

THURSDAY, SEPTEMBER 25, 1975

U.S. SENATE,
SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 318, Russell Senate Office Building, Senator Frank Church (chairman) presiding.

Present: Senators Church, Tower, Mondale, Huddleston, Morgan, Hart (Colorado), Baker, Goldwater, Mathias, and Schweiker.

Also present: William G. Miller, staff director; Frederick A. O. Schwarz, Jr., chief counsel; and Curtis R. Smothers, counsel to the minority.

The CHAIRMAN. The hearing will please come to order.

At the close of yesterday's hearing, Senator Hart of Colorado moved that former President Nixon be called as a witness in connection with the committee's investigation of the Huston plan. That motion was considered in executive session of the committee yesterday afternoon and it was decided by the committee that Mr. Nixon was indeed a central witness of great importance in the matter of the Huston plan, but that there were also other subjects that the committee is now investigating, with respect to which the former President's testimony would be equally important. And so the committee decided that we should endeavor to secure Mr. Nixon's testimony with respect to all of the work of the committee where that testimony would be critical. And the counsels for the committee, Mr. Schwarz and Mr. Smothers, were instructed to open negotiations with Mr. Nixon's attorney looking toward the arrangement that would enable the committee to secure this testimony.

Have you anything to add to that, Senator Tower?

Senator TOWER. I think that about sums it up, Mr. Chairman.

The CHAIRMAN. This morning, we continue our examination of the Huston plan and the events that led up to it and the continuing operations of the intelligence agencies, following Mr. Nixon's revocation of the plan itself. And our witness this morning is a representative of the FBI, Mr. Charles Brennan.

Before I swear the witness, I might say that last summer I made the remark that there was considerable evidence that the CIA had been behaving like a rogue elephant on a rampage. That remark was challenged. But I think that as we close this second week of public hearings, the evidence certainly bears out the fact that the CIA failed, in the case of the poisons, which we examined last week, to carry out the orders of the President. And this week, of course, as we have examined the Huston plan, it again becomes clear that the CIA was not responsive to the President's revocation. Not only the CIA, but the other agencies involved, including the FBI, failed to tell the President that cer-

tain operations like the mail openings, for which they sought Presidential approval, had in fact been going on for years before that authorization was sought. And when it was revoked, the mail openings continued for a long period of time afterwards. We will look this morning at the FBI's role in this particular plan. And our witness, Mr. Brennan, is prepared to respond to questions from the committee. Before we do that, would you please stand and take the oath? Do you solemnly swear that all the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRENNAN. I do.

The CHAIRMAN. Mr. Schwarz, would you commence questioning please.

Mr. SCHWARZ. Mr. Brennan, were you employed by the FBI?

TESTIMONY OF CHARLES BRENNAN, FORMERLY ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, DOMESTIC INTELLIGENCE DIVISION (1970-71)

Mr. BRENNAN. Yes, sir.

Mr. SCHWARZ. From when to when?

Mr. BRENNAN. From April 1948 until July 1974 when I retired.

Mr. SCHWARZ. And in June 1970 were you the Chief of the Internal Security Section of the Domestic Intelligence Division of the FBI?

Mr. BRENNAN. Yes, sir, I was.

Mr. SCHWARZ. And Mr. Sullivan was your immediate superior?

Mr. BRENNAN. Yes, sir.

Mr. SCHWARZ. And did you then in July of 1970 succeed him as the Chief of the Domestic Intelligence Division?

Mr. BRENNAN. Specifically August 1970.

Mr. SCHWARZ. And you left the FBI because of an incident in which Mr. Hoover and you had had a dispute about the questioning of Daniel Ellsberg's father. And I think some people will want to get into that with you, but is that the circumstance under which you left the FBI?

Mr. BRENNAN. Well, no, sir. That was not the specific circumstance. By the time I retired from the FBI, Mr. Hoover, of course, had been deceased several years.

Mr. SCHWARZ. All right. But there was an incident involving that matter in which Mr. Hoover placed you on probation. Am I correct about that?

Mr. BRENNAN. Yes, sir.

Mr. SCHWARZ. All right. Now, going back to the Huston plan itself, you recall, am I correct, that there was advocacy in the plan of increasing electronic surveillance, or bugs and taps, restoring, as the plan said, mail opening, increasing the coverage of envelopes and so forth, restoring the practice of surreptitious entry, and increasing the coverage of campus persons who were believed to be subjects of attention to the intelligence community?

Is that in general what was sought in the Huston plan?

Mr. BRENNAN. Yes, sir.

Mr. SCHWARZ. And all of those matters were opposed in the summer of 1970 by Mr. Hoover, is that right?

Mr. BRENNAN. Yes, sir, that's right.

Mr. SCHWARZ. And had Mr. Hoover been opposing those matters for a few years prior to 1970?

Mr. BRENNAN. Yes, sir, he had.

Mr. SCHWARZ. Was there an earlier time when Mr. Hoover had approved the use of those techniques?

Mr. BRENNAN. Yes, sir, previously during the earlier years of the Bureau's history I think most of these techniques had been in existence.

Mr. SCHWARZ. Now, I am going to ask you a question that may sound sort of strange, but I believe it is relevant from your conversation with us 2 days ago.

Mr. Hoover became 70 years old in 1965, is that in accord with your recollection? Now, why is it significant that Mr. Hoover became 70 in 1965? Specifically, why is that fact significant to your understanding of his opposition to the use of the techniques which we have been talking about?

Mr. BRENNAN. I think when Mr. Hoover reached age 70, of course, he came within the Government's law which required mandatory retirement at that time. And I believe that was waived by President Johnson, which virtually then called for the Director to be renewed as Director of the FBI on an annual basis. And I think that Mr. Hoover was very conscious of the fact that to a degree this put him into a somewhat vulnerable position. I think he then also became very conscious of the fact that any incident, which, within his understanding might prove to be an embarrassment to the Bureau, could reflect questionably on his leadership of the Bureau. And I think that perhaps he felt that such an incident could provide certain individuals with the capacity to not renew his continued role as Director of the FBI.

Mr. SCHWARZ. In your opinion, how was it that Mr. Hoover was able to stay on as Director of the Bureau for so long after 1965? Indeed, he stayed on until he died in what was it, 1972 or 1973?

Mr. BRENNAN. In 1972, I believe, he died.

Mr. SCHWARZ. In your opinion, why was it that the various Presidents kept him in office?

Mr. BRENNAN. Well, this very definitely is my opinion, but I think that the various Presidents possibly, just for political purposes I think, feared possibly the loss of votes. If they were to remove Mr. Hoover, I think there might have been some—and again this is purely speculation—there might have been fear on their part that perhaps Mr. Hoover had some information that might prove embarrassing to them.

Senator MORGAN. I feel as a committee member that I must voice my objection or dissent from this line of questioning. This man is speculating about the reasons that people who are now dead acted as they did.

In all fairness to the Presidents who retained Mr. Hoover and to Mr. Hoover, I just don't think it is proper to let somebody who admittedly had difficulty with Mr. Hoover speculate on his motives. This would not be accepted in a court of law and I don't think it should be accepted in this committee.

The CHAIRMAN. Senator, I think your point is well taken. Let us move ahead with the questions.

Mr. SCHWARZ. With respect, Mr. Brennan, to what Mr. Hoover actually did, let us look at what the written record reveals. And in

connection with the point made by Senator Morgan I wish to move to what he actually did and not to speculation.

Would you examine exhibit 32¹, please?

And I move, Mr. Chairman, the introduction of this document which is dated July 19, 1966. It is from Mr. Sullivan to Mr. DeLoach, subject: "Black bag" jobs. And it contains Mr. Hoover's handwritten note on the third page stating, "no more such techniques must be used."

The CHAIRMAN. Very well, without objection, the document will be entered into the record of the proceedings.

[The document referred to was marked exhibit No. 32 for identification.]

Mr. SCHWARZ. Now, Mr. Brennan, you have had an opportunity to see this document during the course of your preparation with us.

Mr. BRENNAN. Yes, sir, I have.

Mr. SCHWARZ. And does it accord with your understanding of the procedures which previously had been employed in connection with so-called "black bag" jobs?

Mr. BRENNAN. Yes, sir, it does.

Mr. SCHWARZ. All right. Would you read into the record, please, the second paragraph of the document.

Mr. BRENNAN. The second paragraph states, "We do not obtain authorization for 'black bag' jobs from outside the Bureau. Such a technique involves trespass and is clearly illegal. Therefore, it would be impossible to obtain any legal sanction for it. Despite this, 'black bag' jobs have been used because they represent an invaluable technique in combating subversive activities of a clandestine nature and directly undermining and destroying our Nation."

Mr. SCHWARZ. All right. Now, the document also refers to a so-called "do not file" procedure.

The CHAIRMAN. I think, Mr. Brennan, it might be helpful if you would just explain to the committee what a "black bag" job is.

Mr. BRENNAN. I think in general parlance, in the intelligence community, Senator, the "black bag" job refers to an operation which involves a penetration which basically is designed to obtain intelligence information, which basically constitutes breaking and entering.

The CHAIRMAN. You mean what would normally be called a burglary?

Mr. BRENNAN. Yes; normally, Senator, yes.

The CHAIRMAN. Thank you.

Mr. SCHWARZ. Would you turn to exhibit 33,² please?

And, Mr. Chairman, in line with what Senator Morgan indicated, I move the introduction of exhibit 33, which is Director Hoover's memorandum to Mr. Tolson and Mr. DeLoach, dated January 6, 1967, again stating his opinion with respect to the propriety of so-called "black-bag" techniques.

Senator MORGAN. Mr. Chairman, before we go on, so that there will be no misunderstanding about my position, I have no objection whatsoever to Mr. Hoover's orders being put in the record. My objections were to allowing or asking this witness to speculate on why Mr. Hoover did so and so or why the President extended his term.

The CHAIRMAN. I understand the objection and I have sustained it.

¹ See p. 273.

² See p. 276.

Mr. SCHWARZ. Would you read into the record, Mr. Brennan, exhibit 33, please?

Mr. BRENNAN. It is a memorandum for Mr. Tolson and Mr. DeLoach from J. Edgar Hoover, and it states:

I note that requests are still being made by Bureau officials for the use of "black bag" techniques. I have previously indicated that I do not intend to approve any such requests in the future, and consequently, no such recommendations should be submitted for approval of such matters. This practice, which includes also surreptitious entrances upon premises of any kind, will not meet with my approval in the future.

Very truly yours.

Mr. SCHWARZ. All right, finally, in this line of questioning, would you turn to exhibit 40¹ which is a memorandum dated July 27, 1970, from the Director of the FBI to the Attorney General, including Mr. Hoover's comments on the Huston plan itself.

Have you got that, Mr. Brennan?

Mr. BRENNAN. Yes.

Mr. SCHWARZ. All right, Mr. Chairman, I move the introduction into evidence of that document.

The CHAIRMAN. Without objection, it is so ordered.

[The document referred to was marked exhibit No. 40 for identification.]

Senator BAKER. Mr. Chairman, may I ask a question on procedure? I notice counsel today is moving introduction of documents. I was not under the impression that that was necessary in order to make it a part of the records of this committee. If it is, we have got a problem, because I assumed, then, at some point, all of the documents that have been used and prepared by staff would be thought of as the records of this committee and would be open to public inspection, except as sanitization would be required. I don't want to be picayunish, but I don't want to end up at some future date not having access to some of the information which was before us at this committee table. Is it the chairman's position that we must formally put documents in the record? My position is that we should consider all of them part of the record.

The CHAIRMAN. I think all documents will be considered part of the record. I believe that the reason counsel is proceeding this way this morning is because he is undertaking to put these particular documents in the record. While, normally, we have simply been asking the witness to refer to passages of documents in the normal interrogation. But, Senator, all of the documents, in any case, will form the record of this committee.

Senator BAKER. Thank you, sir.

The CHAIRMAN. My view is the same as yours.

Senator TOWER. So, no formal motion is necessary?

The CHAIRMAN. I actually think that is so. And if the committee would prefer, we will—

Senator BAKER. No; I don't object, I just want to make sure that this questioning which was new today does not imply that at some future date we are going to exclude documents. I am now reassured. The chairman, as I understand it, has ruled all of these documents will be for the record of the committee. That satisfies my request.

¹ See p. 313.

The CHAIRMAN. Very well. Now, would you proceed, Mr. Schwarz.

Mr. SCHWARZ. Mr. Brennan, is it fair to say that this document restates the objections to the lifting of the various restraints which Mr. Hoover had already expressed in the footnotes to the document submitted to the President on June 25, 1970?

Mr. BRENNAN. Yes, sir, it does.

Mr. SCHWARZ. All right, the only added part that ought to be read into the record, if you would, would be the final paragraph on the third page. Would you read that into the record.

Mr. BRENNAN:

Despite my clear-cut and specific opposition to the lifting of the various investigative restraints referred to above and to the creation of a permanent interagency committee on domestic intelligence, the FBI is prepared to implement the instructions of the White House, at your direction. Of course, we would continue to seek your specific authorization, where appropriate, to utilize the various sensitive investigative techniques involved in individual cases.

Mr. SCHWARZ. Now, is it your understanding that Mr. Mitchell declined to authorize, or did authorize specific techniques that were referred to? Or is it in between in some fashion?

Mr. BRENNAN. I don't recall that, sir.

Mr. SCHWARZ. I just have one more question. After the Huston plan was turned down, was there a program of intensification of investigation in the security field which was proposed by your department and approved eventually by the Director?

Mr. BRENNAN. Yes, sir.

Mr. SCHWARZ. I have nothing further, Mr. Chairman.

The CHAIRMAN. Mr. Smothers, do you have questions?

Mr. SMOTHERS. Just a few inquiries, Mr. Chairman. Mr. Brennan, I think it is a fair inference from your testimony this morning, and certainly from your previous testimony before the committee, that you are of the opinion that the FBI was somehow being restricted unnecessarily in its domestic intelligence effort.

