Inspection
9. Intel.	10. Maint.
11. Laboratory	12. Plan. & Eval.
13. Spec. Inv.	14. Spec. Inv.
15. Training	16. Legal Coun.
17. Telephone Rx.	18. Telephone Rx.
19. Director Rec.	20. Director Rec.

consideration. I also seek your recommendations as to any corrective action that should be taken either by you or by the Attorney General. It may be that the best solution would be additional legislation.

In addition to the general support of the Department and its personnel to assist you in your undertaking, I am specifically designating four Department officials to make themselves available to you, individually or as a group, for consultation and advice. They are Harry E. Peterson, Assistant Attorney General in charge of the Criminal Division, Robert Nixon, Assistant Attorney General in charge of the Office of Legal Counsel, J. Stanley Pottinger, Assistant Attorney General in charge of the Civil Rights Division, and the acting head of the Civil Division, Irving Jaffe. They will also be available to the incoming Attorney General for the same purpose. They will also be available to the incoming Attorney General for the same purpose.

I know that you agree with me that it is critical to the national interest that we will be able effectively to counter evidence in time of crisis and that there be no question for public doubt concerning the legitimacy of its actions.

INQUIRY # 8

INQUIRY # 8

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NW# : 88608

DocId: 32989541

FILES AND THEIR DISCLOSURE

I. Problem:

Mr. William D. Ruckelshaus, in Item #8 of memorandum to the Director dated 7/20/71, stated, "The whole question of files and their disclosure must be studied with a view toward understanding why files are kept, what categories of files there are, what information is contained in the files and whether the purposes for maintaining files are being met under present policy. In the issue of disclosure, when, where, and to whom must also be thoroughly examined." ~~Mr. William D. Ruckelshaus in Item #8 of memorandum to the Director dated 7/20/71, stated, "The whole question of files and their disclosure must be studied with a view toward understanding why files are kept, what categories of files there are, what information is contained in the files and whether the purposes for maintaining files are being met under present policy. In the issue of disclosure, when, where, and to whom must also be thoroughly examined."~~

As problems involved in creation and maintenance of files and disclosure of information contained in them are rather complex they are being discussed separately. Identification Division records consisting of fingerprint cards and identification records (Rap Sheets) are not considered to fall in this category of "Files" and their use is not being commented upon.

II. Present Policy

II. Present Policy

A. Why Files Are Kept:

A. Why Files Are Kept:

Age of information in FBI files covers a relatively short span of years. FBI had ~~very few files until the Presidency of Franklin Roosevelt in 1933, redirected the FBI's responsibility for the Internal Security of the United States in 1933, and as the number of violations of law over which the FBI has jurisdiction has nearly tripled since 1939, the amount of work files have increased~~ since 1939, the vast majority of FBI files have been created since 1939.

Regulations of National Archives and Records Service, (NARS) General Services Administration, which are based on Title 44, Chapter 33, Sections 2301 and 2302, U. S. Code, govern the type of material which we must maintain. Record material is described as including "all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or suitable for preservation by that agency or its legitimate successor as evidence or in connection with the transaction or public business and preserved or evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein."

This document is prepared in response to your request and is not for distribution outside your Committee. Its use is limited to official proceedings by your Committee and the content may not be disclosed to unauthorized personnel without the express approval of the FBI limited to official proceedings by your Committee. (CONTINUED - OVER)

(CONTINUED - OVER)

In view of this definition of record material, we are required to retain any material which we have made or received during the course of public business, and which has been preserved or is appropriate for preservation.

In 1969, NARS surveyed the records of the Department of Justice, including those of FBI and subsequently instructed that certain categories of FBI files at FBIHQ be retained indefinitely. Included were files which would have historical value and would document policies, procedures, functions, budgetary policies, etc. In addition, vast majority of investigative files must be kept indefinitely although it was prescribed that only a representative sampling of certain types of violations at five year intervals be retained. These requirements apply only to files at FBIHQ. NARS has previously approved destruction of closed field files as all pertinent information is in files at FBIHQ. As a practical matter, however, field investigative files are retained 10 years before being destroyed. As a practical matter, however, field investigative files are retained 20 years before being destroyed.

The FBI has an active program to keep its records at FBIHQ to the barest minimum. While certain categories of files, as previously mentioned, must be retained permanently, some are obsolete and useless. With approval of NARS we destroy certain categories of such obsolete material. Within several of the larger categories are: Results of investigations over 25 years old regarding alleged governmental and economic activities where no complainants, victims, or witnesses can be located; cases where the culprits are unknown, and investigations where the perpetrators of the crimes were never identified.

In order to reduce amount of storage space required for files we microfilm, with approval of NARS, majority of files regarding criminal violations which are over 10 years old.

B. Categories of Files

B. Categories of Files

Material is filed into one of the following general types of files:

Material is filed into one of the following general types of files:
Main Files

Main Files

A main file is opened on an individual, organization, or subject matter when there will be an adequate volume of mail or the matter is deemed of sufficient importance to be assembled in one place. Main files are referred to as "Case Files" when we are making an investigation. Sufficient importance to be assembled in one place. Main files are referred to as "Case Files" when we are making an investigation.

General Files

General files are used for nonspecific violations, complaints over which we have no jurisdiction, and miscellaneous matters. General files are also maintained on various individuals, organizations, foreign, local, and state law enforcement agencies as well as federal agencies for information regarding cooperation, liaison, general organization, etc.; associations; patriotic organizations such as the American Legion, newspapers, magazines, radio and television stations which cooperate with the Bureau in locating fugitives and to whom we give press releases; and activities of foreign nations such as Soviet and satellite activities, etc.

Control Files

Control Files

Control files are maintained for the purpose of having all information regarding a specific matter immediately available without the necessity of reviewing numerous case files. An example is "Warrants Against the President." Investigating case files are opened for each threat "which we conduct an investigation," however, file copy is placed for the control files so that all such threats investigated in one place may be placed in the control file so that all such threats are recorded in one place.

Policy Files

Policy Files

A policy file is maintained for each violation over which the FBI has investigative jurisdiction along with various specific programs arising from this jurisdiction.

Administrative Files

Administrative Files

Administrative files are maintained on statistical reports, appropriations, conferences, training schools, FBI National Academy matters, and related subjects.

