Mr. MITCHELL. I do not believe that what was recommended in the Huston plan went forward.

Senator MONDALE. What part did not?

Mr. MITCHELL. If you give me a couple of hours to study it and analyze it and analyze the record, maybe I can answer it for you.

Senator MONDALE. I think you would need at least 2 hours.

Mr. MITCHELL. I would think so too, Senator.

Senator MONDALE. Any other questions?

Thank you, Mr. Mitchell.

Our next panel of witnesses are four persons from the FBI.

Would you stand and be sworn, please? Do you swear that the testimony you are about to give will be the truth, the whole truth, so help you God?

Mr. WANNALL. I do.

Mr. MOORE. I do.

Mr. BRANIGAN. I do.

Mr. MINTZ. I do.

Senator MONDALE. Would you introduce yourself for the record, please, and then the questioning will begin.

Mr. WANNALL. I'm W. Raymond Wannall, Assistant Director, Intelligence Division of the FBI.

Mr. MINTZ. I'm John Mintz, the legal counsel to the Bureau.

Mr. BRANIGAN. Mr. Chairman, I'm William A. Branigan, and I am the Section Chief of Counterintelligence No. 1 in the FBI.

Mr. MOORE. Mr. Chairman, I'm Donald E. Moore. I retired from the FBI as Inspector in June 1973.

Senator MONDALE. All right.

Would you begin the questioning, Mr. Schwarz?

Mr. SCHWARZ. Mr. Chairman, we have had an opportunity to talk to these gentlemen in executive session previously.

Mr. Mintz is legal counsel and the dialog with him occurred last Tuesday when we discussed various questions of warrants. He has nothing by way of first hand knowledge on the subject of mail opening.

Beginning with you, Mr. Wannall, could each of you state briefly for the record what your connection was with the mail opening subject, and what your knowledge about this project is now and was at that time.

TESTIMONY OF W. RAYMOND WANNALL, ASSISTANT DIRECTOR, INTELLIGENCE DIVISION, FBI; WILLIAM BRANIGAN, SECTION CHIEF OF COUNTERINTELLIGENCE, FBI; DONALD E. MOORE, FORMER FBI INSPECTOR; AND JOHN A. MINTZ, ASSISTANT DIRECTOR, LEGAL COUNSEL DIVISION, FBI

Mr. WANNALL. In two separate programs I had a direct connection in that they were carried on or instituted at the time that I was the Chief of the section which had responsibilities for those particular programs or phases of programs.

Mr. SCHWARZ. Mr. Branigan?

Mr. BRANIGAN. Mr. Chairman, I was the Section Chief, within which section I supervised—I had responsibility for five specific programs involving the FBI.

Mr. MOORE. I was the Inspector in charge of the branch from mid-October 1956 until my retirement in June of 1973, the branch in which these programs were carried on.

Mr. SCHWARZ. Mr. Chairman, I will attempt a summary of the key facts about the FBI programs. I would appreciate it, gentlemen, if you would correct me should I state things that appear to you to be inaccurate.

Now, the FBI mail-opening programs began during the Second World War and, with a short interruption after the war, lasted until 1966. Is that right?

Mr. WANNALL. That is correct.

Mr. BRANIGAN. I would like to correct that. It is my recollection that they probably began immediately prior to World War II.

Mr. SCHWARZ. I think that is true. They began in 1940. Other people were in the war; we were not yet.

And there were eight major programs. Is that correct?

Mr. WANNALL. Yes, sir.

Mr. SCHWARZ. And they involved approximately eight cities in the United States.

Mr. WANNALL. I will accept your number, Mr. Schwarz.

Mr. SCHWARZ. All right. And in addition to the major programs, there were some isolated instances where, in connection with particular espionage matters, you had mail-opening programs directed at particular individuals who may have been suspected of being involved in espionage activities.

Mr. WANNALL. Yes, sir.

Mr. SCHWARZ. Thank you. Now, why were the FBI mail programs suspended in 1966?

Mr. WANNALL. At that time, Mr. Hoover instructed that this technique be suspended, along with others.

Mr. SCHWARZ. And was this at the same time he instructed that surreptitious entry—that is, breaking into places—be suspended?

Mr. WANNALL. That is correct.

Mr. SCHWARZ. And trash covers and certain other things were also to be suspended?

Mr. WANNALL. Yes, sir.

Mr. SCHWARZ. What is your understanding as to the reasoning for that series of actions taken in 1966?

Mr. WANNALL. I think I would have to interpret what was in Mr. Hoover's mind, which would be difficult. But I do think that Mr. Hoover regularly had a regard for the climate of times. I think the programs which had been carried on before were in periods during which the circumstances were entirely different than the period that existed at the time he ordered the suspensions.

Mr. SCHWARZ. Is it accurate, however, that after Mr. Hoover ordered the suspensions, the FBI continued to obtain material from the CIA in connection with the CIA's New York project, and continued to add certain names whose mail they would like to obtain from the CIA?

Mr. WANNALL. That is correct.

Mr. SCHWARZ. Now, throughout the period covered by the FBI's own programs and its receipt of material from the CIA programs, was the subject of legality of mail opening focused upon, to the best of your knowledge, based upon either your recollection or your review of the files?

Mr. WANNALL. Would you give me the time frame again, Mr. Schwarz?

Mr. SCHWARZ. Starting from the beginning, 1940, and running all the way up through the FBI's own program and until 1973, which was the time the CIA program was stopped.

Mr. WANNALL. From the review of material that I have recently made, there was a consideration of this in about 1951, as I recall.

Mr. SCHWARZ. And thereafter, from the material we have been able to obtain and which you have reviewed, there does not appear to have been such a consideration, except for Director Hoover's references in connection with the Huston plan. Is that right?

Mr. WANNALL. To the best of my knowledge, that is correct.

Mr. SCHWARZ. And we could not determine, could you, whether there was actually an opinion in 1951 or whether the subject was merely raised?

Mr. WANNALL. I think the subject was raised because as I recall, a particular document was prepared by one of the supervisors who was involved in the operations.

Mr. SCHWARZ. Thank you.

Now, Mr. Chairman, based upon the staff review of the FBI programs, it appears to the staff that in most cases the FBI programs did not involve the same kind of random or general opening of mails, but rather it involved the opening of mail which the FBI had reason to believe, in their opinion, was likely to lead to matters relating to illegal agents within the country. I think there are some exceptions to that, but, gentlemen, is that, in your judgment, a fair characterization of the FBI programs?

Mr. WANNALL. That is a very fair characterization.

Mr. SCHWARZ. However, Mr. Wannall, could I call your attention to the document which is exhibit 16,[1] the document dated March 11, 1960.

Mr. WANNALL. I have the document.

Mr. SCHWARZ. In support of the staff conclusions that I just mentioned, did the FBI have a review procedure of its mail-opening programs so that those programs which did not appear to yield results with respect to espionage matters were reviewed? And what happened when they were reviewed?

Mr. WANNALL. We had a procedure whereby starting, I think, about 1958, programs which were carried out within the division, not only relating to mail projects, but others, were reviewed on a semiannual basis. I think later that became an annual basis, and then a review in conjunction with an annual inspection of our division by another division which conducts such inspections.

Mr. SCHWARZ. And were certain of the programs turned off, based upon such reviews?

Mr. BRANIGAN. That is correct, Mr. Counsel, certain of our programs were turned off because of their unproductivity. That is correct.

Mr. SCHWARZ. Now, one further background question. None of these programs was based upon the obtaining of warrants. That is true, is it not?

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[1] See p. 228.

Mr. BRANIGAN. That is correct.

Mr. SCHWARZ. The document, Mr. Wannall, concerns a program involving an Asian country of which you were personally aware, does it not?

Mr. WANNALL. That is correct.

Mr. SCHWARZ. I would like to read into the record from the document, in the third paragraph, an example of what the person writing the document was claiming to be the advantages of a particular program. And it reads as follows:

A true picture of life in that country today is also related by the information which this source—

Now, when he says "this source," he means the mail-opening program, does he not?

Mr. WANNALL. We're talking about the mail-opening program by use of the word "source," yes.

Mr. SCHWARZ. [reading].

A true picture of life in that country today is also related by the information which this source furnishes, showing life in general to be horrible due to the complete lack of proper food, housing, clothes, equipment, and the complete disregard of a human person's individual rights.