Mr. BRENNAN. Yes sir, I was.

Mr. SMOTHERS. Is it your opinion that these restrictions were based upon the FBI's past record of inexactness or ineptness in this area? Could this at all have been based upon the fact that the work product coming out was not a good one?

Mr. BRENNAN. No, sir, I do not feel that there is a relation there at all. And perhaps I can clarify it for you. For example, I believe we have to go back to 1960. Prior to 1960 the FBI was not involved to any great extent in the investigations of organized crime or to any great extent in the investigations of civil rights matters. And following the advent of the Kennedy administration into office I believe particularly because of the Attorney General's interest in organized crime matters, specifically Robert Kennedy, the FBI quickly responded by establishing a new division which immediately began to emphasize and intensify investigations into organized crime. And at about the same time, I believe that there was an intensification of investigations into civil rights violations. And I think if you examine the record prior to 1960 as contrasted to after 1960, you will see there was a marked increase in the accomplishment of the FBI relative to these types of investigations.

I relate this because it also relates to the impact within the FBI, in other words, when you intensify in one area then you have to take manpower from somewhere in order to produce those intensified investigations. Basically, that manpower began to drain away from security and intelligence operations. And as a result, with the reduced manpower, there was coincidentally a reduction in the various techniques which applied to the security and intelligence field. Subsequently, as I indicated, Mr. Hoover then, by 1965, reached age 70 and I think then he also became very sensitive to the use of investigative techniques in the security intelligence field which he felt might prove embarrassing to the Bureau; all of which provided a drain which materially affected those of us who were involved in security and intelligence investigations.

Mr. SMOTHERS. Mr. Brennan, the question is raised in part because of a recent inquiry into this very question conducted by the General Accounting Office. In commenting on the effectiveness of FBI investigations, the Comptroller General, Elmer Staats, looked at and reported on cases that were reviewed, cases of the domestic intelligence activities here, many of which covered a period of time when you headed that operation. Turning to page 33 of a report released by them on yesterday, he notes that only 16 of 676 cases, less than 3 percent of those that you investigated, were referred for prosecution. Of those 16 referrals, only 7 were prosecuted, obtaining 4 convictions. Of these same cases, only 12 of them, or less than 2 percent, resulted in the FBI obtaining any advance knowledge of planned activities on the parts of subversive or extremist groups. The report sort of concludes that the domestic intelligence effort may be largely an ineffectual one. Do you agree with that conclusion?

Mr. BRENNAN. I do not think I would agree with that conclusion. I think that basically intelligence investigations are designed not specifically for prosecutive intent, but basically to develop intelligence information which will be provided to officials of the U.S. Government to enable them to possibly consider new types of legislation which may be affecting the security of the country. And I have not had an opportunity to review that report so I am not familiar with those circumstances. And I feel that a response to that could only come from the FBI relative to its own record of accomplishments, in regard to security and intelligence investigations.

Mr. SMOTHERS. Let me be sure I understand your last comment, then I will conclude. Is it your contention that a primary purpose of the domestic intelligence investigations conducted by the FBI was to aid in some legislative purpose?

Mr. BRENNAN. To a great extent, yes, sir.

Mr. SMOTHERS. To your knowledge, has the FBI made substantial legislative recommendations based on these intelligence activities?

Mr. BRENNAN. It is my recollection that it has, yes, sir.

Mr. SMOTHERS. I have nothing further, Mr. Chairman.

The CHAIRMAN. First of all, I would like to call your attention, Mr. Brennan, to exhibit 2,¹ page 3. Now do you have that reference?

Mr. BRENNAN. I believe so, Senator.

The CHAIRMAN. And if you look to the bottom of the page, to part E which bears the caption, "Development of Campus Sources." Now the document I am referring to is generally referred to as the Huston

¹ See p. 189.

plan. It is the recommendations that Mr. Huston made to President Nixon to relax restrictions and to authorize certain illegal actions.

Mr. BRENNAN. Yes, sir.

The CHAIRMAN. Now, with respect to the development of campus sources, Mr. Huston recommended to the President that "present restrictions should be relaxed to permit expanded coverage of violence-prone campus and student-related groups." And then in the rationale for that recommendation on page 4, I read at the top of the page, the first sentence, "The FBI does not currently recruit any campus sources among individuals below 21 years of age."

So what Mr. Huston was recommending, backed up by the various agencies that had put this report together, was that the restriction that the FBI had imposed upon itself, that it would not use informants on campuses who were less than 21 years old, should be revoked. Now the purpose of that was to enable the FBI to recruit student informants, was it not?

Mr. BRENNAN. Yes, sir.

The CHAIRMAN. So that information could be secured from members of the student body about activities, protests and demonstration activities on the campuses?

Mr. BRENNAN. Yes, sir.

The CHAIRMAN. Now, as we know, the President accepted that recommendation and then 5 days later revoked his approval of the entire Huston plan. That was in July of 1970.

Now I call your attention to exhibit 44,¹ please. It is the FBI's plan following the President's revocation of the Huston plan. It is dated September 2, 1970, and the purpose at the very top of the page of the plan is "to recommend consideration be given to returning to previous standards permitting the field to develop security and racial informants among students 18 years of age and older with full individual justification and Bureau approval." So here, within a month or so of the time the President revoked the Huston plan, this recommendation is made to Mr. Hoover, that the restriction on 21 years of age should be removed and student informants should be obtained on the college campuses. And on the last page of that memorandum, Mr. Hoover's approval states that you are authorized to develop student security and racial informants who are 18 years of age or over. This presents you with a tremendous opportunity to expand your coverage, correct—the last paragraph, just above Mr. Hoover's signature?

Mr. BRENNAN. The memorandum has attached to it part of what we call an SAC letter of instruction to the field. That is what you are referring to?

The CHAIRMAN. Yes. And in that letter of instruction to the field, Mr. Hoover says in the last paragraph, "as you are aware, you have been previously instructed not to use campus student informants under the age of 21. In view of the current circumstances, you are authorized to develop student security and racial informants who are 18 years of age or older." This presents you with a tremendous opportunity to expand your coverage.

Mr. BRENNAN. Yes, sir.

The CHAIRMAN. All right. So within a month after the time the President had revoked the Huston plan, the FBI had reduced the age

¹ See p. 323.

limit from 21 to 18 and then commenced a tremendous expansion of surveillance of student groups. Is that not correct?

Mr. BRENNAN. It was an expansion, Senator; yes, sir.

The CHAIRMAN. Well, let us look at the size of it.

Now let us turn back to exhibit 41,¹ if you please. And on page 2 of the FBI plan, I read to you from the latter part of the third paragraph:

* * * it is felt that every Black Student Union and similar group, regardless of their past or present involvement in disorders, should be the subject of a discrete preliminary inquiry through established sources and informants to determine background, aims and purposes, leaders and key activists. It is estimated that this would cause the field to open approximately 4,000 cases involving organizations and the key activists and leaders connected therewith.

That suggests to me a very broad expansion of the student surveillance activities.

Mr. BRENNAN. Yes, sir, but I think the foregoing, prior to that, provides a justification for it. It indicates, for example, in paragraph 2 there, that in 1967 black student unions began forming their own groups to project their demands, many of which indicated a commitment to black nationalism. And it also is followed by an observation that campus disorders involving black students increased, I believe that is either 23 or 28 percent of the 1969-70 school year over the previous year.

The CHAIRMAN. Right, but if we go back to the order for increasing the surveillance, the plan states, "It is felt that every Black Student Union and similar group, regardless of their past or present involvement in disorders" should be put under surveillance. So it really was a plan to establish general surveillance of these black student groups on the campuses of the country, regardless of their past or present involvement in disorders?

Mr. BRENNAN. Yes, sir, that is correct.

The CHAIRMAN. I think we have established on this testimony that the President revoked this plan which he first authorized, a plan that reduced the 21-year age barrier. A month or so later the Bureau comes along and reduces the age anyway, and establishes a broad new surveillance program on black student groups, regardless of whether or not they had any previous record of any sort.

Senator Tower?

Senator TOWER. Mr. Brennan, regarding the assumption that anti-war activities were being financed by Communist sources externally, was this an assumption that was held at the highest level in both the Johnson and Nixon administrations?

Mr. BRENNAN. I do not know whether it was an assumption, Senator, that was held at the highest levels. I believe it was my recollection that the FBI was continually being pressed by both the Johnson administration and the Nixon administration as to whether or not this was true—whether or not there was evidence to indicate that possibly there might be financing from abroad, underlying the anti-war protest here. And perhaps it might be that it was based on their assumption that it could be true.

Senator TOWER. In pursuance of this, did the FBI or the CIA monitor the principals involved in the matter of foreign travel,

¹ See p. 317.

attendance of international conferences, and receipt of propaganda, individual guidance from external sources and external finances? Was there an effort made to follow all of these particular aspects of the activities in the principals involved?

Mr. BRENNAN. To the degree that we were capable, within the limitations that we had, yes sir, we were seeking to do this and in some instances succeeded in placing informants in groups who were traveling abroad or attending Communist conferences abroad, yes sir.

Senator TOWER. Did you get any information or any hard intelligence to the fact that they were getting any individual guidance from these Communist sources?

Mr. BRENNAN. Guidance is a difficult question to answer, Senator. They attended conferences, for example, in Cuba, which were attended, as I recall, by officials from Communist governments. They attended conferences in various other countries abroad which were sponsored by Communists. The peace movement in the United States was generally discussed and I recall in one instance, for example, where several of the activists who were involved in the policy committee of the antiwar activities traveled abroad and attended conferences where these issues were the subject of discussion with many Communist representatives. And at the time, the general feeling of the antiwar movement here was that the next step in the stage should be protest demonstrations around the United States.

It is my recollection that information at the Communist conference abroad led to the conclusion that there should be instead a concentrated demonstration in Washington, D.C. And following the return of these individuals to this country, I think they served to project that view and indeed we did have a concentrated demonstration in Washington, D.C., and it is my recollection that when that demonstration took place, there were also concerted demonstrations at American embassies in many foreign countries on the same day.

Senator TOWER. Did you get any evidence that the activities in this country were indeed being financed by external sources?

Mr. BRENNAN. We never had any evidence to that effect, Senator.

Senator TOWER. You suspected it but you could not get any hard evidence?

Mr. BRENNAN. I personally did not suspect it, Senator. The question was continually being pushed to us by the White House as to whether or not there was proof of this. I personally held the feeling that we were dealing with what I term "credit card revolutionaries," and that the individuals involved in this type of activity in the United States had ample resources of their own through which to finance these activities. I never saw anything to the contrary.

Senator TOWER. These international meetings that they attended—those were under Communist auspices, were they not, financed by Communist sources?

Mr. BRENNAN. As I recall, they were, yes, sir.

Senator TOWER. So their external participation was indeed under Communist auspices?

Mr. BRENNAN. Yes, sir. As a matter of fact, we had furnished to the White House in one period of time a report which I recall ran between roughly 40 and 50 pages at the specific request of the White

House, in which we detailed specifically the extent of the links between Americans who were traveling abroad with the Communist representatives of these various conferences.

Senator TOWER. Turning to another matter, after the withdrawal of the Huston plan, was there any increase in electronic surveillances by the FBI?

Mr. BRENNAN. It is my recollection, Senator, that there was no significant increase.

Senator TOWER. In other words, it continued at about the same level?

Mr. BRENNAN. I believe it did, yes, sir.

Senator TOWER. What was the general level of electronic surveillances during the 1970 period?

Mr. BRENNAN. If I recall correctly, Senator, in the security field, I believe that we had somewhere in the range of 40 to 45.

Senator TOWER. Were you aware of a covert mail program in the FBI prior to June of 1970?

Mr. BRENNAN. Prior to June 1970 the only program of that nature of which I am aware went way back for years, and which I had no specific relationship with.

Senator TOWER. Were you aware of the CIA mail program before June 1970?

Mr. BRENNAN. No, sir, I was not.

Senator TOWER. Did you become aware of the CIA mail program during the preparation of the special report that was being prepared for the President?

Mr. BRENNAN. No, sir, I did not.

Senator TOWER. Did you ever inquire of any CIA personnel on the Huston plan working group if the CIA had a mail program? Did you ever ask any of them?

Mr. BRENNAN. No, sir, I did not.

Senator TOWER. Did you inquire of Bureau personnel about the CIA mail program?

Mr. BRENNAN. No, sir, I did not.

Senator TOWER. Were you ever aware that the Bureau was receiving information obtained from any mail intercepts?

Mr. BRENNAN. Not to my knowledge, no, sir. I knew that the Bureau received information disseminated by the CIA, but as to the nature of the technique by which information was received, no, I had never any indication that it came from that type of a technique.

Senator TOWER. Now, Mr. Brennan, you were one of the FBI representatives in the interagency working group which prepared the Special Report on Intelligence Assessment. Now, was it your impression that Mr. Huston of the White House staff, who testified here the day before yesterday, and Mr. Sullivan, from the FBI, were in close communication as the report developed?

Mr. BRENNAN. Yes, sir, they were.

Senator TOWER. Did Mr. Huston limit his role merely to that of an observer, or was he an active participant?

Mr. BRENNAN. I would define his role as an active participant.

Senator TOWER. In what way did he participate? Did he by chance, or by design, guide and direct the preparation of the report?

Mr. BRENNAN. I don't think he guided and directed the preparation of the report, because it is my recollection that Mr. Huston did not have that sufficient in-depth background concerning intelligence matters to be able to give that strong direction and guidance.

Senator TOWER. So who would be the principal figure there—Mr. Sullivan?

Mr. BRENNAN. I would say Mr. Sullivan was, yes, sir.

Senator TOWER. Thank you, Mr. Brennan. I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Tower.

Senator Mondale.

Senator MONDALE. Thank you, Mr. Chairman. Mr. Brennan, I take it that there was no doubt in your mind that the break-ins or the so-called black bag jobs were illegal?