Set-up Files

Set-up Files

These are files which are set up by locality or special category with subs for field offices, states, continents, or foreign nations. Almost any type of file can be made a set-up file if the volume of mail expected is great enough or if the supervision of the subject matter is divided among several Special Agent Supervisors according to locality.

C. Type of Information Contained in the Files

Generally speaking, there are no limits as to the type of information in our files. The FBI, by the very nature of its jurisdiction and its worldwide reputation as an elite law enforcement agency, attracts information. In addition to being responsible for investigations relating to interstate criminal activity throughout the United States, the FBI is also responsible for the Internal Security of the United States. Any intelligence organization survives on information uncovered by investigation or received from other sources. Citizens write to the FBI regarding any matter which they feel is against the best interests of the United States or where they feel an individual or organization might be violating a law. The average citizen is not aware of the jurisdiction of the various investigative agencies, local, state or Federal and many of them bring their problems to the FBI. The FBI will promptly disseminate any matter which is under the jurisdiction of another agency to that agency. The said disseminated information is either acted upon and filed, or filed because no action is required. information is either acted upon and filed, or filed because no action is required.

In addition to the filing of material relating to criminal and security matters, ~~in the interest of the springfield federal bureau of investigation type (the group)~~ investigations and the information developed during these investigations and the information developed during these investigations is filed.

D. Disclosure of Information in FBI Files

D. Disclosure of Information in FBI Files

1. Responsibility for Proper Utilization of Information

1. Responsibility for Proper Utilization of Information

Among the foremost of the FBI's responsibilities is the proper utilization of information received either through investigative activities or through other means as this information may be of vital interest to another Government agency or a local law enforcement agency. It is extremely important that the FBI keep ~~these as this information may be of vital interest to another Government agency or a local law enforcement agency. It is extremely important that the FBI keep these agencies informed concerning matters in which they would have a legitimate interest. Information is disseminated at both field and Headquarters level, with FBIHQ making the information available to Federal agencies at the national level.~~ ~~these agencies informed concerning matters in which they would have a legitimate interest. Information is disseminated at both field and Headquarters level, with FBIHQ making the information available to Federal agencies at the national level.~~

2. Basis for Dissemination

2. a. To Government Agencies

The ~~FBI is under obligation to act as a clearing house for information which affects the Internal Security of the United States. This obligation is based on the following:~~ ~~The FBI is under obligation to act as a clearing house for information which affects the Internal Security of the United States. This obligation is based on the following:~~

~~1. Beginning in 1939, various Presidential directives requested all law enforcement officers to report information regarding espionage, sabotage, subversive activities and related matters to the FBI. These directives charge the FBI with the responsibility of correlating the material and referring matters under jurisdiction of other Federal agencies to the appropriate agencies.~~

~~2. The Delimitations Agreement between the FBI and the Armed Forces intelligence agencies provides that the responsibilities assumed by one organization in a given field carries with it the obligation to exchange freely and directly with other subscribing organizations all information of mutual interest. In addition, a supplemental agreement provides that certain information of general interest to the intelligence services of the Armed Forces be furnished them.~~

~~3. The National Security Act of 1947 provides that upon written request from the Director of Central Intelligence Agency (CIA) the Bureau shall make available information for correlation, evaluation and dissemination essential to national security.~~

~~4. Executive Order 10450 (Security of Government Employees) requires the FBI to check names of all civil applicants and civil incumbents of any department or agency of the Executive Branch against records of the FBI.~~

~~5. Supplement Number Four (Revised) of Departmental Order 3484, signed by the Attorney General in January, 1953, classified all official records and information of the FBI as "Confidential." However, in accordance with long-standing policy concurred in by the Attorney General, the practice of passing to other Government agencies information coming to the FBI's attention in connection with the conduct of investigations normally within the Bureau's jurisdiction was entirely appropriate and correct. The Attorney General advised the Bureau it would be remiss in its duty if it failed to pass along information which might prove of interest to the general welfare.~~

b. White House Requests

b. White House Requests

Pursuant to requests from the White House, the names of individuals who attend, serve or perform at White House functions, the names of individuals no longer in the White House, former Bureau files including ~~considered~~ ~~and~~ ~~the~~ ~~President's~~ ~~records~~ ~~for~~ ~~any~~ ~~individual~~ ~~which~~ ~~includes~~ ~~any~~ ~~individual~~ ~~in~~ ~~the~~ ~~White~~ ~~House~~ ~~or~~ ~~any~~ ~~other~~ ~~person~~ ~~who~~ ~~is~~ ~~a~~ ~~threat~~ ~~or~~ ~~danger~~ ~~to~~ ~~the~~ ~~President~~ ~~or~~ ~~the~~ ~~members~~ ~~of~~ ~~his~~ ~~family~~ ~~or~~ ~~friends~~ ~~or~~ ~~persons~~ ~~he~~ ~~trusts~~ ~~are~~ ~~handled~~ ~~expeditiously~~ ~~and~~ ~~only~~ ~~destroyed~~ ~~under~~ ~~the~~ ~~order~~ ~~of~~ ~~the~~ ~~President~~ ~~or~~ ~~any~~ ~~designated~~ ~~individual~~ ~~in~~ ~~the~~ ~~White~~ ~~House~~. The ~~President~~ ~~is~~ ~~notified~~ ~~directly~~ ~~of~~ ~~any~~ ~~information~~ ~~pertaining~~ ~~directly~~ ~~to~~ ~~the~~ ~~White~~ ~~House~~ ~~staff~~ ~~security~~ ~~problems~~ ~~by~~ ~~the~~ ~~White~~ ~~House~~ ~~security~~ ~~officer~~ ~~or~~ ~~by~~ ~~the~~ ~~White~~ ~~House~~ ~~security~~ ~~committee~~ ~~or~~ ~~any~~ ~~other~~ ~~appropriate~~ ~~communications~~ ~~department~~ ~~or~~ ~~agency~~ ~~of~~ ~~the~~ ~~Government~~. The ~~President~~ ~~is~~ ~~notified~~ ~~directly~~ ~~of~~ ~~any~~ ~~information~~ ~~pertaining~~ ~~directly~~ ~~to~~ ~~the~~ ~~White~~ ~~House~~ ~~employees~~ ~~and~~ ~~persons~~ ~~having~~ ~~regular~~ ~~access~~ ~~to~~ ~~the~~ ~~White~~ ~~House~~. White House employees and persons having regular access to the White House.