Now, none of that had anything to do with espionage, did it?

Mr. WANNALL. No; I would say that that was developed as positive intelligence, a byproduct of the program.

Mr. SCHWARZ. And you agree that the FBI does not have the responsibility for developing positive foreign intelligence?

Mr. WANNALL. We have no charter to develop positive foreign intelligence. As a member of the intelligence community, of course, we can be called upon by others to develop it. And should we come into possession of it, we do have a responsibility to see that it gets in the proper hands.

Mr. SCHWARZ. All right. Now, based upon your review of the material and your previous deposition, given the generality that the objective was to look for espionage matters, you agree, do you not, that the review of the files demonstrates that material was picked up concerning antiwar groups, concerning pornography, concerning several other matters which do not relate to the initial purpose; that is, to search for information relating to espionage matters?

Mr. WANNALL. We did secure such information as a result of this or other programs.

Mr. SCHWARZ. All right. Let us put aside the question of the legality of the program in the first instance and the fact that there was no warrant, and let us assume that there had been some statute or other authority to permit the FBI to look for information with regard to espionage matters. The fact is, of course, that other information did come to the attention of the FBI, such as antiwar movement matters, and that that other information was filed and used by the FBI in the course of its intelligence operations. Do you agree with that?

Mr. WANNALL. Yes sir.

Mr. SCHWARZ. All right. Now, as I say, passing the question of propriety in the first instance, and assuming there was some proper basis, do you not agree that it is improper to pass beyond that initial purpose, to retain and use materials such as material on antiwar demonstrators that had no relationship to the initial espionage purpose?

Mr. WANNALL. Well, at this time, just sitting here and analyzing it, it certainly could be concluded in that sense, Mr. Schwarz. However, I think it would be well to consider that as far as the product of this program was concerned, it was considered as having come from a source for which approval for its establishment had been granted on a high level, within the FBI at least. And the men who were producing the information did have a responsibility in their minds at that time to see that intelligence information was put in the proper channels.

Mr. SCHWARZ. This is not a problem limited to mail, is it? When you have a wiretap, assuming, it is a wiretap legally implemented for a purpose of discovering a certain crime, you may also get information that is unrelated to that, and your current practice is to retain the unrelated information. And my last comment, Mr. Chairman, is that this is an issue which we are going to have to deal with in the general sense as to what the proper standard should be. And perhaps somebody else is going to want to pursue that issue here and later when the Attorney General testifies.

Senator HUDDLESTON [presiding]. Mr. Kirbow, do you have any questions?

Mr. KIRBOW. Mr. Chairman, may I defer my questions until you have finished?

Senator HUDDLESTON. On the very point that counsel was discussing, how long do you retain this information and material?

Mr. WANNALL. Under rules that have been prescribed by the Archivist of the United States, we retain the material indefinitely if it has some bearing on the historical development of the country or something of that nature. I think there are rules with regard to destruction of certain categories of material. I would defer to Mr. Mintz. I think he may have a better concept of the legalities of the problem and what we are permitted to retain or not, if you want to have that.

Senator HUDDLESTON. Yes, I would.

Mr. MINTZ. The information is retained indefinitely, as he indicated. There are rules specified for our records destruction program that generally require destruction only after about 20 years of retention if the material is no longer of any value, but the broad scope of the information is retained indefinitely in this area.

Senator HUDDLESTON. How could information collected in this fashion that might be totally unrelated to the mission, but might be derogatory to some citizen, be of any value, or be necessary to retain for 20 years in your files? The revelation of this information might be very damaging to somebody, but very untruthful. Why would you keep it laying around for 20 years with the vulnerability it might carry?

Mr. MINTZ. I suppose the answer to that is historically it was a practice in the Bureau to retain information for its potential value. I suppose the greater point to your question is the possible abuse of that information. I think that it is very difficult to justify any abuses of such information. I am not sure we have any record of that having been done. But the material collected was retained.

Senator HUDDLESTON. On another matter, Mr. Wannall, or Mr. Branigan, who specifically authorized the mail opening? We will start at the beginning with respect to the mail cover project in New York City.

Mr. BRANIGAN. Senator, are you referring to the CIA project?

Senator HUDDLESTON. I am referring first to the projects of the FBI.

Mr. BRANIGAN. Our first project, which dates back prior to World War II—we have no record as to who authorized this. This was a very closely confined survey. To describe it for you, I might use the term I called a "traitor's trap." It was a program designed to detect persons—and there are such—within the United States who would be willing to sell information to a foreign power.

Our second survey that we talked about which initiated in New York City, since you referred to that, was intially approved at a level of our Assistant Director. However, within a very short time after that was approved, it was specifically approved by Mr. Hoover himself.

Senator HUDDLESTON. Who approved the extension of that program from a simple mail cover to a mail opening?

Mr. BRANIGAN. You are referring to our second program?

Senator HUDDLESTON. Your second program.

Mr. BRANIGAN. This was never what we could consider a strictly mail cover project. This was a program designed to detect the illegal agents operating in the United States, and I think we have explained the difficulty of findings persons who come to this country who are swept up in the mainstream of American life, and who are here for the purpose of staying behind in the event of hostilities, who are here for the purpose of carrying on espionage. It is a very difficult thing.

The program was founded on firm indicators as to the manner in which these persons would prepare correspondence, and these included not only indicators with respect to the envelopes, the covers for these things, but the correspondence itself, so it was never a strictly mail cover operation.

Senator HUDDLESTON. You had mail intercept programs in other cities in addition to New York, is that correct?

Mr. BRANIGAN. That is correct, Mr. Senator.

Senator HUDDLESTON. Who approved the establishment of these operations?

Mr. BRANIGAN. I think, for the most part, these—certain of them, certainly would have been approved by Mr. Hoover.

Senator HUDDLESTON. Did they come through your office specifically?

Mr. BRANIGAN. That is correct. Any proposal to extend one of these things would have initiated, perhaps, with our field office, writing in and saying, "here, we think we could do ourselves and the country some good if we got into this area," and then the supervisor who works for me would prepare in the form of a memorandum or a communication, and it would come in to me and I would prepare it, and from there I would probably send it on up the line.

Senator HUDDLESTON. You probably would send it up the line, but would it be put into operation with your approval at that point? Would that go any further?

Mr. BRANIGAN. No, sir. I don't think that I signed off on any of those particular programs.

Senator HUDDLESTON. How much authority did the agent in the field have to initiate such a program on his own?

Mr. BRANIGAN. Under my understanding—and I have been in the FBI for 34 years. I worked for a good many of those under Mr. Hoover. I have to say, Senator, that the agent in the FBI really didn't

have that much authority. The fact of the matter is that I guess we have human beings that work for the FBI and, if a man took it upon himself, if he was particularly aggressive, if he thought there was something, he might have assumed that authority, and we have had programs which we know were initiated in the field office without—but there again, I mean the system isn't all that imperfect because once you start one of these programs you have the duty to report. You want to report the results, or else it is no good, and so in reporting the results quite obviously the people back here at headquarters are going to say, "oh, what is this? Here is something new." And they will raise a question about it.

Senator HUDDLESTON. Once a program was initiated, how strict were the guidelines received from your level by the agents who were operating the program in the field?

Mr. BRANIGAN. Well, the actual guidelines, the indicators, as I say, in our programs were not specifically laid out from the headquarters level. Rather, they were conveyed to our agents in the field, probably all of whom had direct experience in counterespionage, counterintelligence matters, through their superiors in the field. Sure, we had the guidelines back here, and they were outlined, and the field was well aware of these.

Senator HUDDLESTON. Is this just another case where these instructions may have gone down verbally, and where there might be a great deal of room for misunderstanding?

Mr. BRANIGAN. I don't really think there could be any room for misunderstanding, Senator. The guidelines for locating—and I am referring to the specific programs here—for locating the indicators were known to these people. There is no question about it, and I don't really think there could be any. Now, the question that you ultimately are coming to, Senator, is, were these guidelines expanded so that we weren't really coming up with illegal agents? We weren't really—we always focused on the illegal agent, believe me. I am convinced of that, but if, as Mr. Wannall has indicated, there is a by-product that came there and some particular agent was aware that in this particular field we had another investigative interest, I am not saying that that didn't occur.

Senator HUDDLESTON. Thank you.