Mr. BRENNAN. There was no doubt in my mind about that.

Senator MONDALE. And that some of the other activities such as unwarranted taps, some of the efforts under the COINTEL Program that we are going to be reviewing later, were illegal?

Mr. BRENNAN. In regard to wiretapping, Senator, the policy, as it prevailed within the Bureau, within my understanding, involved a legal one, which called for the written approval of the Attorney General of the United States, and which I believe was within the framework of legality, as the procedures existed at that time.

In regard to the counterintelligence program, I think the policy called for specific instructions to the field, that they were not to engage in illegal activities.

Senator MONDALE. Well, for the purpose of my question, let us just stay with break-ins, then, because they, we can both agree, were clearly illegal. How do you justify the law enforcement arm of the government which itself resorts to illegal taps? You must have thought this through. You must have wondered about it. How do you justify it?

Mr. BRENNAN. The primary ones of which I was aware involved organizations which were taking their direction and control from foreign powers, and that, to me, was sufficient basis for a utilization of that technique in order to determine the extent of the foreign direction or control of their activities.

Senator MONDALE. So the reason was not, in your mind, that it was legal, but that even though it was illegal, the purpose sought was sufficiently important that you felt the law could be violated?

Mr. BRENNAN. Yes, sir, I did.

Senator MONDALE. In retrospect, when we look at this whole period of the late sixties and the early seventies, did that foreign threat, the alleged foreign control and foreign funding, in fact, prove to be a serious cause of domestic unrest?

Mr. BRENNAN. No, sir, it did not.

Senator MONDALE. And, as a matter of fact, when we were all through with these techniques you concluded and I quote, "It is my recollection that we never developed any information to indicate that Communist sources abroad were financing the antiwar activities of the United States." Would that be accurate?

Mr. BRENNAN. Yes, sir, that is true.

Senator MONDALE. Further, you said, "I felt that the extremist groups and the others who were involved in the antiwar activities and

the like at the time were of middle- and upper-level income, and we characterize them generally as credit-card revolutionaries." Is that correct?

Mr. BRENNAN. Yes, sir.

Senator MONDALE. So that, when we spent several years trying to find, under Presidential directive, this evidence that domestic unrest was directed, financed, and heavily influenced by foreign enemies, in fact, we found it was pretty much a domestic source of unrest. Is that correct?

Mr. BRENNAN. Yes, sir, but we were continually being asked by the White House as to whether or not there was foreign funding of it, and in response to that, then, I felt that it was necessary for us to try to respond to the question.

Senator MONDALE. Thank you, Mr. Brennan, because I think that is exactly the point. And I return to Senator Hart's point yesterday. Our hearings thus far have necessarily involved questioning people like yourself, but, in fact, you were carrying out what you thought was official governmental policy, were you not?

Mr. BRENNAN. Yes, sir.

Senator MONDALE. And you thought you were doing what the President of the United States wanted you to do?

Mr. BRENNAN. Well, yes, to a degree that when the White House asked a question, I felt that it was necessary for the FBI to respond through the utilization of the appropriate techniques, to try to ascertain the answer.

Senator MONDALE. And you were under tremendous pressure in the late sixties and the early seventies to find evidence that these protesters were being financed and directed by foreign sources. Is that not correct?

Mr. BRENNAN. Yes, sir, no question about that.

Senator MONDALE. As a result, you, following these orders, expended tremendous effort, money and the rest, to try to prove the existence of such foreign influence?

Mr. BRENNAN. Yes, sir, we did.

Senator MONDALE. And except for these meetings about which you testified before, you found little or none?

Mr. BRENNAN. That is true.

Senator MONDALE. Mr. Chairman, it seems to me that part of the problem that we have uncovered here is a lack of accountability, and even some lawlessness on the part of these agencies, but above all, it seems to me what we have seen is a pattern of Presidential unaccountability to the law. It seems, if we go back to the sixties and the seventies, there was rising domestic concern and bitterness about this war, and those Presidents, instead of deciding there was something wrong with the war, decided there was something wrong with the people, and instead of trying to meet those arguments as though they were honest protests against the war, they tried to characterize them as being foreign-dominated-influenced, and in effect, the critics would be corrupted by an alien power.

Now, maybe some were, but there is very little evidence of it. Our task is not only to try to restore some kind of accountability to these agencies, but a much more difficult one. What do we do to make certain that Presidents in the future do not use these secret

agencies to carry out their fantasies, to try to shift the blame from themselves to somebody else, and if possible, to foreigners? I think it is asking a lot of human nature to ask people at the second level of Government to disobey the orders of the President. That means you lose your job. It means destruction of your career, maybe more, if that should happen. I think it is hard to expect, nor is it likely, that those agencies are going to proceed with policies which they think are really alien to what the President wants. And I think it was interesting that in 1966, when Ramsey Clark was Attorney General, they did, in fact, stop "black bag" jobs. At least an order went from Hoover to that effect, I think, reflecting this as the official policy at the time.

And our great task is to see how on earth we can address this problem: The grant of power to the CIA and to these other agencies is, above all, a grant of power to the President, and a dangerous grant, because he can operate secretly. And that is what I think makes our task so very difficult. Thank you.

Mr. BRENNAN. If I may inject an observation, Senator, and hopefully I will not be out of line in doing so, I would suggest that perhaps the problem is even more complex. In other words, the requests of the White House were just not simply to answer that one specific question. I think you have to look at the social, political, and economic complexities that were related, which built tremendous pressures on the White House, and these, I think, stem from the thousands of bombings, the arsons, the disruptions, the disorder. Our academic communities were being totally disrupted, and I think that a vast majority of the American people were subjecting the Representatives of Congress and the members of the White House staff and other people in Government to a great deal of pressure, as to why these things were taking place and why something wasn't being done about these, and I think in a broader context, then, the FBI was getting a tremendous amount of pressure from the White House, in response to the overall problem.

Senator MONDALE. The irony was that their conclusion, without any evidence, was that the unrest was supported by foreign money and direction, and you could not find any.

Mr. BRENNAN. Well, I would say—

Senator MONDALE. But they continued to pursue that theory long after no one could prove it, and the whole idea behind the Huston plan was to criticize the FBI for failing to find what the President was sure existed. And they found a dollar or two here and there, and they found some meetings, and no doubt there were some Communists involved. I have no doubt about that. But the mass of the protest was indigenous. It was domestic. It was prompted not by disloyalty, but by a profound feeling on the part of millions of Americans that the war was wrong.

Mr. Chairman, I think a very instructive memo on this Presidential point is dated September 18, 1970, by John Dean [exhibit 24¹]. It went to the Attorney General. What it says, in effect, is that now that we have rejected the Huston plan, we should put it, in effect, back into place, and remove the restraints as necessary to obtain such intelligence. In other words, they rejected the formal plan, and then they proceeded surreptitiously, according to this memo, to go ahead and do it anyway.

The CHAIRMAN. I think that is correct. Senator.

Constantly we have this theme raised, Mr. Brennan. You have raised

¹ See p. 255.

it in complete good faith, I am sure. Other witnesses have raised it, that this was a time of turbulence. Yes, there were great pressures on the Agency. The White House was deeply concerned about the extent of the antiwar protests.

But that is the very time, in times of turbulence and distress, when an even greater obligation falls not only on the agencies but on the President himself, to operate within the law. Stress or turbulence does not really excuse law enforcement agencies of the Government or the President himself from rising above the law and proceeding in lawless fashion.

Mr. BRENNAN. Yes; I agree with that, Senator.

The CHAIRMAN. Well, that certainly is not the record of what happened during this period. And I can only say that remembering those protests, it did not take an FBI agent to tell me that the students out in the campuses were upset with the war because they thought it was a foolish, futile war, and that is what it was. And I was upset with it, too, in the U.S. Senate, and I was protesting it. And I did not go to any Communist meetings in Cuba. It was a foolish policy for the country, and that was what the students were upset about, and it was an indigenous movement, basically, and a lawful one—not the violence, but the protest was lawful. This is a free society, and students have a right to protest when they do not think the Government policy is sound, particularly when they are the ones who are drafted to fight a war thousands of miles away in the jungles of Southeast Asia. So I just want to emphasize that our concern here is lawlessness.

Mr. BRENNAN. Yes, sir.

The CHAIRMAN. And that is all the more important in times of stress.

Senator TOWER. Mr. Chairman, may I be indulged a comment at this time?

The CHAIRMAN. Yes.

Senator TOWER. However indigenous this may have been, I am convinced there was some external influence. In 1967, I made a speech from the steps of Sproul Hall at the University of California at Berkeley. I was lucky to get away with my life. My speech was punctuated by such editorial comment consisting of four-letter words that I will not repeat here in mixed company, and I was called among other things, a Fascist pig, and I heard all of the rhetoric of the Communist anti-American propaganda mill. So that influence came from somewhere.

The CHAIRMAN. Yes. We all had that experience. I recall being called a Commie symp, because I opposed the war, so it was a time of stress. My point is that that is the time when it is more important than any other that everybody live within the law.

Mr. BRENNAN. Yes; and I agree with the Senator that certainly there was evidence of external Communist direction, whether that direct or not, the point is we were getting to the point of whether or not it was being funded from abroad, so there is no inconsistency in the two observations.

Senator TOWER. Let me just reinforce what I said by reading from page 62 of the transcript of the testimony of Mr. Angleton in an executive session of this committee, on September 12, 1975, "It has also come out in mail intercept that certain groups went to Moscow for political indoctrination, and they went to North Korea for weaponry."

The CHAIRMAN. Senator Baker?

Senator BAKER. It is my turn?

The CHAIRMAN. I believe so.

Senator BAKER. I want my 10 minutes, plus the time to speak and a time for rebuttal, Mr. Chairman.

[General laughter.]

Senator BAKER. I will take my time in rebuttal first.

You know, really, it is awfully easy for all of us to be morally righteous and indignant. But as Senator Jim Pearson from Kansas told me when I was a young Senator, and excited about something, "You know, if you're in the Senate, you're only entitled to be a moral giant once a week." I don't propose now that we are excessively indignant about the turbulence of the times in Vietnam, but it is awful difficult for me to see how that relates to an inquiry into the Huston plan.

I think that these things ought to be kept in mind in that respect. One, those folks are still out there—the people who did, in fact, disrupt this country, who demonstrated in massive numbers here in the Capital and tried to block the streets that led to the Capital City, to shut down Washington, as they said. I remember driving down Virginia Avenue and having oil drums thrown in the path of my car, and my staff man who was driving that day is a big, burly young fellow who managed to get us to the Capitol with his nerve and the assistance of about 300 horsepower.

But those people are still there. There is no doubt that most of the protest was domestic, and indigenous to the American opportunity to express disagreement. But there also is no doubt that people who want to disrupt this country, and who want to change our system, thrive on the distrust that goes on during national upheavals.

So we can't sit here—as I sometimes get the impression we are doing—and throw the baby out with the bath water. We can't say the CIA, the FBI, the DIA, and whatever else we have got, were patently wrong in their efforts to investigate these situations, and they are bad and they ought to be disbanded. If we do, we will be totally at the mercy of those folks who are still out there.

The CHAIRMAN. Well, nobody is suggesting that, Senator.

Senator BAKER. I know that. But I hear the reports from time to time that 1976 will be the year of the resumption of the revolution. And I expect we are going to have a pretty good time next summer. This is the point that bothers me, Mr. Brennan, and I hope you understand that my energetic remarks in this respect have very little to do with you.

But the great tragedy of Watergate, or the tragedy of the Johnson era in its response to civil distress, or of the Nixon times—and God knows, the country went through a lot, and I went through a lot during that time politically—but the great tragedy of that time is not the resignation of a President, or the fact that another was killed—as bad as that was—or another terminated his political career under the stress of the war.

The great tragedy is, under the most tumultuous civil strife we have ever known except during the time of the Civil War, our institutions failed us. I am terribly unhappy to hear you say, and to hear others say, that we knew so-and-so was illegal, therefore we thought

the national good justified our going ahead with it. That is the greatest disservice that you could render this country, is to say that the constitutional protections and guarantees are not valid and relevant in times of great national stress. I think they are. And I think we can guard ourselves against those folks who are out there who would disrupt this city and this country, and burn our campuses, and destroy our banks and our public institutions. We can do all of those things and still not trample the rights under the Constitution. Our purpose here is to try to find out what went wrong and how we can prevent those events in the future.

I have two or three questions, and then I will stop. I made my speech, Barry. I took my speech and my rebuttal all at the same time.

The CHAIRMAN. You ended up in agreement with the chairman.

Senator BAKER. Well, no; the chairman had difficulty understanding why he agreed with me.

[General laughter.]

Senator BAKER. It's just that I expressed it in a different way, Mr. Chairman. I want to make sure that the chairman understands—and everybody else understands—that it's all well and good to be concerned about this, but don't throw the baby out with the bath water. Those folks are out there, you're going to see them again next summer, and you might as well be prepared for it.

Mr. Brennan, when did the "black bag" jobs start with the FBI?

Mr. BRENNAN. That I wouldn't know, Senator.

Senator BAKER. Did it start before you came to the FBI?

Mr. BRENNAN. That would be very difficult for me to say.

Senator BAKER. Certainly you're in a better position to say than I am. Were they going on at the time that you came to the FBI?

Mr. BRENNAN. If they were, I had no knowledge of them. I gained no knowledge of them until the early fifties.

Senator BAKER. When did you first have knowledge of the "black bag" jobs?

Mr. BRENNAN. In the early fifties.

Senator BAKER. What was your understanding of who authorized them?

Mr. BRENNAN. It was my understanding that they were authorized by the Director, Mr. Hoover.

Senator BAKER. Is that understanding based on documentary proof, on conversation with Mr. Hoover, on the statements of other people, or what?

Mr. BRENNAN. Well, it was just the general knowledge that I gained through my investigative experience in the FBI.