For a number of years we have followed the practice of furnishing significant intelligence information, both in the domestic and foreign areas, on a timely basis directly to the White House concurrent with the dissemination of the same data to the Attorney General and other interested agencies, ~~of the same data to the Attorney General and other interested agencies~~. The Bureau disseminates by teletype to the White House and other interested agencies summary data concerning civil unrest and acts of violence as they occur in the U.S. We also provide the White House by letter or teletype, as circumstances indicate, top-level intelligence data developed through our sources when it appears the President or senior members of his staff would have an interest. Some of this originates with our Legats and through our coverage of foreign establishments in the U.S. Simultaneous dissemination is made to the Attorney General who is advised of our dissemination to the White House.

~~It is noted that frequently the value of information being disseminated depends entirely on the timeliness of our dissemination. Therefore, direct and immediate dissemination to the White House is the only effective way to handle these matters.~~

c. Exceptions

c. Exceptions

i. Congressional Committees

1. Congressional Committees

The Attorney General on 3/14/54, ruled that the FBI shall make name checks and investigations of individuals being considered for staff positions of the following Congressional Committees when such requests are made by the chairmen:

- a. Senate and House Appropriations Committee
 - a. Senate and House Appropriations Committee
 - b. Senate and House Judiciary Committees
 - c. Senate and House Judiciary Committee
 - c. Joint Committee on Atomic Energy
(Cooperation extended to this Committee pursuant to the Atomic Energy Act of 1946)
 - c. Joint Committee on Atomic Energy
(Cooperation extended to this Committee pursuant to the Atomic Energy Act of 1946)
 - d. Senate Armed Services Committee
 - d. Senate Armed Services Committee

e. Senate Foreign Relations Committee

2. Supreme Court

The Bureau conducts name checks for the Supreme Court, which checks are normally limited to employees such as chairwomen, elevator operators and individuals of this type.

3. Foreign Intelligence Services

As a matter of cooperation with friendly intelligence services, the Bureau conducts name checks for the following such agencies who have liaison representatives stationed in Washington, D.C.

a. Royal Canadian Mounted Police (Canada)

a. Royal Canadian Mounted Police (Canada)

b. MI-5 (British Security Service)

b. MI-5 (British Security Service)

c. Australian Security Intelligence Organization (Australia)

c. Australian Security Intelligence Organization (Australia)

d. New Zealand Security Service (New Zealand)

d. New Zealand Security Service (New Zealand)

e. French Foreign Intelligence and Counterespionage

e. French Foreign Intelligence and Counterespionage Service

f. MI-6 (British Secret Intelligence Service)

f. MI-6 (British Secret Intelligence Service)

g. BFSS (Bureau For State Security) (South Africa)

g. BFSS (Bureau For State Security) (South Africa)

In addition, name check requests are conducted for cooperative foreign police and intelligence services through the Bureau's Legal Attaches stationed

In addition, name check requests are conducted for cooperative foreign police and intelligence services through the Bureau's Legal Attaches stationed in foreign countries. In a very limited number, name check requests are

handled for cooperative foreign police agencies by direct correspondence.

d. To Local and State Law Enforcement Agencies

The FBI traditionally has cooperated with local and state law enforcement agencies in matters of common interest. Pertinent information regarding local criminal matters is furnished to local and state law enforcement agencies when such dissemination will not jeopardize FBI investigations or informants. During Fiscal Year 1973, 189,910 items of criminal information were furnished by the FBI to local and state law enforcement agencies. During

Fiscal Year 1973, 189,910 items of criminal information were furnished by the FBI to local and state law enforcement agencies.

E. Type of Information Disseminated

Name check requests received from agencies within the Executive Branch, as a general rule, are checked against FBI files for "subversive-type" references only and criminal-type references are not reviewed. However, for some agencies, at their specific request, all references in Bureau files are reviewed. All agencies are aware of the limitation on the type of search made as they are furnished a copy of an FBI booklet describing procedures for requested name checks.

The policy of disseminating only "subversive-type" information is based on the fact that any agency desiring to obtain a copy of the individual's identification record showing his arrests may do so by submitting a separate request directly to the Identification Division. A second reason for limiting the search is due to economy as searching criminal-type references would require additional personnel and an increase in the cost of conducting name checks.

In response to name check requests, the Bureau disseminates the results of Bureau investigations, information received from reliable sources concerning membership in subversive groups, pertinent public source information, and information which good judgment and common sense dictate should be furnished. Information falling in the category of rumor or gossip which is found in Bureau files is not disseminated unless a compelling reason exists therefor, and when such information is disseminated to a requesting agency, that agency is alerted to the nature of the information and the fact that it has not been verified by the FBI. The nature of the information and the fact that it has not been verified by the FBI.

Derogatory information on Federal employees is furnished to the Civil Service Commission and where common sense dictates, it is also furnished to the employing agency. and where common sense dictates, it is also furnished to the employing agency.

F. How Dissemination is Made

F. How Dissemination is Made

I. Name Checks

I. Name Checks

When possible a copy of the FBI communication is furnished to the requesting agency. A record is maintained on the original of this communication that a copy was furnished to the particular agency. When information is located in numerous FBI communications, the pertinent data is abstracted and summarized into a separate communication. A copy of this communication is retained in numerous FBI communications, the pertinent data is abstracted and summarized into a separate communication. A copy of this communication is retained in FBI files.

2. Other Than Name Check Requests

~~Any information received by the FBI which is of interest to another Federal Agency is furnished in writing to that agency.~~

G. Protection of Information Disseminated

~~When reports or letterhead memoranda already in the file are disseminated to a requesting agency, each such document contains the following statement:~~

~~"This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.~~

~~agencies are not to be distributed outside your agency."~~

Data abstracted from the files and disseminated by letter or in letterhead memoranda form contains, in substance, a direct quote appearing above. In letterhead memoranda form contains, in substance, terminology appearing above.

III. Issues

III. Issues

Basic issue appears to be whether FBI should retain and disseminate information in its files which is not acquired as a direct result of its investigations.