Senator Schweiker, do you have any questions?

Senator SCHWEIKER. Thank you, Mr. Chairman. Mr. Branigan, was all of the mail which was opened going to and from a foreign country, or did some of the mail which was opened include purely domestic mail traveling from one point in this country to another?

Mr. BRANIGAN. In one of our programs it did include domestic mail, mail within the country to another location in the country. It was strictly domestic. Now, let me hasten to add to that, that particular survey that we had was again based on firm indicators as to how an illegal agent would prepare his mail, and we do know, and we had experience, that illegal agents operating in the United States received correspondence from their support officers, if you want to call them that, their principals, who were themselves in the United States, and this was why we were directing this particular thing, Senator.

Senator SCHWEIKER. Did the FBI ever ask the CIA to open letters during the project that dealt with Government employees? In other

words, did you have a request to the CIA to see the mail of Government employees?

Mr. BRANIGAN. That is correct. In connection with the particular project you are referring to, we furnished to the CIA categories of correspondence that we would be particularly interested in, and I think if you would read our particular category where we were talking about the Government employees, the next sentence, the next part of that sentence specified, "or other persons in sensitive industry." And, what we were focusing on is not a Government employee who just wouldn't have any—we were focusing on a Government employee who would have access to highly restricted, highly classified information, who would be in a position in correspondence with persons abroad who might be, himself, the subject of some kind of pressure tactics by another, a hostile service, based maybe on the hostage situation, I don't know, but this is really what we were focusing on, not just the words "Government employee" but one who was in a position to do damage.

Senator SCHWEIKER. Would that have included elected officials or not?

Mr. BRANIGAN. If you, Senator, say that the FBI focuses on elected officials; in my career, no. We don't focus on elected officials, but if an elected official, who was in a position where he had access again to really sensitive information, it might be desirable, from a counterintelligence standpoint, really sensitive, that we would know, well, yes.

Senator HUDDLESTON. Such as members of this committee?

Mr. BRANIGAN. No, sir. No. sir.

Senator SCHWEIKER. Mr. Wannall, how were names added to the list? In other words, once a procedure was set up, once you had an objective that you cited, how were new names added and who made that recommendation or decision?

Mr. WANNALL. In which project, Senator?

Senator SCHWEIKER. In any projects. What procedures were followed, say, for adding names once a project was set up to do a certain thing? You obviously may have had new names come into the category.

Mr. WANNALL. Well, of the eight FBI projects, I don't recall any where we had a list of names, as such. There were three operations wherein agents had access to some 16—I think 13,000 pieces of correspondence within 2 hours, and I am told that they maintained in their head names because of their expertise in the particular area, but they didn't take a list and didn't have time to check that list in a 2-hour period against so many thousands of pieces of communications. Now, this is in our own operations that I am discussing.

Senator SCHWEIKER. Let me get more specific. I understood that in a case in San Francisco, there were some names that were added through the field office, which were not reviewed at a higher level. How did this happen?

Mr. WANNALL. I found a reference in material I have reviewed to the fact that one of our offices would furnish to San Francisco a list of names. Following that, we went to our San Francisco office and asked them to go through all of their material to discuss with agents who may have been working there during the time this particular survey or the surveys were being conducted, and the response we got back was that there was no list, as such, which was used to pull out pieces of

mail, that because of the time element, 13,000 pieces of mail in 2 hours, the agents couldn't retain in their minds individuals.

It is quite possible that names were furnished to the San Francisco office so that the agents would keep these in mind, but they found no indication that a list was compiled, as such, and utilized in screening the mail.

Senator SCHWEIKER. Mr. Moore, you were knowledgeable about the CIA's mail-opening project and, of course, the FBI received a "take" from that project. Why didn't you inform the CIA of the FBI mail-opening programs, given the fact that perhaps they would have derived some benefit from them?

Mr. MOORE. Back in 1958 when they first advised us, as I understand it, of theirs, Senator, our programs were very tightly held, even within the Bureau. I would not have advised any other, CIA or anyone else, without approval. Subsequently—I believe it was 1961—I did advise CIA.

Senator SCHWEIKER. Did you have any discussion at all about mail openings, Mr. Moore, with Post Office officials or with the Attorney General?

Mr. MOORE. Senator, with regard to Post Office officials, you used the words "mail openings." I discussed with Post Office officials on some occasions our mail programs in which we received mail from the Post Office delivered to our custody. I did not advise them that that mail was subsequently opened.

I also personally had one discussion with an Attorney General at one time with regard to our mail intercept program. To the best of my knowledge, the words "mail openings" were not included in the discussion.

Senator SCHWEIKER. Which Attorney General was that?

Mr. MOORE. That was Mr. Katzenbach.

Senator SCHWEIKER. To the best of your knowledge, you did not discuss mail opening?

Mr. MOORE. To the best of my knowledge, Senator, a question came up in which the furnishing of mail by the Post Office to the FBI was raised. I discussed that, along with other people, with one other representative of the FBI, with Mr. Katzenbach and another representative of the Department of Justice, but I cannot say that the words "mail openings" were utilized.

Senator SCHWEIKER. Mr. Mintz, do the present procedures of the Bureau require your review and approval for proposed programs where the legality of an operation or procedure might be in doubt?

Mr. MINTZ. They do.

Senator SCHWEIKER. Do the present procedures of the Bureau provide any machinery for you to be informed of programs that might have been started some time back and, therefore, wouldn't immediately come to your attention? I am referring to programs that may be ongoing, and because they were started prior to you or another official's administrative beginning, they would not come before you for review.

Mr. MINTZ. I cannot say that they do.

Senator SCHWEIKER. Can you give any suggestion or consideration as to how we might spot some of these situations that still might be ongoing, but might be rooted out, just as mail opening was?

Mr. MINTZ. I suppose the best way is to inquire of the investigative divisions of the Bureau as to their activities.

Senator SCHWEIKER. Do you regularly receive reports of internal inspections? I mean by that the investigating division you were talking about.

Mr. MINTZ. I do not.

Senator SCHWEIKER. Who sees that?

Mr. MINTZ. The Inspection Division prepares them and submits them to the Director.

Senator SCHWEIKER. Would they relate to items of questionable legality or not?

Mr. MINTZ. That is a very broad question, Senator. I cannot tell you. I have not reviewed them myself. I do not know.

Senator SCHWEIKER. Mr. Wannall, why did the FBI, in your opinion, neglect to get the Attorney General's approval for mail opening? Can you shed any light or give any insight to this committee that might be useful in preparing new legislation?

Mr. WANNALL. Senator Schweiker, it would be difficult for me to try to advise you now why back in the early stages of these programs there was no consultation with the Attorney General. I was not privy to any of the discussions at the time. I don't even know if the question came up, so to answer that part of your two-part question, I would say it would be difficult for me to offer an opinion to you as to why someone at that time did not do or follow that procedure.

Senator SCHWEIKER. I just thought you might have heard some discussion or had some insight. I would certainly think it must have crossed a lot of the minds of those who were dealing with this problem.

Mr. WANNALL. Well, I am aware, as I indicated earlier in response to a question of Mr. Schwarz, that in 1951 the question was addressed in a memorandum. It was some 5 years after that, to the best of my knowledge, that there was another program introduced which concerned the interception of mail. In the interim I have found no indications of any further discussion of the problem, no record of any such discussions, and neither have I heard in connection with my discussing this particular matter recently with others, of any considerations that were given to going to the Attorney General prior to the institution of the procedures.

Senator SCHWEIKER. That is all, Mr. Chairman. Thank you.

Senator HUDDLESTON. Thank you, Senator. Senator Hart.

Senator HART of Colorado. Thank you. Gentlemen, I don't know to whom this question should be directed, but it is my understanding that during the 25 or so years that the FBI conducted its own mail-opening projects and cooperated with the CIA in its project, that no Attorney General was aware of either of these projects. Is that the case?

Mr. WANNALL. I would say that as projects, I have no knowledge that any Attorney General was aware of it. I do have information which I have secured as a result of a review of material available at our headquarters at this time that in at least two cases the fact that mail had been intercepted was made known to departmental officials. I do not know if the Attorney General himself became aware of this in those two instances.

Senator HART of Colorado. But to your knowledge, there was no effort by Mr. Hoover or by any of you to make any Attorney General aware of this?