Senator BAKER. When was a "black bag" job authorized? When was it used? Under what circumstance for national security, or in order to assist a U.S. attorney in prosecuting a lawsuit? Out of curiosity, when was it authorized? When did you use the "black bag" job that you today say is illegal?

Mr. BRENNAN. The "black bag" jobs that I knew of—which I guess you have to say were technically illegal—but, as I know of the technique, for the most part through the years it involved counterespionage operations, sir.

Senator BAKER. Is that all?

Mr. BRENNAN. To my knowledge, yes sir.

Senator BAKER. Domestic espionage or international espionage?

Mr. BRENNAN. I'm speaking of counterespionage.

Senator BAKER. You're speaking of counterespionage in the sense of a spy of a foreign country operating in this country, and you were trying to counter him? Is that the counterespionage you're speaking of?

Mr. BRENNAN. Yes sir.

Senator BAKER. And that's the only case you knew "black bag" jobs to be done?

Mr. BRENNAN. Subsequently, after I got to Bureau headquarters, I learned there were some "black bag" jobs which were directed at what I would have to term domestic subversive groups, and some domestic extremist organizations, but they were quite limited.

Senator BAKER. How many "black bag" jobs were done in the course of your tenure at the FBI?

Mr. BRENNAN. I would have no idea, sir.

Senator BAKER. Well, you've got to have some idea. Was it 1, or was it 1,000?

Mr. BRENNAN. I do not think I would be capable of commenting. I do not have that range; I did not work in that field where it was generally employed as a technique, Senator.

Senator BAKER. How many do you have knowledge of? Something in the range of what, 1, 10, 100, 1,000?

Mr. BRENNAN. I don't think I'm in a position to be able to answer that, Senator.

Senator BAKER. Do you have any knowledge on that subject?

Mr. BRENNAN. Yes; in a general range.

Senator BAKER. Then I would like to have that general range.

The CHAIRMAN. Senator Baker, we have figures. Would you like to have them? We have documentary figures.

Senator BAKER. I would like that, and I would like the witness' impression too, Mr. Chairman.

The CHAIRMAN. Very well. What was your impression?

Mr. BRENNAN. Can we get a given time frame?

Senator BAKER. No. That you have knowledge of.

Mr. BRENNAN. The overall impression on my 26 years in the FBI?

Senator BAKER. Yes.

Mr. BRENNAN. I would have to say—I would put it in a frame, possibly, of maybe 30, 40.

Senator BAKER. Did the FBI ever get caught?

Mr. BRENNAN. I don't think we did, Senator.

Senator BAKER. As a matter of fact, you didn't.

Mr. BRENNAN. I never heard of anybody getting caught, sir.

Senator BAKER. And the techniques involved—were they with the cooperation of the local police? How many men did it take? What techniques did you employ to keep from getting caught?

Mr. BRENNAN. I never engaged in one, Senator, so again, I would have to speculate on that, or speak from hearsay.

Senator BAKER. Mr. Chairman, do you have some figures?

The CHAIRMAN. Yes. I was just going to congratulate you, Senator, because you have managed to get your rebuttal and a good speech and your questions all within 10 minutes.

Senator BAKER. I think I'm being politely told to shut up.

[General laughter.]

The CHAIRMAN. Now, let me just give these figures. These are figures that have been supplied to us by the Federal Bureau of Investigation; they have, at our request, been declassified. And I would like to read them into the record.

At least 14 domestic subversive targets were the subject of at least 238 entries from 1942 to April 1968. In addition, at least three domestic subversive targets were the subject of numerous entries from October 1952 to June 1966. Since there exists no precise record of entries, we are unable to retrieve an accurate accounting of their number, but that is the best figure we have.

Senator BAKER. Thank you, Mr. Chairman. This final question, Mr. Brennan, since my time apparently has expired. Was your division the one involved in any surveillance of political figures at the Democratic National Convention in 1968?

Mr. BRENNAN. Yes, sir. We developed all of the intelligence information relative to the activities of the dissidents who went out to Chicago to disrupt the convention. However, I don't recall any time that any instructions were given to include surveillances of, as you say, political figures, Senator.

Senator BAKER. Yes. I'm talking about the allegations and the charges that the FBI kept surveillance on Robert Kennedy and Senator Edward Kennedy and Martin Luther King, and a number of other political figures, and that, in fact, there was a communications link—I believe a telephone—from FBI headquarters in that city to the White House—even to the Oval Office.

Mr. BRENNAN. I am not familiar with such surveillances. But basic—

Senator BAKER. You're familiar with those allegations and charges?

Mr. BRENNAN. No. As a matter of fact, I'm not.

Senator BAKER. You've never heard them before?

Mr. BRENNAN. No. Not those specific ones.

Senator BAKER. Well, generally, maybe I'm not describing it with exact accuracy.

Mr. BRENNAN. I recall that there was an Earth Day affair, which I believe Senator Muskie made a speech, or something, and I believe an FBI report dealt somehow with the Senator's appearance on that occasion. But any information of that type was purely coincidental to the investigative efforts of the FBI which were basically directed at the activists who were involved in those types of movements. And anything related to political figures was actually coincidental.

Senator BAKER. I'm told I was wrong. It was not at the 1968 convention; it was the 1964 convention that I was referring to. Does that alter your answer at all?

Mr. BRENNAN. I had little knowledge of the 1964 convention. That was not coordinated out of the Domestic Intelligence Division. It is my recollection that that was basically coordinated by Mr. DeLoach.

Senator BAKER. Are you aware, generally, of the situation that I described in reference to the 1964 Democratic National Convention?

Mr. BRENNAN. I'm aware in general, because the FBI personnel that were there at that time were phoning in reports concerning the activities of individuals and groups over which Domestic Intelligence Division had an interest.

Senator BAKER. Did they phone in reports on Martin Luther King or on Robert Kennedy?

Mr. BRENNAN. I do not recall that they did that; no, sir.

Senator BAKER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Baker. The Foreign Relations Committee is considering the Sinai agreement, and I have to stop in there this morning for a few minutes. I am trying to get the agreements declassified, and I'm going to ask Senator Tower to take over during the time I have to be away. Senator Huddleston is next.

Senator HUDDLESTON. Thank you, Mr. Chairman.

I regret that I had to miss most of the session so far this morning; I was at another subcommittee looking into another operation in our system—the matter of our grain inspection program and the corruption that has been discovered there and all its implications for this country and for our dealing with countries in the other parts of the world. So I will be brief, and hopefully not trespass on subjects that have already been covered by the witness.

Mr. Brennan, were you aware while you were with the FBI that prior to the development of the Huston plan there was a growing feeling of conflict between the FBI and the CIA, particularly at the top levels involving Mr. Hoover?

Mr. BRENNAN. Yes, sir. I was.

Senator HUDDLESTON. How do you think this conflict affected the efficiency of the total intelligence-gathering community?

Mr. BRENNAN. Are you speaking now, Senator—you will have to put me within the correct time frame. Are you speaking of—

Senator HUDDLESTON. Leading up to the formation of the Huston plan, 1969, 1970.

Mr. BRENNAN. It is my recollection that the Director of the FBI discontinued direct liason with the CIA, I believe, in February of 1969 or 1970.

Senator HUDDLESTON. I think that is very close, if not the exact date.

Mr. BRENNAN. And basically, I do not think that had a great deal of effect, relative to our participation with the CIA in the Huston plan.

Senator HUDDLESTON. Now, this conflict resulted primarily from a reluctance on the part of Mr. Hoover to participate in certain suggested intelligence-gathering activities. Is that correct?

Mr. BRENNAN. The conflict between CIA and FBI?

Senator HUDDLESTON. Right.

Mr. BRENNAN. No, sir. That arose out of a dispute which arose from a set of circumstances which occurred in, I believe, Denver, Colo., in which an FBI agent gave some information to a CIA agent, which Mr. Hoover learned about. He objected to—he had Mr. Helms call the CIA agent back to Washington, and he insisted on knowing the identity of the FBI agent who had divulged the information.

Senator HUDDLESTON. Right. Mr. Angleton described that incident yesterday. He described it as the straw that broke the camel's back, I believe.

Mr. BRENNAN. Yes.

Senator HUDDLESTON. Which would indicate there were other instances, too, such as a request by the CIA for specific wiretaps, this type thing—are you aware of any of this?

Mr. BRENNAN. I'm not too much aware of those, Senator, because I did not assume the position as Assistant Director of the Domestic Intelligence Division until August of 1970. And I think that the incidents, or whatever, that may have led up to a relationship of friction between the two agencies, had gone on before that. And I was really not all that aware of the details.

Senator HUDDLESTON. Were you aware that Mr. Hoover resisted the proposals that were included in the Huston plan?

Mr. BRENNAN. Yes, sir, I was.

Senator HUDDLESTON. Did Mr. Hoover also resist—at least for some period of time—the suggestions for the intensification program that followed the demise of the Huston plan?

Mr. BRENNAN. Well, the intensification program was not, let us say, an intensification program as might be defined within the concept of a program, sir.

What I am saying is, if you put all of these individual recommendations together, it resulted in intensification, but it was not a one-package program.

Senator HUDDLESTON. Wasn't it a fact that Mr. Hoover had great reservations and resisted some suggested intelligence-gathering activities during this period?

Mr. BRENNAN. Yes, sir, he very definitely did.

Senator HUDDLESTON. And it was Mr. Hoover going to the Attorney General, and then perhaps both of them going to the President, that actually scuttled the Huston plan. Is that correct?

Mr. BRENNAN. That is my understanding of what happened, sir; yes.

Senator HUDDLESTON. And why, in your judgment, was Mr. Hoover so reluctant to participate in these suggested intensifications of the intelligence-gathering activity?

Mr. BRENNAN. Well, sir, I think I previously explained that I feel that these techniques encompass some degree of risk which might constitute a backlash, which Mr. Hoover was desirous of avoiding.

Senator HUDDLESTON. The kind of backlash that would reflect on the agency?

Mr. BRENNAN. Yes, sir. Embarrassing incidents in which agents might be involved.

Senator HUDDLESTON. You think this was a greater concern of his than any abridgment of individual liberties or freedoms that might occur because of these activities?

Mr. BRENNAN. That is my personal feeling. He hadn't demonstrated a previous concern of this nature in the past.

Senator HUDDLESTON. But then after some insistence, and after developing additional activities that might be employed, on October 29, Mr. Hoover and the top echelons of the FBI did agree to certain types of activities which would, in fact, double the caseload of the FBI in intelligence; is that correct?

Mr. BRENNAN. Yes, sir, I believe so.

Senator HUDDLESTON. Upon what basis do you believe this agreement came about, or this change in position, on the part of Mr. Hoover?

Mr. BRENNAN. It is difficult for me to recall the time frame, Senator, but I believe that possibly it might have been motivated by possible budgetary considerations.

Senator HUDDLESTON. Are you saying, then, that Mr. Hoover and the other top officials of the FBI entered into this kind of a program which intensified its intelligence-gathering activity—and went beyond what might have been legal—for the purpose of increasing the caseload so that the budget of the FBI could be sustained or increased?

Mr. BRENNAN. No. I don't know that—can you clarify for me which techniques that you are stating the Director approved which would have been illegal?

Senator HUDDLESTON. Well, there were a number of activities included. The lifting of a moratorium on investigations of 7,000 individuals on the Security Index—what did that mean?

Mr. BRENNAN. That was involved in a procedure whereby cases would be opened at periodic intervals to recheck whether or not the individual might possibly still be employed at the same place, and so forth.

Senator HUDDLESTON. Which required agents in the field to intensify their surveillance of these individuals, whether or not there had been any indication that these individuals were, in fact, engaging in any kind of wrongdoing.

Mr. BRENNAN. I don't think it constituted surveillance, Senator. I think it merely involved reopening—

Senator HUDDLESTON. Some kind of checking would be required.

Mr. BRENNAN. A check, yes. A check.

Senator HUDDLESTON. Exhibit 41¹ mentions opening cases on approximately 4,000 black student activists, all members of the Black Student Unions, and similar groups, regardless of their past or present involvement in disorders. Does that constitute a check?

Mr. BRENNAN. Yes, sir.

Senator HUDDLESTON. Would this not, too, involve further checks, further investigation and surveillance, against people who had no record of any kind of participation in any sort of wrongdoing or disturbance?

Mr. BRENNAN. It was designed to try to develop information about the types of individuals who were activists in such groups who might further instigate individuals who had propensities for violence.

Senator HUDDLESTON. It involved the opening of cases on approximately 6,500 New Left student activists, black and white, to determine whether they had a propensity for violence. Now, how do you investigate a person to find out whether or not he or she has a propensity for violence?

Mr. BRENNAN. You cover his activities in connection with demonstrations and the like, and attempt to ascertain whether he is exhorting other individuals to engage in violence. A number of these individuals publicly professed their determination to destroy or overthrow the Government of the United States.

A number of them advocated means by which these efforts should be furthered, and Bureau investigations were broadly encompassing to make a determination as to whether or not they did, in fact, do certain of these activities.

Senator HUDDLESTON. We're looking at 6,500 people. You're surely looking at a number of people who have no experience in violence, and

¹ See p. 317.

who have no activity that would suggest that they have been involved in violence.

Mr. BRENNAN. That is true, Senator, but I think that——

Senator HUDDLESTON. It's a dragnet, "shotgun" type of operation.

Mr. BRENNAN. I think that's true. But by that time I believe that the leaders of the New Left movement had publicly professed their determination to act to overthrow the Government of the United States. And I felt that with them on public record as having this basic objective, anyone who joined in membership in their cause, possibly should have their names recorded for future reference in FBI files. And I was reminded of the circumstances of the thirties, when many individuals, who at that time were involved and concerned as a result of the economic depression, became involved with Communist activities.

A great deal of Communist cells developed, and many of the individuals who at that time were in colleges, subsequently were employed in sensitive positions of Government, and the Government had no record of their previous Communist involvement. I did not want to see a repetition of that sort of circumstances come about.