IV. Options

IV. Options

There are no options. We are required by law to retain information which has been made or received in connection with the transaction of public business and which has been preserved or which is appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities or because of the informational value of data contained there. With respect to the dissemination of information to Federal agencies, we are required by law, Presidential directives, and instructions of the Attorney General to furnish information in our files to agencies of the Executive Branch. The exceptions cited previously are logical and no change is believed necessary. Likewise, the welfare of the general public requires that we continue our policy of furnishing pertinent information regarding local criminal matters to local and state law enforcement agencies. Likewise, the welfare of the general public requires that we continue our policy of furnishing pertinent information regarding local criminal matters to local and state law enforcement agencies.

INQUIRY # 9

INQUIRY # 9

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NW# : 88608

DocId: 32989541

1 - 1 Mr. Baker
1 - 1 Mr. E. S. Miller

September 1 a, 1973
September 1 a, 1973

Mr. William D. Ruckelshaus
Mr. William D. Ruckelshaus
The Deputy Attorney General - Designate
The Deputy Attorney General - Designate
Director, FBI
Director, FBI

1 - 1 Mr. T. J. Smith
1 - 1 Mr. T. J. Smith
1 - 1 Mr. Sizoo
1 - 1 Mr. Sizoo

X SUBSTANTIVE ISSUES REGARDING
SUBSTANTIVE ISSUES REGARDING
THE FUTURE OF THE FBI
THE FUTURE OF THE FBI

0 47B BI-I.

Reference is made to your memoranda to me captioned as above
and dated July 20 and August 20, 1973. Attached is the FBI's response to
Issue Nine of your July 20, 1973, memorandum. Attached is the FBI's response to
Issue Nine of your July 20, 1973, memorandum.

Enclosure

Enclosure

JMB:rlc AC

JMB:rlc NL

(7)

NOTE:

NOTE:

Mr. Ruckelshaus' memorandum 7/20/73 enumerated 11 issues
regarding FBI reorganization and operation being studied by him. The issues
3/20/73 memorandum from Mr. Ruckelshaus set forth the format for response
for issue nine, which concerns the creation of a Civilian Review Board
over FBI intelligence gathering activities. Our response opposes creation
of such a board.

B SEP 20 1973
B SEP 20 1973

ENCLOSURE

ENCLOSURE

MEMORANDUM

RECORDED

SEP 20 1973

FBI

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54 SEP 24 1973

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8. Problem - The question of a Civilian Review Board for the intelligence-gathering activities of the FBI should be examined. This is a recurrent suggestion which came up at the Princeton Conference, in addition to other forums.

Policy - There is no Civilian Review Board to monitor the FBI inasmuch as various checks and reins are available to check or control the FBI. (See Options)

Issue - Is it necessary to have a group of civilians review the FBI's policy and activities to insure that nothing improper is being done and to handle complaints regarding the FBI?

Options - No Civilian Review Board is required since numerous means exist to control the FBI. Specifically, the Senate Select Committee on Intelligence and the House Appropriations Committee, Senate Oversight and Management Subcommittees, the National Security Committee, the President's Foreign Intelligence Advisory Board, the Civil Service Commission, the President's Attorney General, the Department of Justice, the Federal Courts, the news media and of course public opinion. The President's Foreign Intelligence Advisory Board is in reality a civilian review board for the President. Its members are non-government personnel qualified in matters relating to national defense on the basis of their knowledge and experience. Especially is the FBI opposed to the concept of civilian boards exploring the field of FBI counterintelligence and intelligence-gathering operations. Especially is the FBI opposed to the concept of civilian boards exploring which would adversely affect this Bureau's relations with foreign intelligence agencies. In general, we feel that the Congressional oversight concept should have put this question to rest.

JMS:rlc

JMS:rlc
NOTE:

NOTE: See memorandum to Mr. Ruckelshaus, captioned "Substantive Issues Regarding the Future of the FBI: dated 9/19/73, prepared by JMS:rlc.
See memorandum to Mr. Ruckelshaus, captioned "Substantive Issues Regarding the Future of the FBI: dated 9/19/73, prepared by JMS:rlc.

62-24172-344

ENCLOSURE

ENCLOSURE

62-24172-344

INQUIRY # 10

INQUIRY # 10

NW# 88608 DocId:32989541 Page 118

NW# : 88608

DocId: 32989541

I. THE PROBLEM:

~~What should be the relationship between the Federal Bureau of Investigation and the other Departments and Agencies of the Federal Government? To what extent should the Federal Bureau of Investigation keep tabs on other Departments and Agencies through the development of sources and informants in those Agencies?~~

II. THE PRESENT POLICY:

A. Relationship between the Federal Bureau of Investigation and other Departments and Agencies of the Federal Government

The Federal Bureau of Investigation enjoys a close working relationship with the other Departments and Agencies of the Federal Government and traditionally has cooperated fully with local, State and Federal agencies in matters of common interest.

Cooperation among the Federal Bureau of Investigation and other Federal Departments and Agencies takes several forms, including another ~~Cooperation and Agreements between the Federal Bureau of Investigation and other Federal Departments and Agencies, such as memorandums, contracts, grants, high-level memoranda, and agreements, for joint investigative or jurisdictional purposes, in which the Federal Bureau of Investigation and other federal agencies have concurrent jurisdiction; and shared responsibility for enforcing a Federal Statute. The purpose is of the cooperation, agreement, and guidelines is to promote the closest possible cooperation and coordination between the involved agencies, to insure there is no duplication of effort in any field, and to insure that proper coverage is maintained.~~

In addition to the above cooperative means, the Federal Bureau of Investigation maintains the following programs relevant to its relationship with other Federal Agencies and Departments:

1. FBI Liaison Program

1. FBI Liaison Program

In order to insure adequate and effective liaison arrangements with other Government agencies, the Federal Bureau of Investigation maintains a Liaison Section within its Intelligence Division at Federal Bureau of Investigation Headquarters. The objective of this section is to insure that the Federal Bureau of Investigation's business with other U. S. Government Agencies is accomplished promptly, effectively, economically, and with a minimum of jurisdictional or policy problems, through appropriate high-level liaison with key officials of these Agencies.