Mr. WANNALL. I have no personal knowledge in that area. Certainly not as far as I, myself, am concerned.

Senator HART of Colorado. Just so the record is clear, in case it is not already, why was this done?

Mr. WANNALL. Well, I am in the same position as I was in trying to advise you with respect to something to which I was not privy. I do not know why it was not done, Senator.

Senator HART of Colorado. Do you think it should have been done?

Mr. WANNALL. In retrospect, I would say yes, and I would think that the procedures which have been established by the present Attorney General are such that it certainly would be done at the present time.

Senator HART of Colorado. It is my understanding that the FBI presently is not opening mail at all. Is that correct?

Mr. WANNALL. That is correct.

Senator HART of Colorado. What prohibition is there to prevent the resumption of mail openings?

Mr. WANNALL. Instructions have been issued, Senator Hart. Mr. Branigan addressed himself to the problem of accounting for the activities of every single agent. I know the agent would realize that should he engage in any such project or even a single undertaking, he would be subject to very severe disciplinary action.

Also, as Mr. Branigan indicated, should he engage in such a project or an individual action, he would have to account for it because he would have information he could not utilize without reporting it to headquarters. So, I would say that the necessary instructions are out, and procedures for implementing those instructions are as tight as they can be.

Senator HART of Colorado. Are the instructions to which you refer in the memorandum [exhibit 17 [1]] to all special agents in charge, from the Director, dated December 5, 1973?

Mr. WANNALL. I would say that is a broad instruction which covers conduct of employees, and certainly, in my opinion, mail opening would be within the framework of those instructions that were issued at that time.

Senator HART of Colorado. The key phrase of your response is, "in my opinion." Has that general prohibition which the Director issued ever been made more specific as to actual areas of conduct, including mail openings, or is it just a broad blanket prohibition?

Mr. WANNALL. With respect to mail openings, of course, Mr. Hoover issued specific instructions in July 1966 there should be no more such mail openings, and I have no knowledge that those instructions have in any way been violated.

Senator HART of Colorado. So, in your judgment, and in the judgment of those throughout the Bureau, that blanket absolute prohibition is still in operation?

Mr. WANNALL. Yes, sir.

Senator HART of Colorado. Mr. Mintz, I would like to pursue a line of questioning that we got into in executive session that involves the whole area of illegal procedures or mail openings. It is my understanding of the law, according to the interpretation of the Constitution, statutes, Supreme Court case law, and so forth, that it is illegal for anyone to open the mail without a judicial warrant. Is that correct?

[1] See p. 232.

Mr. MINTZ. That is a general statement that I would subscribe to in regard to criminal cases, Senator Hart.

Senator HART of Colorado. Yes. It is also my understanding—correct me if I am wrong—that the state of the law with regard to wiretapping is that such wiretaps can be conducted with a judicial warrant. Is that correct?

Mr. MINTZ. That is correct, but also I must add that in regard to wiretapping, in regard to criminal cases, without a warrant it is, of course, a violation, but in title III there is recognition of Presidential authority, whatever it may be. I suggest, as they mention in criminal cases, with regard to mail openings, there may be that same authority. I do not claim that there is, but there may well be that same authority, so that the opening of mail may well be authorized by the constitutional power of the President in certain instances, and it would not, therefore, be a violation of the law.

Senator HART of Colorado. I assume it is not the policy of the Bureau to seek judicial warrants to open mail at the present time?

Mr. MINTZ. Oh, yes, we do in criminal cases.

Senator HART of Colorado. Well, criminal includes espionage cases.

Mr. MINTZ. If the espionage case is one that would lend itself to prosecution, and the discovery of the information that would be filed in the affidavit—as it would be discovered through publicity—would be appropriate, then we would get a warrant.

Senator HART of Colorado. And have you done this in the past?

Mr. MINTZ. I am sure that we have.

Senator HART of Colorado. Would you explain the problems of publicity surrounding warrants and why this is a difficult area?

Mr. MINTZ. Yes. In the intelligence business, some of the objectives are not prosecutorial. Some of them are just simply to collect intelligence data that would be useful to protect this country against international attack or to aid in our foreign intelligence information capacity, and so, the filing of an affidavit, which would require the specification of the facts sufficient to show probable cause, as required by the fourth amendment, would lay out our side of the case and would give more information than we would get in a particular situation. So, it is relatively impossible now to use the warrant procedure in security matter cases.

Senator HART of Colorado. In our executive session, counsel brought out the fact that affidavits stating probable cause can be delivered to the court under seal. Now, why doesn't that procedure work?

Mr. MINTZ. That is correct. They can be sealed. They can be sealed fairly indefinitely. However, some of these cases are of continuing interest and may well go on for many years. I am not sure the court would accept at this time and under the present state of the law our request to seal an affidavit permanently.

Senator HART of Colorado. Have you ever tried?

Mr. MINTZ. Not to my knowledge.

Senator HART of Colorado. That is all the questions I have.

Senator HUDDLESTON. Mr. Wannall, I find it curious that the question of the legality of this mail operation came up in 1951 and, yet, after operating for over 20 years, it was apparently never resolved at the highest level. The Attorney General was never really called upon to give guidance to either the FBI or the CIA as to whether or

not they were within the legal requirements. Was this something that was done on purpose?

Mr. WANNALL. Senator, I cannot tell you without reservation that somewhere there was no discussion with an Attorney General. I just do not have that knowledge. I have no knowledge that there was a discussion from the material I have seen. I have no knowledge there was a discussion with any other official outside of the FBI.

As Mr. Branigan indicated, much of this from an operational standpoint was highly compartmentalized, and there were things that were not put down in writing, I think, because of the sensitive nature of the operations and protecting them on a need-to-know basis, so I don't have any knowledge which I have been able to glean as a result of review of material or discussions with people that there were discussions with the Attorney General.

Senator HUDDLESTON. The record shows there were individuals within the FBI, the CIA and the Postal Department that felt serious reservations about the program, and at least suggested its legality ought to be resolved, and yet they never really were up until this date, I suppose. Do you know of any instance where the type of material or evidence gathered through this operation had any direct effect on the prosecution by the Justice Department in a case of espionage or any other serious offense?

Mr. WANNALL. I know of no cases where any of the evidence gathered through this source or these sources was utilized, and I rather doubt that that situation could come about. We did have two cases that were presented to the Department, and acknowledged that there were intercepts, and prosecution was declined on that basis. The results that we would retain in our files would be there in the event that prosecution should be considered, and prior to undertaking prosecutive steps the Department of Justice certainly would have access to everything in our files and the sources of that information.

So I don't know of any cases where there has been prosecution in which material from this source has been utilized.

Senator HUDDLESTON. Mr. Kirbow, do you have any questions?

Mr. KIRBOW. Thank you, Mr. Chairman.

Mr. Chairman, in agreement between Mr. Schwarz and myself, I think the record should show that he has exercised his judgment to disqualify himself from the examination of these witnesses on the question of authority, especially as they relate to former Attorney General Katzenbach, because of a previous attorney-client relationship between himself and Attorney General Katzenbach, and I therefore will pursue that line of questioning.

I would like to inquire into exhibits 18 through 21, please. Directing your attention to exhibit 18,[1] Mr. Moore, and the first document, dated October 2, 1964, is that a memorandum you prepared and forwarded to Mr. Sullivan?

Mr. MOORE. Yes, it is.

Mr. KIRBOW. It appears in that particular memorandum, so that the record might be made, that a discussion was underway within the Department concerning the prosecution of two persons from the Eastern District Court of New York on some very serious charges. Is that a true representation of what it basically says?

[1] See p. 233.

Mr. MOORE. Yes, it is.

Mr. KIRBOW. And to the last sentence in the third paragraph, of the first page, it states:

> No information obtained from wiretaps or microphones is contemplated to be used in this case and the only tainted source is a mail intercept which did not take place anywhere near the residence.

Now, since the record shows that mail cover throughout all of this period of time was a legally authorized matter, and that you could photograph the outsides, you must have been talking about something other than mail cover when you talked about the evidence that had been obtained and which couldn't be used; it had to be from some other source. Is that correct?

Mr. MOORE. Yes. Mail cover and mail intercept, to me, are two different things.

Mr. KIRBOW. All right. In this case here, you are clearly talking about some information that had been obtained from opening the mail?