So that when individuals did profess themselves to be in adherence to the concepts which aimed at or called for the overthrow of their Government, I did feel that the FBI had the responsibility to record that type of information so if they ever obtained sensitive Government positions that could be made known, and known to the agency for which they were going to go to work.

Senator HUDDLESTON. So it is better to go with a blanket approach rather than possibly miss somebody who might turn up somewhere down the road.

Mr. BRENNAN. Well, sir, I feel that the absence of any type of approach in the thirties indicated to me that history proves that you can make tragic mistakes. And I felt that this Government should not fall into that type of a tragic mistake again.

Senator HUDDLESTON. My one point on the investigations of the 7,000 individuals on the Security Index is that it puts a person in the position of being locked up. So that is a rather serious position for a person to be in, or a category for him to be in. And this was part of this effort to increase the caseload, is that correct?

I think the total of these certainly represents a substantial intensification and increase in the activity of the FBI in this field of domestic intelligence. And I believe during this period—if it hasn't been pointed out already—you switched almost entirely from a counterintelligence operation to a domestic intelligence operation.

Mr. BRENNAN. No; I don't think that is true, Senator. I think that there was a different type of balance.

Senator HUDDLESTON. The emphasis——

Mr. BRENNAN. There was more of an emphasis on the domestic, but I think that the emphasis stemmed from the activists in this country who were using explosives and the like to such a disruptive effect, when, to me, it was a question of putting your priorities in order, and I personally felt that the domestic situation had a higher priority at that particular given time.

Senator HUDDLESTON. All right. Yesterday Mr. Angleton indicated to this committee that the most appropriate subject for investigation

into the intelligence-gathering community of this Nation would be to look at the product of what is being produced, and determine whether or not that was adequate.

He suggested by that statement, I think, that it is the end, rather than the means, that is important. And maybe the methods used—whether or not civil liberties might be abridged, or the Constitution violated—was not as important as what the final product was. Now Mr. Angleton, I assume, was speaking for himself and not the CIA. I am wondering what your concept is and whether this is the attitude that prevails in the FBI and in other intelligence-gathering operations.

Mr. BRENNAN. No; I don't think so, Senator. My particular feeling on that score—and I feel this is possibly representative of the general level of feeling inside the FBI—is that the end never justifies the means. I believe that we are a society of law and order, and I believe that our intelligence agencies, or any organization acting on behalf of our Government, should behave within the concept of the laws that they are trying to uphold. And I feel that the problem that has been long lacking has been the fact that we have not had the legislation which has clearly defined for the FBI the role that it must play in order to enable it to fulfill its responsibilities.

And I believe that this problem arose when the fact that we were operating basically out of a directive by President Roosevelt in 1939, which enabled the FBI to cope with problems which dealt with subversive activities, so-called because they were clearly and directly related to foreign interests. But I believe that once we passed 1960, when we got into a new era that marked a drastic social, political, and economic change in our society, and we saw a number of individuals in our country who professed themselves to be revolutionaries, dedicated to the overthrow of our Government, this posed new problems which should have brought about better defined legislation to enable the FBI to fulfill its responsibilities.

And I hopefully feel that, if nothing else, something may come out of the hearings of this committee that will give the FBI the applicable legal framework to enable it to go ahead and do its job.

Senator HUDDLESTON. That is our objective, Mr. Brennan. I think your concept would conform to those of the members of this committee. We are trying to find out how to do it, and your testimony will be helpful in that regard. Thank you, Mr. Chairman.

Senator TOWER [presiding]. Senator Goldwater?

Senator GOLDWATER. I have no questions.

Senator TOWER. Senator Morgan?

Senator MORGAN. Mr. Brennan, many of the 7,000 individuals who were on the Security Index were on there simply because they belonged to a given organization or some other group that you were suspicious of. Is that not true?

Mr. BRENNAN. Yes, sir.

Senator MORGAN. In other words, as far back as 1950, you and others in the Bureau followed the doctrine of guilt by association.

Mr. BRENNAN. No; I wouldn't say that's true, Senator.

Senator MORGAN. Well, if you put a man's name on a list because he was a member of an organization that was not illegal, he was put on there because he was associated with other people who are in that group that you might have suspected. Is that not true?

Mr. BRENNAN. Well, that possibly would be an interpretation that you could put on it.

Senator MORGAN. And from that time on, right on through the anti-war demonstrations, you and the Bureau had followed a policy of holding anyone else guilty, or holding others guilty by association, if they associated with groups that you were suspicious of. Is that not true?

Mr. BRENNAN. No; I don't think that's true. And let me clarify for you, Senator, something relative to the Security Index. The Security Index was something which was in existence years before I ever arrived at FBI headquarters. And as the Senator here indicated, it also involved one aspect of potential emergency detention.

I was opposed to, in general frames, the existence of a Security Index of that nature, and I think if you review FBI files you will find that I worked actively to reduce the number of individuals on the Security Index, and I changed the policies and procedures which drastically reduced those numbers. And I also changed the priorities which would determine the basis for which individuals might be considered for emergency detention.

Senator MORGAN. But on through the years, during your association with the Bureau, you have engaged in illegal activities such as unlawfully breaking and entering, because you felt that the ends justified the means.

Mr. BRENNAN. I never did, Senator. No.

Senator MORGAN. Well, under your direction did the Bureau not do that?

Mr. BRENNAN. I don't recall any specific instances under my direction, Senator.

Senator MORGAN. Well do you not know of such incidents in the Bureau?

Mr. BRENNAN. I know of such instances; yes.

Senator MORGAN. Mr. Brennan, I ask you, as early as the sixties—and I believe you indicated that is when most of it commenced—if you didn't, for instance, unlawfully break into the Ku Klux Klan headquarters in Louisiana, obtain the list of the membership and the financial records, and then proceed to arrest those members?

Mr. BRENNAN. In 1960?

Senator MORGAN. Somewhere in the sixties. I don't remember the exact date.

Mr. BRENNAN. I was shown a document which related to a penetration of what I would term a domestic extremist group, and I believe I indicated in there that I had no specific recollection of the specific penetration which may have been indicated.

Senator MORGAN. By penetration, you mean breaking and entering, and getting into the organizations, right?

Mr. BRENNAN. Yes sir.

Senator MORGAN. I ask you to look at exhibit 32¹ which is a memorandum dated July 19, 1966, from Mr. Sullivan to Mr. DeLoach. Do you see that memorandum?

Mr. BRENNAN. Yes sir, I see that.

Senator MORGAN. Look on the bottom of the second page.

¹ See p. 273.

Mr. Chairman, I am advised that an agreement would be reached that we would not talk about specific instances of unlawful breaking and entering. Is that correct?

Senator TOWER. I will defer that to Counsel.

Mr. SCHWARZ. Senator Morgan, they have not declassified the specific instances, and we are open to talking about the generalities at this point. We intend, I believe, to perhaps get back to specifics at another point.

Senator MORGAN. Mr. Brennan, it is true that you broke into these organization's headquarters, obtained membership rosters, financial information, not only with the white extremists, but, as you have already testified, you investigated the black extremist groups, regardless of whether you had had trouble with them or not.

That is true throughout the decade of the sixties, isn't it?

Mr. BRENNAN. Yes sir.

Senator MORGAN. And you went beyond that. You not only broke in and obtained this information, but you then proceeded to harrass these people by having their income tax records checked, did you not?

Mr. BRENNAN. I assume, Senator, when you say, I, that you did this, that you are referring to the FBI?

Senator MORGAN. Yes; speaking with regard to the FBI.

Mr. BRENNAN. Yes sir.

Senator MORGAN. And you, as a member of the FBI and part of the Justice Department, had access to every income tax return filed in this country, didn't you, simply by the attorney for the Justice Department certifying that it was needed in the course of your investigation?

Mr. BRENNAN. I don't know that we had access to the tax return of every individual in this country, sir.

Senator MORGAN. Did you ever have any trouble getting the tax return of anyone you wanted, whose return you wanted because you were investigating?

Mr. BRENNAN. I'm not too familiar with the use of that technique, Senator.

Senator MORGAN. I will ask you, sir, if you don't know that the FBI made it a practice of harrasing, or calling for tax investigations of those that they thought, in good faith, were dangerous, such as black extremists, white extremists, war demonstrators, those who wanted to go to the Democratic and Republican Conventions, in order to keep them busy, in order to keep them occupied?

Mr. BRENNAN. I was never aware that the FBI requested the IRS to harrass any individual on the basis of his tax return, Senator.

Senator MORGAN. Well, did you harrass them in any way through your investigations in order to keep them occupied, to keep them busy?

Mr. BRENNAN. Not that I have specific recollection of—the nature of that incident.

Senator MORGAN. Now the Director issued an order to stop the unlawful breaking and entering in 1966.

Mr. BRENNAN. Yes sir.

Senator MORGAN. But it did continue some after that, did it not?

Mr. BRENNAN. Not to my knowledge.

Senator MORGAN. Not to your knowledge. I believe you told Senator Mondale that you thought that at times, in the main interest of national security, such break-ins and enterings were justified.

Mr. BRENNAN. I think I told the Senator that I feel there is a need for legislation which would provide the legal framework for whatever action is decided the FBI should be engaged in.

Senator MORGAN. Did you not say also that you thought that there were times when such unlawful entry was justified and warranted?

Mr. BRENNAN. In the absence of any specific legislation, and if the FBI had the responsibility to develop information regarding the efforts of agents of a foreign power who were actively engaged in spying on intelligence activities in this country, I would say, yes sir, it would be justified.

Senator MORGAN. What do you refer to as domestic counterespionage? What is that?

Mr. BRENNAN. Do you have a reference to domestic counterespionage?

Senator MORGAN. I believe you referred to it earlier as domestic counterespionage.

Mr. BRENNAN. I do not think those two terms are coincidental or related. I referred to counterespionage as related to the type of activity which would be designed to block, negate, nullify, or develop information for prosecutive purposes concerning the activities of individuals who have been sent to this country, either under the guise of diplomatic cover legally, or as illegal agents, or utilizing Americans in concert with foreign agents, to engage in intelligence operations here. I would interpret the domestic groups to be basically related to the Americans who were involved in either, let us say New Left-type activities, Old Left activities, or extremist type activities.

Senator MORGAN. All right. But going back to domestic activities, and especially to the question that the chairman asked you with regard to your instructions, or the Bureau's instruction, to investigate every black student group, regardless of whether or not that group had been involved in any unlawful activities, was that sort of an effort to intimidate the black students from belonging to those groups? Was it not a type of espionage?

Mr. BRENNAN. No sir. I think if you look—as I pointed out to the chairman, I believe—the basis for that cited the fact that there had been a significant increase in disruptive activities on the part of some Black Student Unions, and I think the instructions concerned the initiation of investigations to determine which ones may have developed a propensity for violence.

Senator MORGAN. I only have a minute left, Mr. Brennan. Let me use that minute to say to you that I, of course, can understand the apprehensions of the Bureau, and your efforts to apprehend those who violated the law. But as a former chief law officer of my State, and one who directed a substantial law enforcement agency, I believe that there are adequate laws on the books today to enable any competent and efficient law enforcement agency to enforce the laws of this country without engaging in unlawful breaking and entering, without engaging in unlawful wiretaps, without using the IRS for the purpose of harrassing the citizens that we may suspect even though they may be guilty of nothing, but who, in our judgment, might be dangerous to society.

I think it may take a little more effort on the part of our law enforcement agencies. They may have to be better trained. But I think it

can be done, and I don't believe that in this country that we can tolerate people in Government violating laws themselves in order to apprehend others that we may suspect of violating the laws. Thank you, Mr. Chairman.

Senator TOWER. Senator Mathias?

Senator MATHIAS. Thank you, Mr. Chairman. Mr. Brennan, I rejoiced a moment ago when I heard you say that under the pressure of what appeared to be a domestic threat that the proper solution should have been to seek legislation to deal with it. I just want to say to you that I think that was absolutely the right reaction, and that it is a tragedy that your advice in this matter was not carried out.

The temptation is very great to say, "Well, we are in an emergency situation, we have to take emergency action." But, I think we ought to keep in mind some of the thoughtful advice we have had from great Americans in the past on this.

Chief Justice Hughes, who I look upon as a very great American, writing in a case in 1934 said that "an emergency does not create power. Emergency does not increase granted power or remove or diminish restrictions imposed upon the power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants and powers to the Federal Government and its limitations to the power of the States were determined in the light of emergency, and they are not altered by emergency." And I think this, in essence, is what you were telling us, and I think as we look to the future we want to try to insure that institutions, as they carry out their lawful duties, remember that emergencies alone do not create the power that is necessary to cope with. But there are within the constitutional framework sources of power which I think are capable of meeting any emergency, so it is the process that is important.

Mr. BRENNAN. I appreciate your observation, Senator. I agree with you wholeheartedly, and I think the record should show that I am very proud to be a member of the FBI. I think the FBI did an outstanding job over the years, and I think the people of the FBI represented the finest group of individuals that I have ever had the opportunity to associate with and I think as they stand today, they are ready and willing to do a further and better job for the country, and I do feel that there is a specific need for legislation to enable them—all they want to know is what are the guidelines, what do you want us to do, and tell us what are the limits that you do not want us to exceed, and I am very confident that the FBI will agree with that concept.

Senator MATHIAS. It seems to me it is the work of this committee, for the first time in a generation, to try to provide those kinds of guidelines for the FBI, the CIA, the DIA, the NSA and the other intelligence agencies that are important to the work of Government—

Mr. BRENNAN. I agree, sir.

Senator MATHIAS [continuing]. And this is the long overdue discharge of responsibility for the Congress.

I would like to look with you at the July 19, 1966, memorandum [exhibit 32¹] from Mr. DeLoach to Mr. Sullivan with reference to "black bag" jobs, and, without reviewing the terms of that memorandum, it would appear from it that it confirms your earlier testimony that

¹ See p. 273.

the "black bag" jobs had, in fact, been going on for some period of time prior to 1960, would it not?