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~~By the establishment of effective liaison contacts, we recognize and solve minor problems before they become major problems, requiring protracted and expensive negotiations between the Federal Bureau of Investigation and other Agencies. These objectives are achieved by placing experienced FBI representatives in contact with officials at the highest levels of other Government Agencies where the Federal Bureau of Investigation either needs assistance or has concurrent interests. The Federal Agencies with which the Federal Bureau of Investigation currently maintains direct personal liaison are:~~
~~Federal Bureau of Investigation currently maintains direct personal liaison are:~~

- (a) The White House
- (b) ~~The White House~~
Office of the Vice President
- (c) ~~Office of the Vice President~~
National Security Council
- (d) ~~National Security Council~~
Foreign Intelligence Advisory Board
- (e) ~~Foreign Intelligence Advisory Board~~
Drug Enforcement Administration
- (f) ~~Drug Enforcement Administration~~
Central Intelligence Agency
- (g) ~~Central Intelligence Agency~~
Federal Inspection Service
- (h) ~~Federal Inspection Service~~
~~(i) Department direct liaison with various elements of Army, Navy, Air Force, and Marine Corps~~
National Security Agency, and Marine Corps)
- (i) ~~National Security Agency~~
Atomic Energy Commission
- (j) ~~Atomic Energy Commission~~
Department of Transportation
- (k) ~~Department of Transportation~~
Department of State
- (l) ~~Department of State~~
~~(m) Department of the Treasury~~
Internal Revenue, Bureau of Customs, Bureau of Alcohol, Tobacco and Firearms, Secret Service)
- (m) ~~Internal Revenue, Bureau of Customs, Bureau of Alcohol, Tobacco and Firearms, Secret Service~~
Immigration and Naturalization Service
- (n) ~~Immigration and Naturalization Service~~
U. S. Marshal Service
- (o) ~~U. S. Marshal Service~~

Liaison with other Federal Agencies is handled by receiving telephone calls and visits from representatives of those Agencies, and by contacts with them on an irregular basis as the need may arise.

~~Liaison with other Federal Agencies is handled by receiving telephone calls and visits from representatives of those Agencies, and by contacts with them on an irregular basis as the need may arise.~~

In addition to maintaining close liaison with various Federal Agencies at the Headquarters level in Washington, D. C., FBI regulations call for an effective liaison program at the field level. The Special Agents in Charge (SACs) of the FBI's fifty-nine field offices are directed to specifically designate an Agent (or Agents) to be responsible for developing and maintaining liaison with other Federal Agencies represented locally. In each instance, liaison contacts are developed to include a close friendly relationship, mutual understanding of the Federal Bureau of Investigation and Agency jurisdictions, and an indicated willingness by the Agency representative to coordinate activities and to discuss problems of mutual interest, and Agency jurisdictions, and an indicated willingness by the Agency representative to coordinate activities and to discuss problems of mutual interest.

2. Dissemination of Information

The proper utilization of information received by the FBI either through investigation or otherwise, is foremost among our responsibilities. Such information may be of vital interest to another Government agency and/or local law enforcement agency, and it is not FBI policy to withhold from dissemination information to which other agencies are justifiably entitled. Dissemination of information to other agencies is handled at the Headquarters level in Washington, D.C., as well as in the field.

The FBI serves as a clearing house for information affecting the internal security of the United States. This is based on various Presidential directives which have specifically requested all law enforcement officers to report information regarding espionage, sabotage, subversive activities, and related matters to the FBI. These directives charge the FBI with the responsibility of correlating this material and referring to other Federal agencies under their jurisdiction and any other Federal Agency with responsibilities in that field to the appropriate Federal Agency with responsibilities in this field to the appropriate Agencies.

Various agreements between the FBI and other Federal Agencies provide for exchange of information of mutual interest and require that the FBI disseminate certain information to other Departments and Agencies of the Federal Government. An example is the agreement between the FBI and U.S. Secret Service concerning protective responsibilities which requires that we disseminate to Secret Service certain information which by its nature reveals a definite or possible threat to the President's safety.

Under provisions of Executive Order 10450 the FBI checks names of all civil applicants and civil incumbents of any department or agency of the Executive Branch against FBI records.

~~Under provisions of Executive Order 10450 the FBI checks names of all civil applicants and civil incumbents of any department or agency of the Executive Branch against FBI records.~~

In August, 1972, the FBI instituted a program aimed at providing effective and expanded coordination of efforts with the local, state and Federal Agencies having direct responsibilities in the narcotics field. Each FBI office has designated an Agent to act in a liaison capacity as a narcotics coordinator and FBI Headquarters has designated a national narcotics coordinator to expedite this program. Any information received by the FBI concerning narcotics is promptly disseminated to the Drug Enforcement Administration, which is charged with the responsibility of enforcing the various drug laws. The Drug Enforcement Administration, which is charged with the responsibility of enforcing the various drug laws.

3. Cooperative Services

In its traditional role of seeking professionalism at all levels of law enforcement, the FBI is enthusiastically committed to providing expert assistance to local, State and Federal law enforcement agencies. Some of the facilities of the FBI available to Federal law enforcement agencies are:

- (a) The FBI Identification Division. The FBI is the central repository for fingerprint identification information. Data from the identification records are furnished to law enforcement and governmental agencies at the Federal, State, and local levels for official use only.
- (b) The FBI Laboratory. The FBI maintains a well-equipped technical laboratory at its Headquarters in Washington, D.C., for the investigation and prosecution of local, State and Federal law enforcement agencies, and prosecutors throughout the United States. An excellent working relationship now exists between the FBI Laboratory and the laboratories of the Federal Agency experts for the exchange of technical data and procedures. The services of the FBI Laboratory are made available on a cost-free basis to the Federal Agencies, FBI Field Offices, and criminal matters, and to State and local law enforcement agencies in criminal matters only. Expanded programs of scientific aid and training to State and local crime laboratories are presently under development and will involve the continuing close cooperative efforts of local, State and Federal Agencies and the FBI.
- (c) The National Crime Information Center (NCIC). The FBI's NCIC is a computerized information system established as a service to all law enforcement agencies--local, State and Federal. The system operates by means of computers, data transmission over communication lines, and telecommunication devices. Its objective is to improve the effectiveness of law enforcement through the more efficient handling and exchange of documented police information. In the beginning, NCIC contained data concerning stolen property and wanted persons. In November, 1971, NCIC operations were extended to include a file of offenders' criminal histories, which is known as the Computerized Criminal History (CCH) file. In September, 1971, NCIC operations were expanded to include a file of offenders' criminal histories, which is known as the Computerized Criminal History (CCH) file.
- (d) The FBI National Academy. Since its establishment in 1935, the FBI National Academy has provided a professional training program of highest quality to career officers from throughout the law enforcement community. At its new training facilities at Quantico, Virginia, during Fiscal 1973, 1004 officers from various local, state, Federal and foreign law enforcement agencies completed the intensive 12-week course. This course is designed to enhance an officer's capabilities as a law enforcement administrator and to better prepare him to teach his fellow officers.