Mr. MOORE. Yes. That is what I was talking about, and that is what it means to me.

Mr. KIRBOW. Now, at that time, the Acting Attorney General was Nicholas Katzenbach, as shown on the next page; is that correct?

Mr. MOORE. I actually was not aware of that, who was the Attorney General.

Mr. KIRBOW. May I direct your attention to the second page, the first full paragraph, where it states that Hall advised he had discussed this case with Acting Attorney General Katzenbach and Katzenbach was of the opinion that the Department must be candid with the judge.

Mr. MOORE. Yes.

Mr. KIRBOW. Apparently Mr. Katzenbach had had a full briefing of this case and the tainted evidence from someone. Could you tell us who that was?

Mr. MOORE. Sir, I discussed this matter with Mr. Yeagley. And I do want to make it clear in my own mind——

Mr. KIRBOW. Who was Mr. Yeagley at that time?

Mr. MOORE. Mr. Yeagley was an Assistant Attorney General in charge of the Internal Security Division, and I do want to make it clear—I used the words "mail intercept." Once again, I was asked by Senator Schweiker if I used the words "opening mail."

Mr. KIRBOW. Could there be any doubt in the man's mind if you were talking about the product that you had received from some kind of mail program, that you were talking about something that you had opened and received, or at least a postcard which you had taken from the mails and had as evidence in this case, because you would have had to have the original document, wouldn't you?

Mr. MOORE. Sir, in my mind, I would have no question, but I cannot say, and I do not want to say, what Mr. Yeagley had in his mind.

Mr. KIRBOW. How could it have been tainted evidence, really, Mr. Moore, unless it was illegally obtained?

Mr. MOORE. Well, obviously there was a taint, because as it says, this was a tainted source. As I recall, the information itself, the information was not contained in the intercept, but there was something developed thereafter.

Mr. KIRBOW. And this was a very important case to the Department of Justice, because it involved two people who had committed some very serious offenses under the law; is that correct?

Mr. MOORE. Yes; there was an espionage charge.

Mr. KIRBOW. And was the prosecution later dropped, because of this tainted evidence and the inability to use it?

Mr. MOORE. The decision was made to drop the case, and it is my understanding it was based on this.

Mr. KIRBOW. Were you trying to convey in your use of the word "intercept" the true state of events of then-Assistant Attorney General Yeagley, without using the words "opening mail"?

Mr. MOORE. I was, yes. But I also—I have talked to various people since, and apparently the term "mail intercept" does mean the same thing to all people.

Mr. KIRBOW. You shouldn't feel bad, Mr. Moore. These are the same types of things we have heard for the past 6 months on other subjects. However, let me ask you who you were talking to about other mail intercepts that would give you that kind of feeling, or is this just a general feeling of yours from experience?

Mr. MOORE. Well, sir, one, I listened to testimony this morning which talked about communication. But also, in talking to a member of the staff of this committee, the question came up, what do I mean by mail cover.

Mr. KIRBOW. Did you have any conversation directly with Mr. Katzenbach about this particular case?

Mr. MOORE. Not about the Baltch case, none that I recall.

Mr. KIRBOW. Did you at any time have any conversation with him about your mail programs?

Mr. MOORE. Yes. At one time, subsequently, I had a discussion with him involving mail.

Mr. KIRBOW. From previous testimony in executive session, it is obvious from the record that this was considered to be a very important aspect of the CI program within the Bureau; is that correct?

Mr. MOORE. That is correct.

Mr. KIRBOW. And you certainly wanted to preserve it as a source at practically any cost.

Mr. MOORE. Yes. We thought it was valuable.

Mr. KIRBOW. Under those circumstances, can you tell us why you didn't mention the importance of this issue to the Attorney General and that you were, in fact, opening mail, so that he could try to get you some law, or something to carry this out legally?

Mr. MOORE. Sir, I cannot. I think the importance of the matter was stressed with the Attorney General. I don't believe there was any question about the importance.

Mr. KIRBOW. How could you do that, without talking about the product that you received, which meant opening the mail?

Mr. MOORE. Well, I think—as I recall, and from the memorandum I have been shown, I believe that it was recognized that we felt that the information was important.

Now, I cannot go over in my mind—and I certainly do not want to say that Mr. Katzenbach was involved in this if I don't recall, and I don't recall specific words. My impression was that there was no doubt in his mind that he thought the operation was valuable and that efforts should be made to see that nothing would happen which would cause it to be discontinued.

Mr. KIRBOW. Would you please direct your attention now to exhibit 19,[1] gentlemen, a memorandum dated February 27, 1965, from A. H.

[1] See p. 235.

Belmont to Mr. Tolson concerning the Long committee, meaning the committee in the Senate that at that time was chaired by the Senator from Louisiana. Would you tell us who Mr. Belmont and Mr. Tolson were, just to lay the groundwork?

Mr. MOORE. Yes. Mr. Belmont was the Assistant to the Director, who was in charge of all investigative divisions. Mr. Tolson was his immediate superior, who was Associate Director to Mr. Hoover.

Mr. KIRBOW. Were both of these gentlemen witting of the fact that the Bureau was, or had been, engaged in mail opening programs?

Mr. MOORE. Yes.

Mr. KIRBOW. Were they aware that you were still engaged in such a program, albeit piggyback, with the CIA?

Mr. MOORE. Yes. But, sir, the Bureau had programs apart, at this time, 1965.

Mr. KIRBOW. You still had your own programs?

Mr. MOORE. The Bureau had programs of its own.

Mr. KIRBOW. Yes. I understand that.

Look at page 2, if you will please, the first full paragraph, which starts:

I told Mr. Katzenbach that I certainly agree that this matter should be controlled at the committee level but that I felt that pressure would have to be applied so that the personal interests of Senator Long became involved rather than on any ideological basis. Mr. Katzenbach said that he had already talked to Vice President Humphrey about Fensterwald.

Who is Fensterwald?

Mr. MOORE. As I recall, he was staff counsel, or at least a staff employee, of the Long—I believe it was a subcommittee, if I recall correctly.

Mr. KIRBOW. And at that time, hadn't Mr. Fensterwald informed the Bureau that he was in touch with certain of their agents who were going to testify under oath, or asked to testify under oath, concerning mail-opening programs?

Mr. MOORE. I didn't recall that, although I saw it this morning. I don't know whether it was in this document or some of the documents that I was shown this morning. I didn't recall that at the time.

Mr. KIRBOW. Yes. It is in this document, and for reasons which we should not discuss here, it does not appear. It has been blanked out.

If Mr. Katzenbach was so deeply involved that he was dealing with the Office of the Vice President, with the Vice President himself asking him to intercede on your behalf, can you tell us that he did this without being fully briefed on what he was going to talk about?

Mr. MOORE. Well, in fairness to Mr. Katzenbach, I don't know—I don't know even other than these words here in the memorandum, I really don't know what he talked to Vice President Humphrey about.

Mr. KIRBOW. You know what the problem was before the Long Committee?

Mr. MOORE. I know what the problem was that concerned us; yes.

Mr. KIRBOW. It concerned your mail-opening program, and the national security aspects thereof.

Mr. MOORE. Very definitely.

Mr. KIRBOW. There was severe concern at all levels of the Bureau about it being exposed publicly.

Mr. MOORE. Yes.

Mr. KIRBOW. In fact, there were comments in here about Senator Long's zest for publicity on this matter at some time, wasn't there? Wasn't that one of your concerns?

Mr. MOORE. Our concern was—and if you will allow me to say that our concern originally arose with regard to some testimony——

Mr. KIRBOW. Yes, on the part of a person who had the very highest reasons for doing what he had done with you, and occupied the Chief Inspector's position in the Department, I believe.

Mr. MOORE. That is correct.

Mr. KIRBOW. He was an official in the Post Office Department, and he had been forced to give bad testimony to protect this source, because of his cooperation with you.

Mr. MOORE. He had made an answer which he thought was correct under the circumstances, and he had wanted to bring, as I understand, this matter to the attention of the Attorney General, to make certain that the matter was handled correctly.

Mr. KIRBOW. That is the very point that I wanted to get to with these other questions, Mr. Moore. The inspector who there testified before the Long committee has here testified that he did not know, in fact, that the mail was being opened, and he said that thinking it to be the truth.