MR. BRENNAN. Yes, sir.

Senator MATHIAS. And it also then confirms Mr. Huston's testimony of Tuesday, that at least as far as surreptitious entries are concerned, they did not begin with the Huston plan, would it not?

MR. BRENNAN. No, sir. I mean it would confirm Mr. Huston's testimony.

Senator MATHIAS. It would confirm it so that Mr. Huston really does not deserve credit as being an innovator, if you can call it credit; he was sort of a codifier of a practice that had already existed.

MR. BRENNAN. Yes; as a matter of fact, I do not know that Mr. Huston ever before, after, or at any time between, ever had any connection with any so-called "black bag" job.

Senator MATHIAS. This gives me, I think, greater concern than if he had thought it all up. It is very simple to deal with one man. We can get rid of him. We, in effect, have gotten rid of him. But dealing with institutional practices that have been in effect for a long time is a much tougher job.

The memorandum does say on page 2 that "Also through the use of this technique we have on numerous occasions been able to obtain material held highly secret and closely guarded by subversive groups and organizations which consisted of membership lists and mailing lists of these organizations." I wondered what criterion you imposed on yourself and your organization to decide whether the pursuit of domestic intelligence had crossed over the threshold. It was no longer the pursuit of subversive information, but actually interference in legitimate domestic political activity. Did you have any sort of test that you made yourself when some investigation was undertaken as to whether this was a proper investigation? How did you approach it? I am interested in your thought process.

MR. BRENNAN. Well, it gets to be a little bit of a complicated question. You mean the basis on which investigations were initiated?

Senator MATHIAS. Was there ever any point in which a red light flashed before you and you said "Well, I do not think we ought to get into this, I think this is getting into a constitutionally protected area"?

MR. BRENNAN. There may have been some instances. I am sure there probably were some instances, Senator. Right offhand, I cannot recollect or recall.

Senator MATHIAS. But you did not even have sort of a mental checklist?

MR. BRENNAN. Well, you had the basic responsibility of the FBI within the framework of the Presidential directives that may have existed within the degree of legislation that might have been passed by Congress, and based on the instructions from the Attorney General. This provided a broad framework for FBI operations and there was no—I do not think there was a situation within the FBI where any one individual, in other words, would have given a green light, so I think we had relatively a series of checks and balances, that prior to a really serious investigative matter, you would have to get approval along the line in the chain of command.

Senator MATHIAS. But these were internal checklists, and what I interpret as an appeal for you for congressional guidelines would be applicable in this very kind of situation.

Mr. BRENNAN. I feel that the possibility here, Senator, might arise for, let us say, a congressional legislative oversight committee, which would encompass agents from the FBI and which would also encompass attorneys from the Department of Justice who could, thereby, sit down and analyze the nature of the problems that the FBI is confronted with, have the prosecutive opinions of the attorneys, and get the overall legislative impressions of the Members of Congress. And I feel, by working together in this groundwork, perhaps it can all be brought together so that there can be a concise framework established for the future operations of the FBI.

Senator MATHIAS. But there was never any such consultation during the periods in which the "black bag" practice developed, which was a long period of time.

Mr. BRENNAN. Not to my knowledge, Senator.

Senator MATHIAS. I would like to move on to the memorandum or the letter written by Mr. Helms to Mr. Hoover which is exhibit 36,¹ dated February 26, 1970, and I would refer to the notation in Mr. Hoover's handwriting at the bottom of page 3, which says, "This is not satisfactory. I want our Denver office to have absolutely no contacts with CIA. I want direct liaison here with CIA to be terminated and any contact with CIA in the future to be by letter only." Signed "H."

Were you aware of this directive by Mr. Hoover?

Mr. BRENNAN. Yes, sir. I was.

Senator MATHIAS. Did this affect the operations of the FBI?

Mr. BRENNAN. I very definitely believe it did because I feel the various members of the intelligence community must work together in order to fulfill everybody's basic intelligence responsibilities, and I felt that the decision by Mr. Hoover to cut off relationship with the CIA was just totally an atrocious decision and was not consistent with what the responsibilities of the intelligence community are.

We rely upon and deal with CIA closely, as they do with us, in the interchange of matters of mutual interest to both of us, and it just did not square with the abilities of each to be able to carry out the responsibilities and perform the functions by saying, "discontinue liaison with the CIA."

Senator MATHIAS. So you think the best interests of our Government and our people were injured by the rupture between the FBI and the CIA in 1970.

Mr. BRENNAN. It certainly did not improve things, Senator. I feel it certainly did hurt.

Senator MATHIAS. Now, in considering the recommendations of this committee to govern the whole intelligence community in the future, do you think this kind of liaison ought to be mandated by the Congress so that one official, even an official as important as the Director of the FBI or the Director of the CIA, would not be able to cause such a total breach?

Mr. BRENNAN. Very definitely. There should have been some degree of objection right then and there which would have brought the mat-

¹ See p. 283.

ter to a head and which would have resulted in calling Mr. Hoover to task for an explanation as to why he arbitrarily was able to discontinue a relationship with the CIA, and unfortunately that did not come about. But I agree that there should be some means in the future by which no individual in a position of directorship of a particular Government agency should be able arbitrarily just to say who he is going to have contact with and who he is not, especially if it comes down to a point where it is injurious to the functions of the intelligence community.

Senator MATHIAS. To your knowledge, was there any objection to this from any higher authority in Government?

Mr. BRENNAN. Not that I know of. In effect, we worked around it.

Senator MATHIAS. And in fact, it may not even have been known to higher authority in Government, is that not true?

Mr. BRENNAN. I believe it must have been known, Senator.

Senator MATHIAS. So that, really, the only remedy is to provide by law for the kind of liaison which is absolutely necessary if we are to have the most effective use of the intelligence agencies?

Mr. BRENNAN. Yes, sir.

Senator MATHIAS. Thank you, Mr. Brennan.

The CHAIRMAN [presiding]. Senator Hart.

Senator HART of Colorado. Mr. Brennan, did the FBI conduct any surveillance of political figures at the 1972 Democratic Convention?

Mr. BRENNAN. Not to my recollection, Senator. And if they—political figures—in other words, I was not in—which one, 1968?

Senator HART of Colorado. 1972.

Mr. BRENNAN. 1972. I do not believe they did, Senator.

Senator HART of Colorado. Could you find out and let the committee know?

Mr. BRENNAN. Senator, I am no longer in the FBI.

Senator HART of Colorado. All right, we will find out. Thank you.

Mr. Brennan, how do you define the New Left, and whose definition was used by the FBI?

Mr. BRENNAN. The New Left was sort of an amorphous, disjointed collection of individuals that ranged all the way from those who were relatively, let us say, to put it in a nice style, were adopting a new style of life, and some of those who were involved in the drug scene, moving all the way up the ladder to those who were more legitimately concerned with—and I think this probably constitutes the overwhelming bulk and majority of it—several millions, clearly, of students who were clearly and objectively opposed to our involvement in the Vietnam situation, and then a relatively small, let us say, a few thousand individuals who were involved in the extremist sense of feeling that the only way to resolve the difficulties they saw confronting us was to take matters into their own hands, to use violence to achieve their ends.

Senator HART of Colorado. That is a pretty sweeping definition, is it not?

Mr. BRENNAN. I think that constitutes in my framework of reference, anyway, Senator, what I would term the New Left movement.

Senator HART of Colorado. A lot of the documents that we have before us and that are in the record refer to the need to watch and follow and otherwise survey the New Left. That is quite a bit of this country, not to mention a whole generation.

MR. BRENNAN. I think, Senator, within the context of the reference to the New Left, as it is contained in FBI communications, I think we are basically referring more to trying to isolate out of this broad amorphous-type grouping, the grouping I described for you, basically the individuals who advocated violent—who displayed a propensity for violence, individuals who publicly professed their supposed revolutionary drive, and individuals who espoused Marxist-Leninist concepts, at the same time individuals who denounced the Communist Party as a moribund defunct party, and who aligned themselves in a greater sphere with the revolutionary leaders of Communist movements throughout the world.

Senator HART of Colorado. I do not find that qualification anywhere in the documents I have seen. You sent out dragnet kind of instructions to your special agents in charge of field agents and so forth, concerning the New Left, not using any of the qualifications that you have just stated here, which gave the agents a broad latitude as to whom they could watch, follow, break in on, and any one of a variety of other activities.

MR. BRENNAN. I do not think, if you are implying that we watched and followed and broke in on millions of individuals, Senator, I do not think that is true. I think that you have to give us some credit for some degree of circumspection in the handling of these matters, and I think if you—in the context of specific instructions that related to the investigative responsibilities of the Bureau, I think that it emerges that there is a framework for our investigative responsibilities.

Senator HART of Colorado. Well, Mr. Brennan, if that degree of circumspection that you were relying on had not broken down, I doubt that this committee would be in existence. Let me refer to a document, exhibit 44¹ that I think has already been brought up in this hearing, a memorandum from Mr. Felt to Mr. Tolson, dated September 2, 1970. It is a document relating to whether people of age 18 to 21 should be recruited as informants.

At the bottom of the first page of that memorandum, it says, "If we could develop informants among these new members," talking about the younger people of various groups, "we could guide them to key positions. By the time they are 21 years of age they are almost ready to leave college and have been subjected to the corrosive influence and brainwashing of ultra-liberal and radical professors." An observation that follows says that "The important consideration, of course, is to protect the Bureau from possible embarrassment. Many of our 18-, 19- and 20-year-old men and women are highly intelligent, mature, and loyal citizens."

That is a nice observation. "This has recently been recognized by the Congress in lowering the voting age to 18 years. It is felt the same concept can logically be applied to the revolutionary conflict at home and particularly on campuses."

There follows a penciled notation or a pen notation. "I don't hold this view. [Signed] H," which I understand is the Director of the FBI. Could you tell this committee why Mr. Hoover did not like young people? [General laughter.]

MR. BRENNAN. I think you have drawn that conclusion from that. I do not know whether I could agree that that was a conclusion that he had arrived at. I was reminded before that I should not engage in such

¹ See p. 328.

speculative conclusions as to why somebody else may have felt something of this nature.

Senator HART of Colorado. You do not know why he made that notation?

Mr. BRENNAN. I do not know.

Senator HART of Colorado. There was a lot of merriment around this town recently when a journalist inspected the Secretary of State's garbage. Did the FBI ever involve itself in trash or garbage surveillance?

Mr. BRENNAN. I believe we had a program some years ago which involved an assessment of trash.

Senator HART of Colorado. What kind of things were you looking for in the trash?

Mr. BRENNAN. Basically, as I recall, we were looking for notes or materials related to individuals we suspected to be intelligence agents of foreign countries or engaged in espionage activities in the United States, and anything that might give us a clue as to types of individuals in the United States that they might be in contact with.

Senator HART of Colorado. Mr. Brennan, in your many years at the Bureau, have you ever known a trained agent of a foreign power to put incriminating documents in his trash or garbage?

Mr. BRENNAN. It is conceivable.

Senator HART of Colorado. I did not ask the question whether it is conceivable. I said, did you have a specific case where that had happened? Colonel Abel or anyone else?

Mr. BRENNAN. Specifically, at the moment, I cannot recall any. Perhaps the FBI records might provide a better indication of whether they had achieved through that degree of investigative technique anything that was of a positive nature.

Senator HART of Colorado. Mr. Brennan, can you account for the reasons why the so-called Thomas Riha case caused the seriousness of the breach between the CIA and the FBI?

Mr. BRENNAN. Why it caused the breach?

Senator HART of Colorado. What having to do with Professor Riha accounted for the seriousness of the breach between the CIA and the FBI?

Mr. BRENNAN. Well, I think it was a breach which was totally out of proportion with the nature of the incident. Are you asking me now to relate back the incidents concerning the Professor?

Senator HART of Colorado. No. I want your judgment as to what was so important.

Mr. BRENNAN. Well, I feel that—again, you are asking me for a sort of an opinion or speculative observation—but I feel I am safe in saying that over the years through my observations in the FBI, Mr. Hoover had no close regard for the Central Intelligence Agency, and I believe that this particular incident constituted just a basis on which he could demonstrate to them his degree of arbitrary rule relative to the relationships between the two agencies, and I believe he seized upon that as an opportunity to be able to do so.

Senator HART of Colorado. But, to your knowledge, it had nothing to do with whether Professor Riha was an agent, double-agent, or was working for any agency of our Government or any other Government?

Mr. BRENNAN. No; and to my recollection, this is the sad part of it. It just—I mean Mr. Riha just apparently happened to pop into a

set of circumstances where the real vital question here was the fact that an FBI agent disclosed some information to a CIA agent which disturbed Mr. Hoover.

Senator HART of Colorado. Without going to great lengths—it is fairly crucial in the case because the purported FBI agent who spoke to the CIA agent said, “Calm this thing down. Get out to the press that Riha is alive and well.” Riha, as you know, disappeared and has never been found.

If an unnamed FBI agent knew something about Professor Riha that he was not telling anyone else, I think that is fairly important. You do not have any information on what happened to Professor Riha?

Mr. BRENNAN. My recollection is that he left this country voluntarily and that there was no indication or evidence to indicate that, as many alleged from that section of the country, that he had been spirited off by Communist agents.

As I recollect, he was possibly of Czechoslovakian background. He was in this country, teaching here, and he suddenly disappeared. The information which the FBI had available to it at that time indicated that he had voluntarily left, and there was no substantiation of any involvement in any intelligence activity or any spying. There was just no basis for the flap that arose, as I recall the incident, and this is why I say it would seem then to me to be a relatively ridiculous situation which blows up to the point where it then leads to a cutoff in relations between the two agencies.

Senator HART of Colorado. I am interested in the information you have given us, because neither the CIA nor the FBI nor the local law enforcement agencies had that information as to what happened to him. They still think he is a missing person.