~~Although many officers from other Federal law enforcement agencies attend the FBI National Academy each year, the number in attendance is limited due to the mandate that the FBI provide this service to local and state law enforcement officers.~~

B. Extent to which the FBI should keep tabs on other Departments and Agencies through the development of sources and informants in those Agencies

~~The FBI does not have the authority or responsibility to keep tabs on other Departments and Agencies of the Federal Government; therefore, it does not have any policy whereby it checks on other Departments and Agencies. Because of the lack of FBI jurisdiction to keep tabs on other Federal Departments and Agencies, no effort has ever been made for the development of sources and informants in those Agencies for that purpose.~~

~~Although the FBI does not keep tabs on other Departments and Agencies, it has long been FBI accepted practice among other agencies of the Government that the FBI would conduct investigations of violations of Federal law in those Agencies where primary investigative jurisdiction is vested in the FBI, and we do so on a regular basis. Violations of Federal law involving personnel of other Government Agencies over which the FBI has statutory investigative jurisdiction include bribery, civil rights, fraud against the Government, Theft of Government Property, and Federal Housing Administration matters. This is not a situation unique to the FBI. A comparable situation exists in which the U. S. Secret Service is charged with investigating the theft of a Government check. It carries out its responsibilities not only in its own Department (Treasury) but in all other Federal Agencies as well.~~

III. THE ISSUES RAISED:

A. THE ISSUES RAISED: ~~between the Federal Bureau of Investigation and other Departments and Agencies of the Federal Government~~

A. Relationship between the Federal Bureau of Investigation and ~~No other Department or Agency has ever raised relative to the present~~
~~present policy regarding its relationship with other Departments and Agencies of the Federal Government.~~ ~~None have ever been raised relative to the FBI's present policy regarding its relationship with other Departments and Agencies of the Federal Government.~~

- B. Extent to which the FBI should keep tabs on other Departments and Agencies through the development of sources and informants in those Agencies
-

In regard to the present policy of not developing sources and informants in other Federal Departments and Agencies for the purpose of keeping tabs on those agencies, no issues are known to have been raised.

IV. OPTIONS FOR FUTURE POLICY:

OPTIONS FOR FUTURE POLICY:

- A. Relationship between the Federal Bureau of Investigation and

other Departments and Agencies of the Federal Government and other Departments and Agencies of the Federal Government

It is imperative that there be a friendly, cooperative association between the FBI and other Departments and Agencies of the Federal Government. There must be an efficient working relationship with the various government channels of communications among all Federal Agencies. The Director of the FBI and the heads of other Federal Agencies should confer periodically on matters of mutual interest and definitely work together on all occasions. In order to avoid duplication of effort and problems of jurisdictional responsibilities there should be a clear delineation of duties and investigative limits for all Federal investigative Agencies.

A prevailing cooperative spirit throughout the entire Federal law enforcement community is a vital necessity in our Nation's war on crime and subversion. The rapid escalation of serious crime and the complexities of upholding the law in today's society have made it imperative that information, expertise, and resources be freely and expeditiously shared by all Federal investigative Agencies. Cooperation is a bilateral obligation. If the FBI does not continue to cooperate and reciprocate in exchange of information and resources with other Federal Agencies, it cannot conduct a successful operation. Therefore, it is my recommendation that the FBI continue its policy of working closely and cooperating fully with other Departments and Agencies of the Federal Government.

B. Extent to which the FBI should keep tabs on other Departments
~~Extent to which the FBI should keep tabs on other Departments~~
and Agencies through the development of sources and informants
in those Agencies

Inasmuch as no issues have been raised regarding the FBI's current policy in this area, and since a change in policy involving the FBI keeping tabs on other Federal Departments and Agencies through the development of sources and informants in those agencies could be most detrimental to all concerned, I recommend there be no change in the FBI's present policy in this area.

INQUIRY # 11

INQUIRY # 11

The Deputy Attorney General
The Deputy Attorney General

October 1, 1973

Director, FBI
Director, FBI

REINSTANTIATION ISSUE REGARDING
THE ORGANIZATION AND OPERATION OF THE FBI
INFORMATION MEMORANDUM

- 1 - Mr. Baker
1 - Mr. E. S. Miller
1 - Mr. E. S. Miller
1 - Mr. Boynton
1 - Mr. T. J. Smith
1 - Mr. T. J. Smith
1 - Mr. T. J. Smith
1 - Mr. J. M. Sizoo

Reference is made to your memorandum to me captioned as above and dated July 20, 1973. Attached is the FBI's response to issue eleven to that memorandum in the format requested in your August 20, 1973, memorandum captioned as above.

Enclosure
Enclosure

JMS: rlc/bjr
JMS: rlc/bjr

(8)

NOTE:

NOTE:

Mr. Buckleibush's memorandum 7/30/73 enumerated 11 issues regarding FBI organization and operation being studied by him. The 8/10/73 memorandum from Mr. Buckleibush set forth the format for response regarding FBI organization and operation being studied by him. The 8/20/73 memorandum from Mr. Buckleibush requests formal response to carry out FBI responsibilities. Our response recommends retention of the legal attaches abroad to carry out FBI responsibilities. Our response recommends retention of the legal attaches.

-ENDOURE
-ENCLOSURE



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Mr. Chairman - Should the FBI have foreign offices reporting directly to the Director?
Mr. Chairman - Should the FBI have foreign officers reporting directly to the Director?