Mr. MOORE. That is not the way, as I understand it, or the way I was told of it. The question was, "Does the mail leave the custody of the Post Office?"

Mr. KIRBOW. Which was in fact a violation of the law at that time, as it is today.

Mr. MOORE. I accept your statement.

Mr. KIRBOW. I don't really want to make that judgment. It is a question. It was an illegal act, was it not, to take the mail from a Post Office to a separate place to do anything with it that was not authorized by the postal laws, by anyone other than a postal inspector or an employee?

Mr. MOORE. I am not sure, but I believe that was probably so.

Mr. KIRBOW. Thank you.

Would you then direct your attention to exhibit 20,[1] memorandum dated March 2, 1965, for Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and De Loach. In that first paragraph, we come back to the subject you discussed a moment ago, where the sentence starts—

The Attorney General stated that Mr. Fensterwald was present for part of the meeting.

This is a meeting between the Attorney General and Senator Long, apparently—

and Fensterwald had said that he had some possible witnesses who were former FBI agents, and if they were asked if mail was opened, they would take the fifth amendment.

Do you see that part of it?

Mr. MOORE. Yes.

Mr. KIRBOW. Do you know who had briefed the Attorney General before this particular meeting with Senator Long?

Mr. MOORE. Well, this, as I am reflecting, the memorandum from Mr. Belmont is dated February 27 [exhibit 19 [2]], and the memorandum from Mr. Hoover is dated March 2 [exhibit 20], so I presume the

[1] See p. 238.
[2] See p. 235.

Attorney General is advising Mr. Hoover subsequent to the meeting that Mr. Belmont and I attended with Mr. Katzenbach.

Mr. KIRBOW. Actually, the memorandum is signed, or appears to be a memorandum from John Edgar Hoover, the Director.

Mr. MOORE. Yes.

Mr. KIRBOW. Thank you. Looking at the second full paragraph which starts—

The Attorney General stated that the Postmaster General is going down there this morning himself,

apparently talking about the Long committee or to see Senator Long,

which he, the Attorney General, thought would be helpful to Chief Inspector Montague of the Post Office Department.

At that time Mr. Gronouski was the Postmaster General of the United States. Do you recall anything about the Attorney General involving Mr. Gronouski in this matter with the Long committee?

Mr. MOORE. I do not. I do not recall this memorandum although, as I say, I am sure I saw it.

Mr. KIRBOW. I see. I will ask the other witnesses a collective question, and any of you may answer if you choose.

Do any of you have any knowledge of your own as to any authority ever having been granted for such a mail-opening program at any level higher than that of the Director of the FBI or the Attorney General?

Mr. BRANIGAN. I have no knowledge.

Mr. WANNALL. I have none.

Mr. MINTZ. I have none.

Mr. KIRBOW. Mr. Chairman, I think that finishes my questions.

Senator HUDDLESTON. Mr. Schwarz.

Mr. SCHWARZ. I would like to continue with some questions on a matter other than that from which I have disqualified myself. In the same document, March 2, 1965 [exhibit 20 [1]], Mr. Hoover's memorandum, I will read into the record some comments he makes about wiretapping by other Government agencies, and then I will have you gentlemen answer collectively as to whether you know anything about those matters.

This is Mr. Hoover's memorandum to all of his major associates about his conversation, so it is Mr. Hoover who is talking in the memorandum. Am I right in that?

Mr. WANNALL. That is correct.

Mr. SCHWARZ. All right, reading from page 2, the second line—

I stated that it is a fact, insofar as I am concerned, that I am the only head of an agency who does not have authority to tap telephones. I stated that I know that subordinates down the line in some agencies will tap phones without the knowledge of the chief of the agency and there is grave suspicion in Washington by some newspapermen that their phones have been tapped by agencies of the government, trying to find out where they are getting their information.

Stopping there for the moment, do any of you gentlemen have knowledge about any taps which Mr. Hoover indicates, or at least which he suspects, which were placed upon newspapermen to determine where they are getting their information. I'll start with you, Mr. Wannall.

Mr. WANNALL. I have no knowledge of what he meant by that statement.

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[1] See p. 238.

Mr. SCHWARZ. Apart from what he meant, do you have knowledge that that occurred at any time?

Mr. WANNALL. I have no knowledge that that occurred with respect to any other agency. I know that in connection with investigations that were conducted by the FBI, there were newspapermen tapped, but I don't think that is relevant to the statement which you have asked me. Mr. Hoover was talking about his knowledge that other departments were—

there is grave suspicion in Washington by some newspapermen that their phone have been tapped by agencies of the government trying to find out where they are getting their information.

I have no knowledge that the FBI engaged in any such wiretaps, or any other agency.

Mr. SCHWARZ. You did say that you knew that the FBI had tapped phones of certain newspapermen. Did I understand you correctly?

Mr. WANNALL. No. I would say I have been aware of the information that has come out publicly with respect to the 17 wiretaps.

Mr. SCHWARZ. Is that the only such information that you have from your whole experience in the FBI?

Mr. WANNALL. That is all that I can recall. I cannot recall specifics in any other area. I think there may have been others, but I cannot call them to mind. It may go back some years.

Mr. SCHWARZ. Without regard to specifics, then, is it your understanding that there were other instances where there were warrantless wiretaps of newspaper men, but you do not recall the details of who was tapped and when?

Mr. WANNALL. Neither were they for the purpose of establishing the sources of their information.

Mr. SCHWARZ. What was your understanding of the purpose of wiretaps of newspaper persons?

Mr. WANNALL. In connection with an investigation which had been authorized, and wiretaps themselves would have been authorized.

Mr. SCHWARZ. But these were warrantless wiretaps authorized by an Attorney General?

Mr. WANNALL. I would say, prior to 1972, the Keith decision, yes, sir.

Mr. SCHWARZ. Yes; they were authorized by some Attorney General.

Mr. WANNALL. That is correct.

Mr. SCHWARZ. In what time period do you have in mind?

Mr. WANNALL. I go back at headquarters for some 28 years. This would be back in the late fifties, early sixties perhaps.

Mr. SCHWARZ. All right.

Mr. Branigan and Mr. Moore, with respect to the subject of tapping of phones of news persons, do you have any knowledge to add to the testimony which Mr. Wannall has given here, either with respect to the FBI or with respect to other governmental agencies?

Mr. BRANIGAN. I have no knowledge of any other agency who would be engaged in—that Mr. Hoover was referring to in this memorandum; and I have no knowledge of the FBI engaging in tapping the telephones of newspapermen.

Mr. SCHWARZ. Mr. Moore?

Mr. MOORE. I recall none, unless I read it in the Rockefeller Commission report. As far as other Government agencies are concerned,

I do know that there was phone tapping of newspapermen, but done with the permission and the authority of the Attorney General.

Mr. SCHWARZ. What period of time are you talking about with respect to the instance or instances that you have in mind?

Mr. MOORE. Would you like an exact year?

Mr. SCHWARZ. I would appreciate your best recollection as to the period of time.

Mr. MOORE. I can, I think, give you an exact year. It would be in the early sixties.

Mr. SCHWARZ. Do you have specifies in mind, Mr. Moore?

Mr. MOORE. Yes, and I think I am correct. It is purely recollection.

Mr. SCHWARZ. All right. What is your recollection?

Mr. MOORE. I don't know whether or not you would want to—I will defer to you, of course, but I wondered if you would like to explore this in open testimony.

Mr. SCHWARZ. Since this came up for the first time here, we will explore that first in executive session, and come back to it. Mr. Chairman, if you think that is appropriate.

Senator HUDDLESTON. I think that would be the correct way to proceed.

Mr. SCHWARZ. All right.

In the document Mr. Hoover states that he proposed to the Attorney General that a new procedure should be devised whereby an Attorney General would control all wiretaps. And then he goes on to say, "I stated many agencies are opposed, because they realize there would be a marked restriction. I stated we"—the FBI—"only have 46 phone taps, which is a low number for a country the size of ours and the area we have to cover. The Attorney General stated no one has any idea how many phone taps the whole Government has."

Now, my question is, which other agencies of the Government were engaging in wiretaps?

Mr. WANNALL. I have no knowledge in that regard.

Mr. SCHWARZ. Do any of the other gentlemen?

Mr. BRANIGAN. Nor do I.

Mr. MOORE. Mr. Counselor, I would like to clarify in connection with the other——

Mr. SCHWARZ. You wanted to make a correction, Mr. Moore?