Finally, Mr. Brennan, Senator Mondale had a discussion with you in which you talked about the pressures on the FBI and other agencies by elected officials. I feel very strongly, as he and other members of this committee do, that this is certainly a factor in some of the things that went wrong. Can you account for the fact that when that pressure occurs, from the White House or from elected officials, or from the Congress, for the FBI to do something—why professional agencies such as this cave in under that pressure? Why concoct, if you will, information to satisfy those inquiries, rather than tell the President of the United States the truth? Why dredge up and examine people's trash, and everything else, to try to make the kind of case that the President of the United States or some Member of Congress wants to hear? Why not tell the Director of the FBI to tell the President of the United States that there is no case here?

Mr. BRENNAN. I don't think the picture you have drawn quite applies to what prevailed in the FBI. I feel that Mr. Hoover, as Director of the FBI, was a very strong personality who at no time really hesitated to tell anybody in town what he felt, including the President of the United States. And I think that if he, at any time, had been directed to take upon himself, or on behalf of the FBI, activities which he personally objected to, for whatever reason, he would make these objections known.

Senator HART of Colorado. Mr. Angleton testified yesterday, and I think the records here today indicate that high level senior officials

in both the CIA and FBI seriously doubted, in fact never believed, that there was substantial foreign connection with domestic dissidents. Yet we have no record whatsoever that that case was ever laid before the President of the United States or his delegates.

Mr. BRENNAN. I cannot vouch for what Mr. Angleton had to say. I think, on the basis of my testimony here earlier today—I think I made it clear that in one instance we furnished the White House with a 40- to 50-page report which detailed the extent to which Americans involved in the antiwar movement were traveling in Communist countries and attending Communist conferences.

I think the only question was a continuing hammering of the fact of whether they were being furnished money. Are Communist funds subsidizing this activity? But I don't think the theory was held within the FBI, that there was no foreign involvement on the part of a number of individuals who were activists in the antiwar movement.

Senator HART of Colorado. I am past my time, Mr. Chairman.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Brennan, I wonder if you would turn to exhibit 32.¹ I would like to just read a couple of paragraphs from that; then I would like to ask you a few questions about those paragraphs. This is a July 19, 1966 memo of Mr. DeLoach and Mr. Sullivan, and the unusual caption to the right of it says "Do Not File," in caps, underscored. And I am reading the third and fourth paragraphs—

The present procedure followed in the use of this technique calls for the Special Agent in Charge of a field office to make his request for the use of the technique to the appropriate Assistant Director. The Special Agent in Charge must completely justify the need for the use of the technique and at the same time assure that it can be safely used without any danger or embarrassment to the Bureau. The facts are incorporated in a memorandum which, in accordance with the Director's instructions, is sent to Mr. Tolson or to the Director for approval. Subsequently this memorandum is filed in the Assistant Director's office under a "Do Not File" procedure.

In the field, the Special Agent in Charge prepares an informal memorandum showing that he obtained Bureau authority and this memorandum is filed in his safe until the next inspection by Bureau Inspectors, at which time it is destroyed.

Now, I wonder if you could tell us a little bit about this rather unusual "Do Not File" procedure. How did this work, Mr. Brennan?

Mr. BRENNAN. I think the memorandum speaks for itself, Senator. In other words, what it is saying is that the special agent in charge of the field office would call the Assistant Director, relay to him the basis for his feelings that a certain action should be taken relative to a "black bag" job. The Assistant Director would prepare that memorandum, send it to Mr. Hoover for approval. The memorandum was not recorded in the usual recordkeeping functions of the FBI, but returned to the Assistant Director of the FBI and would be filed in his office, under a "Do Not File."

Senator SCHWEIKER. Let me ask you another question this way. If it had been filed in the normal procedure, and then somebody subsequently removed it from the normal file and destroyed it, why was it not done that way?

Mr. BRENNAN. There would have been a record of it.

¹ See p. 273.

Senator SCHWEIKER. In other words, each file of the FBI is serialized, and as new information is put in, a serial number is assigned. So is it not correct that if it had been filed in the normal procedure and then removed, there would have been a gap, as far as the number is concerned. Is that correct?

Mr. BRENNAN. Yes, sir.

Senator SCHWEIKER. I gather this is a procedure. How did the agents in the field know about this procedure? Was this in the manuals or rules and regulations, manuals of instructions? Or how did they know that this procedure was to be followed? Was it from memorandums like this? How did the field offices know about the "Do Not File" procedure, and the destruct mechanism?

Mr. BRENNAN. I frankly cannot answer that, Senator. I don't believe there was any reference in any manual or the like that referred to "black bag" jobs. Maybe there was, but I doubt it. And I did not have that much of a—well, I just didn't have any participation to a degree that—well, frankly, I don't know how they knew. Apparently, it was a very highly "need-to-know" type of operation.

Senator SCHWEIKER. All right. They do, of course, call it a procedure. So obviously, it had been invoked and was invoked, and they had a quote obviously indicating that that was a signal that this procedure was to be followed. I gather that one purpose of it was that if a "black bag" job went afoul, and somebody got hauled before a court, the Bureau or someone in the Bureau or an official of the Bureau could make a statement to the court, or to any other person investigating, to the effect that we searched our files and records, and there is nothing to indicate we did such and such. Would that be a fair assumption, on a "black bag" job?

Mr. BRENNAN. I think so, Senator.

Senator SCHWEIKER. And I think that it, of course, could apply in a lot of other areas as well.

As I see it, it looks to me as if the Bureau has had a better perfected technique of plausible denial than the CIA had, because number one, the Assistant Director makes a decision to follow the "Do Not File" procedure. The special agent is informed. He can put a special memo only in his personal safe. When the FBI investigator comes around, the Director or his Assistant Director is assured the procedure has been followed, because the inspector reads it in a safe. He knows his command and control is there, but he also knows it will be destroyed immediately after that. To me it is really the perfect coverup, and a lot more sophisticated and more refined than the plausible denial of the CIA.

I think that one other point that ties in here, of course, is that it would permit anybody to swear in an affidavit, in such a way for example, "He has caused a search to be made of the records of the Federal Bureau of Investigation, the United States Department of Justice, by the employees of the said Federal Bureau of Investigation, acting under his direction, and that said search discloses," and so on and so forth.

Now, the point I am making here—and I realize this does not directly involve you, Mr. Brennan—I want to be fair and make that very clear—is that anyone who went to court or filed an affidavit, or made a sworn statement to another Government agency or to a commission would be technically telling the truth because of the way

that wording is constructed. Yet, in fact, it would be nearly total deception.

And I think we have seen an illustration just recently in Dallas, where destruction of FBI documents has come to light. And I am not going to ask you about that, Mr. Brennan, because I understand there is an ongoing investigation, and it would not be appropriate. But I do want to say that I commend Director Kelley, because I think he is doing a good job. I think he is trying to get things straightened out, and I commend him for his approach in this area.

But I do think it is interesting that here we look at the chief investigative arm of the Government, and anytime that somebody at the Director or sub-Director level decides that they do not want anybody to know about something, there is a formal procedure whereby the whole apparatus jumps into line and can do it, and can deny in a court of law that such a thing ever occurred, and supposedly, technically be telling the truth.

And it just seems to me this is at the heart of our investigation here, because how can we, in Congress, even though we are investigating, know what is going on? We found the theory of plausible denial in our investigation of the CIA on the subject of assassinations. We find it here as a technique that the FBI used. It certainly makes it very difficult for bodies like the Warren Commission and Congress to do their jobs. And I think it is very significant, and I think the record should very clearly show that this procedure was used at the uppermost levels, and was used for certain purposes, and I think we just touched the tip of the iceberg as to what purposes and what motivation and what the situation was.

Now, Mr. Brennan, I would like to turn my attention to one or two other subjects for a moment, and that is that in the mail-opening that was discussed earlier, we now know, of course, that the CIA did not discuss at the meetings about the Huston plan the mail opening procedure. And I understand from preceding testimony that the Counterintelligence Program was not discussed at these same kinds of meetings. I wonder if you could tell us why the COINTEL Programs, or Counterintelligence Programs, were not discussed at these meetings?

Mr. BRENNAN. I don't believe they were pertinent to the basic purpose of the meetings. I believe the basic—in other words, as I interpret what happened relative to the Huston plan, you have to go back to the original question again being asked consistently by the White House. Are foreign, Communist elements subsidizing financially the activists in the antiwar movement? And part of the apparent inability to be responsive to that arises from what I perceive to be a degree of provincialism which existed among the various organizations of the intelligence community at that time. I think the general feeling being let us say, among the FBI, DIA, NSA, you know, we do our thing, you do yours, and let us not get involved in each other's area of operations here. And I think there was a feeling that possibly we could overcome what I would term that frame of provincialism if we could analyze each other's resources, techniques, and possibly broaden the scope of our own overall respective capacities. Perhaps we would do better toward being responsive to what the basic question of the White House was.

Senator SCHWEIKER. Did not the basic question also relate to radicals on campus and radicals domestically? And I have a hard time drawing the line between the distinction you just made and what I thought the White House group and Mr. Huston were focusing on, because Huston was focusing, when he testified before us, on violent revolutionaries, on what they were doing to our streets and to our campuses. And certainly, as I would understand the program you were working on, that would certainly go to the heart of the same kind of thing, whether you are talking about using a student as an FBI informant, or what.

Mr. BRENNAN. Right. I agree, Senator. But I feel that then, stemming from that, what you have is the question of, are you utilizing enough wiretaps, and are you utilizing enough bag jobs, are you utilizing enough of these sophisticated techniques that perhaps you'd used in the past which have since been cut back, and should there be reconsideration of an intensification of the use of these techniques?

Senator SCHWEIKER. I see my time has expired. That is all the questions I have, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Schweiker. Senator Morgan has asked to be recognized for one additional question.

Senator MORGAN. Mr. Brennan, to follow up on my line of questioning earlier, would you turn to exhibit 46,¹ on the second page, a memorandum from the Director of the FBI to the agent in charge in Albany, I believe.

Mr. BRENNAN. Yes, sir.

Senator MORGAN. And on the first page, there was a memorandum to you, requesting that this memorandum be sent to all stations which I assume you approved?

Mr. BRENNAN. Apparently so, yes.

Senator MORGAN. I beg your pardon?

Mr. BRENNAN. Apparently. That looks like my initials up there.

Senator MORGAN. All right. Now, Mr. Brennan, that memorandum included instructions as to how to keep surveillance on individuals that were designated as "Key Black Extremists," and "Key Black Extremist Organizations," did it not?

Mr. BRENNAN. Yes, sir.

Senator MORGAN. And among the things that were listed to be done was, number nine, that "the Federal income tax returns of all Key Black Extremists must be checked annually, in accordance with existing instructions." Do you find that?

Mr. BRENNAN. Yes, sir.

Senator MORGAN. That was one of the policies, was it not, to use tax returns for such purposes of surveillance, and whatever other purpose that you had?

Mr. BRENNAN. There was use of some tax returns; yes, sir.

Senator MORGAN. In other words, anyone who was designated by the Bureau as a person of interest would have his tax return checked annually, in accordance with instructions that were prepared—

Mr. BRENNAN. I don't think that's what that says, Senator. Doesn't it say that consideration shall be given?

Senator MORGAN. The beginning paragraph says: "The desirable coverage must include, but not be limited to, the following investiga-

¹ See p. 338.

tion." I am reading from the top of page 2—"must include, but not be limited to." And then item number nine was "The Federal income tax returns of all Key Black Extremists must be checked annually in accordance with existing instructions."

Mr. BRENNAN. Yes. Apparently that would apply to checking the income tax returns of the Key Black Extremists, or individuals designated as such.

Senator MORGAN. Mr. Chairman, I believe we will be following this up later, but I would like to comment for the record that this concerns me greatly, because if the Bureau decided that any given person should be on their list, then he could have his tax returns checked every year. And you know, even I might—I will put myself in there—I might belong to some organization that the Bureau might decide is extremist, and if so, I could have my tax returns checked every year. I think this raises an important question.

The CHAIRMAN. Well, indeed it does. And I have known you to oppose certain policies of the Government. Does that mean that you get your tax returns examined every year? This business of using the tax returns for surveillance and law enforcement purposes unrelated to the question of whether or not the citizen has paid his taxes, using it as a form of harrassment, you know, is a very serious question, Senator Morgan.

And maybe this is the appropriate time to say that next week the committee is going to explore this question of what we regard as improper practices, where the IRS has begun to use surveillance techniques for purposes other than determining whether the citizen concerned has paid his taxes, for purposes of harrassment. We are going to examine the ways that this is done in liaison with other agencies of the Government like the FBI.

Senator Tower has asked to be recognized.

Senator TOWER. Thank you, Mr. Chairman.

Mr. Brennan, the GAO report that was mentioned earlier today by Mr. Smothers raises a question which I believe is critical to our evaluation of the need for new tools and techniques on the domestic front, as apparently espoused by you today. From a law enforcement standpoint, a 3-percent rate of referral for prosecution of domestic intelligence cases is not terribly impressive. However, the report also noted—and I quote—"Who is to say that the Bureau's continuous coverage on such groups and their leaders has not prevented them to date from achieving their ultimate subversive and extremist goals?"

I also raise the question of whether, despite the limited number of criminals identified to date, this Congress should recognize the need for FBI activity extending beyond the strict parameters associated with law enforcement functions. Mr. Brennan, I ask your comment on the question of whether this committee should ask the Congress to clearly establish by statute a domestic surveillance role for the FBI.

Mr. BRENNAN. Yes. I think the FBI would welcome that type of clarification.

Senator TOWER. I mean, statutorily authorize a surveillance role that may not now be authorized, or may be proscribed by law as it now stands—consistent, of course, with the Constitution, and our theories of law and rights.

Mr. BRENNAN. I am not quite sure I understand what you mean, Senator.