Policy - The FBI has had Agents stationed abroad in American Embassies since 1940. This has not been a secret or classified fact. They are known since 1940. This has not been a secret or classified fact. They are known as Legal Attaches and are not operational. They do not conduct investigations but advise upon law enforcement and security agencies of the host government for coverage of FBI leads overseas. They maintain regular liaison with such agencies in countries where stationed, as well as in other countries that they visit on road trips.

Legal Attaches are regularly called upon to secure in-depth cooperation from foreign agencies on criminal and security matters which are frequently of a complicated and sensitive nature. These matters frequently include requests for surveillance, compromised interviews, information on incoming officials and records of foreign agencies, interpretations of laws and regulations in order to handle foreign nations effectively. Legal Attaches must be proficient in the language of the foreign country, a knowledge of its criminal justice system, its legal procedures and judicial processes. On the other hand, it requires of the Agent knowledge of FBI jurisdiction, regulations and policy. This knowledge, which can only be achieved through years of experience, as an FBI Agent, is extremely broad.

In addition, in order to maintain the cooperation of foreign agencies, Legal Attaches assist these agencies by having investigations conducted in the United States concerning matters of interest to the foreign agencies. Legal Attaches assist these agencies by having investigations conducted in the United States concerning matters of interest to the foreign espionage and terrorist cases which are often of substantive interest to the FBI.

Numerous problems arise in connection with handling leads abroad and matters in this country on behalf of foreign countries. Since each country is different with regard to its laws, customs, language and tradition, the FBI has found it necessary and in fact invaluable to have a man stationed abroad, on the scene, who can insure that prompt and efficient action is taken and that cooperative relationships are nurtured and protected.

JMS:rlc (7)

JMS:rlc (7)

SEE NOTE PAGE 6

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NW# 88608 DocId:32989541 ENCLOSURE

ENCLOSURE

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While our representatives abroad are still FBI employees, they are well aware that the American Ambassadors hold authority through various Presidential directives over the entire American presence in their respective countries of assignment and that all matters of interest must be coordinated with Ambassadors and their staffs. This includes political intelligence information acquired by Legal Attachés.

Issue - Is the FBI to continue using Legal Attachés to meet its responsibilities abroad? Is the FBI to continue using Legal Attachés to meet its responsibilities abroad?

Options:
Options:

1. Retain FBI representatives to carry out functions which have served since 1940 to assist the FBI and U.S. law enforcement agencies in their responsibilities covering foreign ramifications, as well as to assist foreign law enforcement and security agencies.

The liaison function of FBI representatives serves to develop and maintain ~~close~~ ^{close} ~~and friendly~~ ^{friendly} relationships with police and intelligence agencies in foreign countries to assist in the apprehension of fugitives with ~~vestigating~~ ^{vestigating} speed and facility. ~~the~~ ^{the} ~~cooperation~~ ^{cooperation} location and transportation, where held, of ~~and~~ ^{and} ~~expatriate~~ ^{expatriate} international agents which require constant liaison attention taken on immense international aspects which require constant liaison attention.

Accomplishments attained by the FBI through the liaison activities of the Legal Attachés with foreign law enforcement agencies in the past fiscal year (1973) include 1,042 FBI fugitives located; 109 fugitives located for state, local and other agencies; 167 automobiles recovered; and total property recovered worth \$2,260,725.00.

Retention of Legal Attachés will permit further accomplishments, such as in several specific cases set forth below. It is firmly believed that ~~Retention of Legal Attachés will permit further accomplishments, these successes would not have occurred in the absence of personal and direct FBI liaison with foreign police agencies in the countries involved.~~ ^{Retention of Legal Attachés will permit further accomplishments, these successes would not have occurred in the absence of personal and direct FBI liaison with foreign police agencies in the countries involved.}

~~The Legal Attaché, Beirut, has obtained through contacts a considerable amount of vital information concerning Arab terrorist activities which have become in recent years a major law enforcement problem throughout the world. The Central Intelligence Agency and the State Department have congratulated us on the intelligence information developed by this~~ ^{The Legal Attaché, Beirut, has obtained through contacts a considerable amount of vital information concerning Arab terrorist activities which have become in recent years a major law enforcement problem throughout the world. The Central Intelligence Agency and the State Department have congratulated us on the intelligence information developed by this}

~~particular Legal Attache. In addition, he recently uncovered an international car theft ring involving the theft of over 180 cars stolen in the U.S. and valued at \$700,000.~~

~~The Legal Attache, Buenos Aires, located and is currently attempting to arrange for the return of a subject from Argentina who was involved in a \$200,000 fraudulent traveler's check case. This office has also been successful in tentatively identifying two individuals in Argentina who have been involved in the disposition of part of \$5,000 worth of securities and bank money orders stolen in Chicago in 1971 during a robbery in which and blank money orders stolen in Chicago in 1971 during a robbery in which the owner was shot. This Legal Attache was commended by the American Ambassador in Buenos Aires for the part he played in the successful recovery of a hijacked American airliner in Buenos Aires which occurred without loss of life or damage to the aircraft. The Legal Attache, Buenos Aires, also played a leading role in preventing Meyer Lansky, the financial wizard of U.S. organized crime, from receiving asylum in South America. This action resulted in Lansky's return to the U.S. and arrest by the FBI on Federal criminal contempt charges.~~

~~The Legal Attache, London, has valuable contacts not only with New Scotland Yard but also with all major police departments in only with British Police and within his office has acted as a depositary for several Building Societies and FSA interests. He also maintains close liaison with British intelligence services. The recent trials of Peter Banks, alias of notorious criminal employee of the KGB, and Lucy of Birmingham, alias of alias for immediate apprehension with British authorities. For this he has maintained close contact with Scotland Yard and the London and the British Home Office since the City with Great Britain are primary targets to Soviet espionage, terrorism, and acts of terrorism. In particular, the British Home Office would become difficult had we lost the Legal Attache stationed in London. This would be most difficult had we not had a Legal Attache stationed in London.~~

~~The Legal Attache, Madrid, through the cooperation of Spanish police, was able to effect 14-hour coverage on Arab Al Qaeda representatives from Puerto Rico who visited and made contacts in Spain in June of this year. He also was able to arrange similar coverage on a visit to Madrid in 1973 of John Joseph Lombardozzi of the Carlo Gambino family of La Cosa Nostra. The John Joseph Lombardozzi of the Carlo Gambino family of La Cosa Nostra. The~~