Mr. MOORE. No, no correction. This was during an official investigation which had been requested of the FBI.

[Whereupon, at 1:10 p.m., the committee recessed, to reconvene at 2:30 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN [presiding]. The hearing will please come back to order.

In my absence during part of the hearing this morning, I am told by counsel that there was testimony as to a wiretapping incident that related to one or more newsmen. Senator Huddleston, who was then presiding, agreed that this information, being new to the committee, should first be heard in executive session according to the practice of the committee. The FBI is prepared to submit to the committee all relevant documents and information relating to the incident.

Am I correct in that understanding?

Mr. WANNALL. That is correct, Mr. Chairman.

The CHAIRMAN. And the committee will be furnished the documentary information as quickly as that can be arranged?

Mr. WANNALL. Yes, sir.

The CHAIRMAN. And we will have your cooperation?

Mr. WANNALL. Fully.

The CHAIRMAN. Very well.

Mr. Schwarz has a few concluding questions he would like to ask at this time.

Mr. SCHWARZ. All right. Over the lunch hour we were discussing the date of the memorandum from Mr. Hoover [exhibit 20 [1]] that we had been looking at just prior to adjournment and it was dated March 1965.

Among the matters raised in the document was a recommendation to the then—Attorney General that a change in procedure be instituted whereby no wiretaps could be instituted without the approval of an Attorney General. After that memorandum, was such a change made, and if so, by whom?

Mr. WANNALL. It is my recollection, Mr. Schwarz, that the President did issue an order to that effect. However, I do not know the precise date of the order. It is my recollection that it probably followed that within a matter of a few months.

Mr. SCHWARZ. And if that is so, there is a great likelihood there was a causal connection between the suggestion made here in the order of the President that followed.

Mr. WANNALL. I feel this could certainly have had some bearing on the order.

Mr. SCHWARZ. I have a few questions relating to the CIA program and the FBI's understanding of it. Will you turn to exhibit 22,[2] please. Mr. Branigan, Mr. Wannall, Mr. Moore, I think you all might be able to cast some light on this. This is a document dated March 10, 1961, and it is from you, Mr. Moore, to Mr. Belmont, relating to the CIA program and to the CIA's institution of a laboratory for the analysis of mail in New York. Did you send that memo, Mr. Moore?

Mr. MOORE. Yes, I did.

Mr. SCHWARZ. All right. Mr. Hoover writes at the bottom of the memo, in his handwriting, "another inroad!" What do you think that meant?

Mr. MOORE. Obviously, this has to be an interpretation, but I think it is correct. Mr. Hoover was quite jealous of the FBI's jurisdiction and I believe he felt that perhaps there might be an inroad by the CIA on the FBI's jurisdiction in this country. That is purely my interpretation. I think it is accurate.

Mr. SCHWARZ. And you do not think it means—and I agree with you it doesn't mean—an inroad into persons' liberties. It means an inroad into the turf of the FBI.

Mr. MOORE. That is my interpretation of it and I believe it is correct.

Mr. SCHWARZ. All right. Mr. Branigan, would you look at the document which is exhibit 23 [3]? This is a document from someone

[1] See p. 238.
[2] See p. 244.
[3] See p. 245.

else to you dated August 24, 1966, which purports to describe the kind of material you were receiving from the CIA; is that right?

Mr. BRANIGAN. That is correct.

Mr. SCHWARZ. Now, included among the material was, for example, data regarding current and former U.S. exchange students and their U.S. contacts before and after their return, including their romantic involvement. According to this document, you also got information about persons involved in the peace movements, anti-Vietnam demonstrations, women's organizations, teach-ins, racial matters, and so forth.

Did you get a lot of information from the CIA program that really had nothing to do with espionage or that kind of matter?

Mr. BRANIGAN. This is correct. We initially got into this program, Mr. Schwarz, with the idea of identifying Soviet or identifying illegal agents, identifying persons who would be active in behalf of the foreign power. After we had been into it for approximately—oh, I would say about 14 months—it became evident that a lot of the material we were getting related more to the domestic scene than it would to the foreign counterintelligence.

Mr. SCHWARZ. And a lot of it really was just plain junk, was it not?

Mr. BRANIGAN. We, at various times, went back to the Agency with the idea of giving the categories of information that we were interested in and to eliminate information that was of no pertinence to us.

Mr. SCHWARZ. You do not want to accept my word "junk," but information having no pertinence and junk are the same thing; are they not really?

Mr. BRANIGAN. Well, I will accept your word "junk."

Mr. SCHWARZ. OK. Over the course of the 15 years that you received information from the CIA program, the record shows you received some 50,000 copies of letters. Did it lead to the identification of a single illegal agent?

Mr. BRANIGAN. To my knowledge, no.

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

The CHAIRMAN. You have the documents before you, Mr. Wannall, and I would ask you to turn to exhibit 24.[1]

Mr. WANNALL. Yes, sir.

The CHAIRMAN. It is the fourth document here under date of May 25, 1965. It is directed to the Director of the FBI from the San Francisco office of the Bureau and it reads as follows: "As of May 26, 1965," which would be the following day, "contact with source will be temporarily suspended."

Now what does that mean? What does "source" mean here?

Mr. WANNALL. That would be the source which was providing mail intercepts.

The CHAIRMAN. Would that be the CIA source or the FBI source?

Mr. WANNALL. It was the FBI source.

The CHAIRMAN. This would be your own San Francisco operation?

Mr. WANNALL. Yes, sir.

The CHAIRMAN. Very well. So, the message reads "As of May 26, 1965, contact with source will be temporarily suspended in view of discontinuance of Post Office examination of first-class mail, originat-

[1] See p. 249.

ing as a result of the Supreme Court decision of May 24, 1965." And then it reads: "The Bureau will be promptly advised when arrangements have been perfected to recontact this source."

Now, the Supreme Court decision of May 24, 1965, which I have here before me, exhibit 25,[1] was a decision in which the Court held a statute that permitted the Post Office to detain and deliver only upon the addressee's request, unsealed foreign mailings of Communist political propaganda. And the Court held that the act, as construed and applied, is unconstitutional since it imposes on the addressee an affirmative obligation which amounts to an unconstitutional limitation of his rights under the first amendment.

A previous decision by Mr. Justice Holmes is quoted favorably in which Mr. Justice Holmes wrote: "The United States may give up the Post Office when it sees fit, but while it carries it on, the use of the mails is almost as much a part of free speech as the right to use our tongues."

And the Court further went on to say that the defense of the statute on the grounds that Communist governments gave no such rights to their own citizens was to be spurned, the Court holding that: "The governments which originate this propaganda themselves have no equivalent guarantee, only highlights the cherished values of our constitutional framework. It can never justify emulating the practice of restrictive regimes in the name of expediency."

So the Court had struck down this statute, and in this message to the Director, as I read it, the FBI program was temporarily terminated, and the message went on to say, "The Bureau will be promptly advised when arrangements have been perfected to recontact the source."

Now, on the next page is a document [exhibit 26 [2]] which shows, as I read it, that the program was reinstituted shortly thereafter. Is that correct?

Mr. WANNALL. I would certainly interpret the documents that way, Senator Church.

The CHAIRMAN. What was the justification for reinstituting the program after it was terminated in light of the Supreme Court decision?

Mr. WANNALL. I think the Supreme Court decision—I cannot justify this, Senator Church, and I might say that at the time I was not involved in the program, but I would like to make the point that as I recall the Supreme Court decision and as you have refreshed my recollection of it, and which, by the way, I was not aware of at the time because of my removal from this area, related to a procedure which was instituted perhaps in the early 1950's of intercepting—interception by the Customs Service of large quantities of propaganda coming into the country. And I think that was really the basis under which we started this particular program in 1954.

At that time, as now, we had, and still have, responsibility under the Foreign Agents Registration Act which provides for the registration with propaganda agents of foreign principals with the Attorney General. This Supreme Court decision addressed itself to that procedure, as I recall. And I don't think the decision made any difference

[1] See p. 250.
[2] See p. 256.

with regard to the legality of the operation which we were conducting or the illegality of the operation which was beyond the interception of the propaganda starting in 1956.

So, I would say the interruption was probably due to considerations by cooperating officials in the San Francisco area.