Senator TOWER. We are talking right now about the FBI going beyond its authority. We are talking about aspects of FBI activity that might be considered unconstitutional. What I am trying to establish here is, should we recommend legislation that might perhaps remove some of the parameters that surround the FBI at the moment, and give specific authorization for surveillance under certain circumstances?

Mr. BRENNAN. Yes; I definitely feel you should.

Senator TOWER. Thank you.

The CHAIRMAN. Any other questions from the committee? Senator Hart?

Senator HART of Colorado. Mr. Brennan, the last question I asked you had to do with the degree of foreign involvement, particularly financing domestic disruptions. And why, if there were senior people in both CIA and FBI that believed that there was not substantial foreign involvement, that case was not made to the President? You said you could not speak for the CIA, but you thought the FBI consistently took the view that the domestic unrest had substantial foreign involvement.

The reference that I was referring to was your deposition before the committee. The question was asked, "Is it your judgment and was it your judgment at the time that there must have been a great deal more foreign money coming in?" Mr. Brennan: "Based on my experience, I personally did not believe that that was true. I felt that the extremist groups and the others who were involved in antiwar activities and the like at that time were of the middle- and upper-level income, and we characterized them generally as credit-card revolutionaries."

My question is why you and people like you in the FBI and the CIA did not flatly tell the White House that. That case never seemed to get up there. It was always what the President wanted to hear.

Mr. BRENNAN. I don't think that is true, Senator. As I indicated to you, we had ample evidence of the travel of leading activists in the antiwar movement to foreign countries, where they attended meetings of Communist groups abroad concerned with the so-called peace movement in the United States. We submitted a 40- to 45- or 50-page report dealing with the extent of this activity.

Senator HART of Colorado. Did that report include a statement such as I have just read? That is the question.

Mr. BRENNAN. We at one time were required to submit a report dealing with the extent of our knowledge of Communist funding. And I believe it was our observation therein that there was some evidence, for example, of one subversive group or one extremist group of individuals who were traveling to Cuba, who were thereby, let us say, entertained to a degree at the expense of the Cuban Government.

Senator HART of Colorado. Mr. Brennan, that is not my question. My question was, did these lengthy reports ever contain an observation such as you made to this committee that you did not believe there was substantial foreign funding?

Mr. BRENNAN. No. I don't feel that that would be appropriate for inclusion within an FBI report as to the expression of a belief.

The Bureau took the position it was a fact-finding agency, and it would stick to basically what it knew. But I don't think that, even if we had been asked, "what is your feeling about it," that the Bureau would have been able to respond that, "well, we happen to believe such and such."

Senator HART of Colorado. I assume your belief was not based on imagination, but your opinion was based upon facts. If you saw a set of facts that showed substantial foreign funding and then had a belief that there was no substantial foreign funding, I would think that you would be subject to dismissal.

Mr. BRENNAN. Yes. But if I gave you a report dealing with 15 separate organizations which relatively set forth the degree of information concerning whether or not they were receiving funds from foreign sources, I think that you would be able to draw the conclusion for yourself as to whether or not there was any extensive foreign funding.

Senator HART of Colorado. Not if you did not present the other side of the case, and I think it is a classic example of an agency's being given the obligation to tell the facts to the White House, and instead telling the White House exactly what it wanted to hear.

Mr. BRENNAN. I think you are asking, then, for interpretations, and the Bureau did not engage in interpretations.

Senator HART of Colorado. That is all, Mr. Chairman.

The CHAIRMAN. Senator Baker?

Senator BAKER. Mr. Chairman, just briefly, for the sake of clarification, I understood Senator Hart's question to be that it was your conclusion that there was no foreign involvement in these demonstrations. Is it your testimony that there was no foreign funding?

Mr. BRENNAN. Yes, sir.

Senator BAKER. Now, is there a distinction between these two?

Mr. BRENNAN. I think there is. I do not know whether I have confused the members of the committee. Clearly, what I again state is that we had developed no evidence to indicate any substantial Communist foreign funding of the antiwar movement in the United States. But on the other hand, we had extensive evidence of the leading activists, many of the leading activists of the antiwar movement, attending Communist conferences abroad where the matter of what should transpire relative to demonstrations in this country was discussed. And you may want to regard that as perhaps indirect guidance, or perhaps even more direct guidance, of what the antiwar movement should do in this country. Those, I think, are two separate and distinct things which led you, on the one hand, to say, "yes, there was extensive contact between American activists and foreign Communist elements, but no evidence that the foreign Communist elements were pouring money in in support of what was taking place here."

Senator BAKER. Thank you.

The CHAIRMAN. Senator Schweiker has a question.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Brennan, as I recall, a few minutes earlier you testified that you were not aware that any "black bag" jobs were done after the January 6, 1967, memorandum of Mr. Hoover's. Is that correct?

Mr. BRENNAN. That is my recollection, Senator.

Senator SCHWEIKER. All right. Now, we have, of course, on file with the committee the fact that such a "black bag" job did occur in April of 1968, some time after that. Now, I realize you were Chief of the Internal Security Section at that time, in the 1968 time frame?

Mr. BRENNAN. Yes, sir.

Senator SCHWEIKER. And your immediate superior would have been the head of the Domestic Intelligence Division. Is that the correct chain of command?

Mr. BRENNAN. Yes, sir.

Senator SCHWEIKER. And then, the next step would have been Mr. Hoover himself?

Mr. BRENNAN. You have an intermediate step of Assistant to the Director.

Senator SCHWEIKER. Let's assume that basically, to your knowledge, it was not approved through you. If, in fact, as the FBI report shows, it did occur, someone in the sequential steps above you, one, two or three, would pretty well have had to have approved it for a "black bag" job to have occurred. Is that correct.

Mr. BRENNAN. Yes, sir.

Senator SCHWEIKER. It is really inconceivable to you that it really would not have occurred if one, two or three ladders above you did not somewhere give an OK to it? Would that be a fair assumption?

Mr. BRENNAN. Yes, sir.

Senator SCHWEIKER. I think again this points out the clear-cut situation where a memo says one thing, and yet one or two people at the top are doing something differently, whether it is setting up a "Do Not File" procedure, or going against a memo they issued. I think it pretty well gets to the heart of the problem here; and again realize, Mr. Brennan, I am not tying you into it. But I think it is important to put it into the record. That is all.

The CHAIRMAN. Thank you, Senator Schweiker.

I have just one other matter I would like to question you about before we close this morning. Our figures show, based upon the reports of the FBI, that when the agency decided greatly to increase its campus surveillance, it estimated that by its surveillance of all SDS members, 6,500 new cases would be opened. And it estimated that in its surveillance of all black groups on our campuses, 4,000 new cases would be opened.

Now, what does that mean, opening a case? Does that mean that you establish a file on the person? Give me a better understanding of what opening a case means. There is a human element here. What does it mean to the person on whom the case is opened? You have agents going on these campuses asking questions about certain people who are within this new 4,000 group of black students, or within this new 6,500 group of SDS members, and then a case is opened with each one of them. What does that mean? What are the mechanics?

Mr. BRENNAN. Well, the field office basically would have the responsibility of opening a case file on the organization.

The CHAIRMAN. Or on the individual?

Mr. BRENNAN. Well, let me try to give it to you in sequence, Senator.

The CHAIRMAN. All right.

Mr. BRENNAN. And—the field office—through investigative procedures, would attempt to develop sources and informants who could

give them information relative to the individuals who were the leaders of the organization, and through appropriate investigative techniques and efforts, attempt to determine who the individual members of an organization were; at which stage, an individual case would be opened on each individual member.

They now would be investigated with sort of a preliminary background investigation, to draw together the picture of the individual. But inherent in all of this, then, would be the need to make a determination at some point in time, is this merely a rank-and-file type of individual, or has this individual through his activities demonstrated a propensity for violence, or does he occupy a strong leadership position in the organization, and has he or she been responsible for public exhortations of violence?

The CHAIRMAN. Once a file is opened, and the individual is placed under surveillance, suppose it develops—as I am sure it did in a great many of these cases—that the individual is found not to be engaging in any unlawful activities, but simply expressing his opposition to the war, his opposition to being drafted to fight the war, or whatever. Then is the file destroyed?

Mr. BRENNAN. It is closed.

The CHAIRMAN. It is closed. Well, suppose that individual later wants to get a job, let us say, with the Government. He is grown up now, he has left the campus. He wants to get a job with the Government, and he applies for a job, and the FBI is asked to run a name check on him. Now, would that name check turn up that file, even though it were closed?

Mr. BRENNAN. I am not sure, Senator. I am not too familiar now with the operation of the name-check function, and the degree to which they would include types of information pertinent to the inquirer's interest.

The CHAIRMAN. Can you testify that such a name check would not turn up that name because the file had been closed?

Mr. BRENNAN. No; I don't think I could, Senator. As I say, I am not all that certain, and I would hate to really run around in areas where—

The CHAIRMAN. Do you see what I am concerned about?

Mr. BRENNAN. Yes; I understand.

The CHAIRMAN. Here a file is set up. The agency itself decides, after surveillance, that this young person has not violated any laws. The file is closed. Later, he tries to get a job with the Government. A name check is run by the FBI, and the FBI makes a little reference to the agency, and says, "this man's name appeared on a subversive file."

You see, this is an intensely human thing. These people who get caught up in this thing can be affected for the rest of their lives.

Well, I think today the testimony has established that the Huston plan called for a relaxation of restrictions that then applied to surveillance on the campuses, following its revocation by the President. And within a month or so thereafter, the FBI greatly expanded that surveillance. The 21-year limitation, which was meant to avoid student spying on students on the campuses, was eliminated, and informants were obtained on the campuses among the student body. Also, all SDS members were placed under surveillance, and 6,500 new cases were opened. Also, all black groups were placed under surveillance,

even though there was no previous evidence of violence or a tendency toward violence; and that involved the opening of 4,000 new cases.

My final question, Mr. Brennan, is, do you know whether this rather dramatic expansion of the FBI involvement on the campuses of the country began within a month or so after the President had revoked his authorization of the Huston plan, whether all of that was told to the President?

Mr. BRENNAN. I don't believe it would have been, Senator. I believe that the most that would have been done would have—possibly at the next appropriations testimony, where Mr. Hoover would be called upon to spell out what the areas of investigative interest the FBI had, that he, at that time, would have been subject to the congressional inquiry which would have enabled him to draw out the scope of our activities.

The CHAIRMAN. Tell me this. The record shows that Hoover was objecting to the Huston plan, and then shortly after the President revokes it, he is approving a big expansion of surveillance on the campuses, reducing the age from 21 to 18 and all of the other things we talked about. What accounted for the change of position? Why did he object to it in the Huston plan and then shortly thereafter turn around and approve it?

Mr. BRENNAN. I frankly don't know, Senator. There were inconsistencies of that type that went along from year to year, and Mr. Hoover was not the type that would call you in and explain to you why he changed his mind.

The CHAIRMAN. Then you have no explanation to give?

Mr. BRENNAN. No, sir.

The CHAIRMAN. Senator Tower has a comment.

Senator TOWER. I just want to make one comment, Mr. Chairman, consistent with Senator Morgan's objection to the chief counsel, Mr. Schwarz's line of questioning at the beginning of the session today. I would like simply to say for the record that the response that Mr. Brennan gave to Senator Huddleston's questions concerning Mr. Hoover's motivations for recommending rejection of the Huston plan was Mr. Brennan's opinion, and was speculative entirely.

I would like to further note—this should not be inferred as a criticism of Mr. Brennan, because he has got a perfect right to respond to questions as to what his opinion is—but I would point out that Mr. Hoover is not around to comment on what his motivations might have been at the moment. I think we should note that the witness' answer stands as an opinion, as speculative, and not a matter of fact.

Mr. SCHWARZ. Mr. Chairman, there are other FBI witnesses who have contrary opinions, of course, and we have spoken to some who believe that Mr. Hoover did have a genuine interest in the matters that he was talking about. So there is a difference of opinion among the people of the FBI.

Senator BAKER. I might ask, Mr. Chairman, whether anybody really knows why everybody was scared of J. Edgar Hoover. If this witness knows, we ought to let him say. We stopped him a minute ago before he had a chance to say.

The CHAIRMAN. Are you putting a question, Senator Baker?

Senator BAKER. Sure. Mr. Brennan, do you know? Did you ever discuss with Mr. Hoover why the President or anybody else had such

a concern or respect, or even fear, of him? I assume you do not, but nobody has asked that question.

Mr. BRENNAN. No, I don't.

Senator BAKER. I remember, Mr. Chairman, that this is a legend that has gone on for some time. But I rather suspect we may never find the answer.

Mr. BRENNAN. Well, I think it possibly arises, Senator, from reports of certain observations perhaps made by President Kennedy, when he was asked whether or not he intended to reappoint Mr. Hoover or to get rid of him. If I recollect correctly, his observation was—you know, you don't fire God. And I believe that President Johnson also was posed a further question as to whether or not he intended to keep Mr. Hoover on. I think he made a response of similar content.

Senator BAKER. Thank you.

The CHAIRMAN. At the birth of this country, John Adams resolved that our society must have a government of laws and not of men. This was necessary, he said, because the law, in all vicissitudes of Government, fluctuations of the passions or flights of enthusiasm, will preserve a steady, undeviating course. It will not bend to the uncertain wishes, imaginations and wanton tempers of man."

What we have heard this week reflects a sad change from this original conception, so rightly cherished by our Founding Fathers. Now we discover that even the mail of our citizens has been unlawfully read by secret intelligence agencies. Instead of all being equal before the law, we find that any number of citizens, from Presidential candidates on down, have had their letters opened, copied, photographed and filed in the vast vaults of the Federal agencies. We learn that other unlawful intelligence operations have also been concealed from Congress and from the President himself. This cannot be allowed. For as John Locke wisely knew, whenever law ends, tyranny begins.

This hearing is adjourned until 10 o'clock next Tuesday morning.

[Whereupon, at 12:50 p.m., the select committee adjourned, to reconvene at 10 a.m. Thursday, October 2, 1975.]