~~SUBSTANTIVE
SUSPECT
PREDICTED
PROBABLE
SOURCE~~

~~SENSITIVE
SUSPECT
PREDICTED
PROBABLE
SOURCE
Covered~~

~~extensive police work needed for such coverage would certainly not have been put forth by the Spanish police had they not had a close personal friendship with and confidence in our Agent Attached.~~ 32 SEPTEMBER 1945

~~PERSONAL FRIEND~~
~~CONFIDENTIAL FOREIGN~~
~~POSITIVE FOREIGN~~
~~INTELLIGENCE SOURCE~~
~~INTELLIGENCE SOURCE~~

The Legal Attaches in Manila and Mexico City combined in a joint effort which resulted in the capture and return to the U.S. of a fugitive in connection with the theft of over 1 million dollars in California. This individual had fled to Australia in 1970 and extradition was impossible. The individual had fled to Australia in 1970 and extradition was impossible. The Legal Attaché, Manila, who handles Australia, determined that subject regularly traveled to Mexico. The Legal Attaché, Mexico City, arranged for his apprehension by Mexican authorities on a visit to that country.

Another example of the importance of foreign offices concerns the kidnaping of a Mexican child in Puerto, Mexico, by an American citizen. The ransom in the amount of \$105,000 was paid in New Orleans and the child was safely recovered in a hotel in Louisiana. Mexican police authorities developed very little information concerning this matter. The Legal Attache, Mexico City, however, through investigative guidance established the identity of the kidnapper and the fact that he had an estranged wife residing in Australia. The Legal Attache, Manila, working through Australian police had this woman interrogated and negative results in that she had no knowledge of the woman identified as the kidnapper. However, she advised that her husband had received large sums of money from Tel Aviv, Israel.

The Legal Attaché, Tel Aviv, through Israeli police located the subject, recovered part of the ransom money and arranged for his extradition to New Orleans for trial in New Orleans. There is no doubt whatever that this case would not have been solved had we not had Legal Attachés in the above-mentioned locations. The foreign police agencies involved had come up with negative information and only through personal contact and on-the-scene counsel by our experienced Legal Attachés, were local authorities able to produce the information required for the successful conclusion of this case.

~~The Legal Attaché, Tel Aviv, has effected a close working relationship with Israeli police and intelligence agencies and regularly furnishes information which is vital to our coverage of the militant Jewish Defense League's activities in the U.S. and of Arab terrorist activities. It is extremely doubtful that we would regularly receive such information were it not for the presence of our representative in Israel.~~

**SENSITIVE
SPECIFIC
AFFECTIONAL
INTELLIGENT
SOURCE**

~~SENSITIVE FOREIGN
INTELLIGENCE SOURCE~~

The tracing of Watergate funds by Legal Attaché, Mexico City, through established Mexican banking sources, is another example of the capabilities developed by our Legal Attaché system.

2. Attempt to accomplish FBI responsibilities with foreign ramifications by having other Embassy personnel handle FBI work. This option, while removing FBI personnel from foreign embassies, would require an increase in State Department personnel to assume a work load, based on August 31, 1973, figures, of 4,593 FBI cases in the 20 FBI posts abroad, or August 31, 1973, figures, of 4,282 FBI cases in the 20 FBI posts abroad, including 734 in Mexico, 327 in Hong Kong, 208 in Canada and 401 in Great Britain. Expenses involved in the returning of all FBI personnel and equipment in these 20 offices would be considerable and would be offset by similar expenses to assign additional State Department personnel abroad to handle the work formerly handled by FBI personnel.

More important, such a change would result in the FBI being represented abroad by personnel with no experience in law enforcement and no knowledge of the internal policies and regulations of the Government which are not part of the Bureau's regulations. It is believed that the Foreign Service officers will thereby be less effective in representing the FBI in foreign countries, thereby placing the FBI at a disadvantage. It is not believed that Foreign Service officers who differ greatly in background, experience and training from law enforcement officers could effectively represent the FBI with foreign law enforcement and security agencies.

3. Have FBI interests abroad handled by the Drug Enforcement Agency, Immigration and Naturalization Service, U.S. Customs Service, U.S. Secret Service or other Federal law enforcement agencies which currently maintain liaison offices abroad. None of these agencies have the broad scope of investigative jurisdiction which the FBI is required to shoulder. Their standards, policies, methods of operations, investigative techniques and standards of personnel differ greatly from that of the Bureau. Some of these agencies are actually operational abroad. No matter how well intentioned such a representative might be on behalf of the FBI, it is not felt that he would have the necessary experience and/or knowledge of Bureau operations to successfully function as a representative of the FBI. It is, therefore, not believed that this option would be advantageous.

4. End all FBI pursuit of foreign ramifications in criminal and security responsibilities by FBI personnel stationed abroad and conduct them by direct communications. This option does not appear to have any advantageous aspects and would tend to stifle effective foreign liaison. Only a man on the scene can be thoroughly aware of the local customs, tradition and judicial process of the numerous foreign countries involved. Each country is different and the unique understanding of these differences is vital for successful communication and cooperation. It is not believed that a supervisor situated in Washington can adequately grasp these unique situations. If such an option is adopted, it is felt that our present outstanding relationships with hundreds of foreign police agencies would quickly disintegrate. Furthermore, such communications, because of a lack of direct cable connections with foreign countries, would force the FBI to utilize direct mail or public wire systems as opposed to secure methods presently being utilized. This would not only cause long delays, but would necessarily be less secure. This would not only increase delay but could also pose serious security risks. This option is, therefore, not acceptable.

Conclusion

Conclusion

For the reasons set out above, it is felt that the only effective way for the FBI to discharge the full scope of its responsibilities is to maintain its liaison posts abroad.

NOTE:

NOTE:

See memorandum to Mr. Ruckelshaus dated 10/1/73, captioned "Substantive Issues Regarding the Future of the FBI," prepared by JMS:rlc/bjr. See memorandum to Mr. Ruckelshaus dated 10/1/73, captioned "Substantive Issues Regarding the Future of the FBI," prepared by JMS:rlc/bjr.