The CHAIRMAN. But as you have already testified, you cannot now and do not attempt to justify what happened?

Mr. WANNALL. I cannot justify what happened; no, sir.

The CHAIRMAN. Thank you very much.

Do you have any questions, Senator Mathias?

Senator MATHIAS. Yes. The previous document [exhibit 22 [1]] that Mr. Schwarz referred to and in which Director Hoover wrote the annotation, "another inroad!" raises, I think, a very interesting question. It raises the question of the areas of jurisdiction of the FBI and the CIA, and I believe Mr. Hoover had very strong ideas on this, didn't he?

Mr. MOORE. Definitely.

Senator MATHIAS. Probably his position and his ideas had a lot to do with the limitations which were placed in the National Security Act of 1947 which created the CIA and which, in effect, drew its boundaries at the waterline; would that be true?

Mr. MOORE. I believe so, sir.

Senator MATHIAS. Now, one other question that this committee is ultimately going to have to wrestle with is whether that is still a valid boundary for the CIA and whether or not, as we have seen, it is such an artificial boundary that the temptation to violate it is irresistible.

And I am wondering how you feel your relationships with the CIA have been under the present jurisdictional arrangements?

Mr. WANNALL. We have furnished, I think, to the committee, Senator Mathias, a copy of a document; it was a memorandum of understanding between the FBI and CIA, executed in about February of 1966. Within the past several months, there have been efforts to cover any areas that might not have been covered there.

We have consulted with the CIA and have come to mutually agreeable conditions, and the matter as of a month or so ago—I have not had a reading on it lately—was in the hands of the Attorney General for consideration.

We have had no real difficulties in defining our respective areas. Starting in the middle sixties—well, I shouldn't say starting in the middle sixties—when we have had matters of mutual interest, we have consulted. Starting in the middle sixties, I think this consultation has been more pronounced than it was prior to that time. And Mr. Branigan, who would have the greatest interest in this area, I think will possibly support my statement that we have been able to work out any problems that have arisen.

Mr. BRANIGAN. I certainly will support the idea.

We have an excellent liaison, an excellent working relationship with the Agency. This has been—I think in the past this has really been a bum rap, because our relationship with them has been good. It is a workable one.

Senator MATHIAS. When you refer to a bum rap, you mean the concept that there may be some conflict between the Agency and the FBI?

[1] See p. 244.

Mr. BRANIGAN. This is correct. This is correct, Senator. There has been quite a bit of publicity to the idea that there was a—well, we were at loggerheads; we did not get together. And this is not true.

Senator MATHIAS. Of course, one of the interests that we have here, as this whole hearing obviously illustrates, is the rights and privacy of citizens. But we are also vitally interested in the efficient operation of both the Bureau and the Agency. And we want to feel sure that both the Bureau and the Agency are operating in a climate which gives the Government the kind of information that it needs. Do you feel that there is an interlock today which is adequate for that purpose?

Mr. WANNALL. I feel there is an interlock. I think there is certainly an area to which this committee could address itself.

Earlier today I made the comment that the FBI does not have a charter for the production within the United States of positive foreign intelligence. And I think the CIA's charter is for the production of foreign intelligence, but I don't think it is defined as being within the United States. So there is an area here which I think could be very well addressed by legislation, placing the responsibilities where the Congress feels they should be placed.

Senator MATHIAS. When the CIA develops a line of interest—let us say somewhere outside the United States—and a trail leads back to the United States, is that the point at which the interlock begins to work and that you have communication as to the pursuit of that particular line of inquiry?

Mr. WANNALL. That is precisely covered in the February 1966 understanding; yes, sir.

Senator MATHIAS. It is my understanding that Mr. Hoover at one time prohibited personal communications between the Bureau and the Agency.

Mr. WANNALL. Mr. Hoover at one time discontinued the practice of having one man dedicated as a liaison officer with CIA, but he did not prohibit any contacts with CIA.

As a matter of fact, I think——

Senator MATHIAS. Even in that period of time?

Mr. WANNALL. Even in that period of time.

Senator MATHIAS. If there was something that required liaison, you could pick up the telephone and call your opposite number in the Agency and do what was necessary to do the public's business?

Mr. WANNALL. Yes; it had a very salutary effect in that regard, because I became cognizant of individuals who were my counterpart over in the Agency through whom I would deal previously by way of a liaison agent. So I think it possibly benefited this mutual arrangement, the mutual agreements, the mutual spirit of cooperation which I feel has developed. I don't recall any instructions Mr. Hoover ever gave which would preclude our dealing with CIA.

Senator MATHIAS. Of course, it somewhat confirms what you are saying, that there was, in fact, a relationship with respect to mail openings which went on over a period of time.

Mr. WANNALL. That is correct, sir.

Senator MATHIAS. A relationship in which the CIA responded to requests from the Bureau.

I might ask Mr. Mintz this question. Does the Bureau's legal counsel office review the legality of investigative techniques? Do you have an

opportunity to look at an operation and pass some legal judgment on that particular operation?

Mr. MINTZ. Absolutely.

Senator MATHIAS. You are not compartmented out of the process?

Mr. MINTZ. No; we are not at all. We are a part of the executive's conference where policy decisions are discussed. And when matters arise outside the executive's conference, I am contacted directly by other assistant directors who are my peers, and we discuss these matters. And I am frequently requested to give legal opinions.

Senator MATHIAS. Do you see reports, for example, from the Inspection Division?

Mr. MINTZ. Occasionally, but not as a regular matter. Inspection Division would inquire into—usually would inquire into operating procedures and efficiency and occasionally into matters of some concern concerning violations of our regulations. And once in a while, in those instances, I would be consulted.

Senator MATHIAS. But would there be any occasion when you might be denied information that would be contained in a report?

Mr. MINTZ. I have never been denied when I have asked for information in regard to matters I was inquiring into. I have never had an occasion when it was denied to me, Senator.

Senator MATHIAS. Looking to the future and to the kind of recommendation that this committee must make to the Senate on the specific question of mail problems, I am wondering if it would be appropriate that a warrant be required before implementation of mail openings?

Mr. MINTZ. Of course, that raises the matter that I mentioned this morning about there being the possibility of the existence of Presidential power independent of the legislative authority. That being the case, and that not being resolved, I can't really answer your question, Senator.

Senator MATHIAS. This morning Mr. Mitchell addressed himself to that question, and I couldn't help noting that his views hadn't changed over all the years since he first came to Washington. His views expressed this morning were essentially the same as those he gave to the Judiciary Committee in 1969.

Mr. MINTZ. I am sure that the Attorney General, Attorney General Levi, is concerned with this very question you raised, Senator. And I am confident that if there is an answer to be given, that the Attorney General will address that matter with the committee.

Senator MATHIAS. I think that we will have to determine the standards on which warrants would be issued, whether it be probable cause or some other standard.

Mr. MINTZ. If you assume a hypothetical, Senator, that a warrant would be required, the standard would necessarily have to be less than the probable cause standard now required in criminal cases, because at present, probable cause in criminal cases requires a great deal of particularity. We must be able to specify precisely the property or evidence that would be seized. We must be able to indicate the probability that a crime has been or is about to be committed.

In intelligence matters, we are unable to be quite that specific, and I refer you, Senator, to the court's decision in the *Keith* case in which they noticed the difference between regular criminal investigative matters and intelligence matters. And the problem of proof would be quite

different, and that would be a problem for us, should a warrant be required.

Senator MATHIAS. All right. I think intelligence value would be a standard that could be established separately.

Mr. MINTZ. That is correct.

Senator MATHIAS. I think it would have to be refined and defined.

Mr. MINTZ. I feel a standard like that could meet the fourth amendment test of reasonableness, and it would be in compliance with the Constitution.

Senator MATHIAS. I understand that as a representative of the Justice Department, you are limited in what you can say until some departmental policy is developed. But it would appear that this necessary governmental operation could function under some plan of that sort.

Mr. MINTZ. I suspect that it could; yes, sir.

Senator MATHIAS. Thank you, Mr. Chairman.

The CHAIRMAN. I believe that concludes the hearing this afternoon. I want to thank all of you gentlemen for your testimony and for coming back again this afternoon.

These hearings are adjourned until next week, subject to the call of the Chair.

[Whereupon, at 3:07 p.m., the committee recessed, subject to the call of the Chair.]

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