

recent contact with him knew that age increasingly impacted his judgment. We all—the Presidents, the Congress, the Attorneys General, the press and many segments of the public—knew that, and yet he stayed on struggling against change and the future. I hope the committee will weigh the great service he gave this Nation and the great institution he created and dedicated to the public interest favorably against what I regard as largely the transgressions of an elderly man who served with distinction, but too long.

Senator TOWER. Thank you, Mr. Katzenbach. Mr. Clark, we have your complete statement. You may summarize it or read it in its entirety as you choose. In any case, it will be printed in full in the record.

### TESTIMONY OF RAMSEY CLARK

Mr. CLARK. Thank you, Mr. Chairman.

I ask that my 7-page statement be put into the record and I make a few comments so we can get on with the questioning.

It seems like we have been through an intolerable series of revelations of Government misconduct. As we approach our 200th anniversary, I hope we will remember that freedom made this country possible, and freedom has been our credo, and that we will act with strength and determination now to see that we can begin our third century in freedom. It has been imperiled, I believe, by Government misconduct.

I served 8 years in the Department of Justice, beginning with the Kennedy administration and ending at the end of the Johnson administration. I was no stranger to the Department. When I first officially entered there, I padded the halls as a 9-year-old kid beside my father. I love the place. I believe its importance in our social fabric is enormous. I believe it is a durable institution, but I believe it needs help, and I think the Congress must be a principal source of that help.

I have sadly come to the conclusion that the revelations regarding the FBI and other governmental activities concerning Dr. Martin Luther King, Jr., require the creation of a national commission, not legislative, not executive, although it certainly could contain members of both of those branches, but involving the people.

I think we have a crisis, among other things, in credibility. I would like to see people on this commission who were close to Dr. King, who believed in his moral leadership and participated in his movement, lawyers from his past, people who worked with him, like Congressman Andy Young, many others, broad based.

I think the commission should have the power to compel testimony to subpoena witnesses and documents. I do not believe we can afford to leave a stone unturned in exposing for the scrutiny of a democratic society every activity of government that related to Dr. King, to his friends, his associates, his church, the Southern Christian Leadership Conference, any of his activities, to his work.

That is a sad thing for me to have to recommend. I was Attorney General when Dr. King was murdered. I followed that investigation more carefully than any investigation while I was Attorney General. I had confidence at the time that we were doing everything that could be done to determine the facts. But my confidence and my judgment don't matter. The confidence and the judgment of the people is imperative.

Beyond the revelations concerning Dr. King—we've had so many that required drastic action—I listed again a number of recommendations that I've made from time to time here before, discussions with staff here this morning. I realize I left some out. I think, for instance, the Director of the FBI should be limited to a term of 4 years. I suggested this before. I think the term ought to begin at the end of the second year of the Presidency, so that a President would serve a Director appointed before his term for 2 years and then 2 years with someone that he appointed. I don't think that's extreme. I think it's essential. In fact, I think we have many analogies to indicate the desirability. Take the Chief of Staff in the military and things like that. We are considering our freedom here. I believe that a society committed to democratic institutions, aspiring to freedom and hope and to live under the rule of law, must have faith in its agents, can fully protect their interest and serve their needs by fair conduct, by honorable conduct.

The Congress will have the courage to come to grips and enact laws to prohibit investigative and enforcement activities that are unacceptable to the moral standards of the American people. I think we need as a first requisite specific statutes that address every form of investigative and enforcement activity prohibiting those that are judged unacceptable, and I would hope that would be a long list, attaching criminal sanction to their violation. I would hope that conduct that is permitted would be specifically authorized in statute, so that no agent on the street would ever wonder what he is authorized to do. And if Congress determines there is a twilight zone, that it would vigorously regulate that twilight zone. Some consider the use of electronic surveillance to be such a zone. I don't. I think it ought to be prohibited, as I said when I was Attorney General. If it is permitted, I think it would require rigorous regulation well beyond what we have considered in the title III of the Omnibus Crime Control Act. That shows the concern of Congress and it shows, I think, the potential of law to protect the people from abuse of governmental powers.

I think that any disruptive activities such as those that you reveal, regarding the COINTEL Program and the Ku Klux Klan, should be absolutely prohibited and subjected to criminal prosecution. I believe the police investigation, the criminal investigation and accumulation of data files or dossiers should be prohibited, except in actual ongoing criminal investigations initiated where there was probable cause to believe the crimes have been committed, or is about to be committed.

I think information obtained by police, by agents of the FBI or other Federal bureaus, from public sources for general informational purposes—and I am not a know-nothing—I think that those who have the duty to protect us must know public information about the society in which they live. I think that should be made available always to the public and to the press in the form in which it is received.

Where techniques inherently inimical to freedom, such as paid informants, which I oppose, are authorized by law; they should be stringently regulated. I think the standards should exceed those that the courts have now imposed upon fourth amendment procedure regarding search and seizure. I think vigorous internal compliance should be required, regular inspection and reporting to the highest

authorities within the executive, congressional oversight and regular public reporting with the times, number, and duration of all such activities. Every individual or organization should be entitled to notice of, and on demand to review, any information possessed by any investigative or enforcement agency concerning him, her or it, unless that information is part of an ongoing criminal investigation, and in those circumstances it be subject to judicial rules of discovery. I believe it will better serve the public safety and the freedom of the people, and under any circumstances I think there should be full disclosure not less than 2 years after the date of the receipt of the information.

When Government agencies act unlawfully, I think responsible persons should be subject to criminal sanction, civil damages, and injunction. I think the law should strictly prohibit unauthorized public agencies, or private persons, from engaging in authorized criminal investigations assigned to another jurisdiction. Illustrations that explain what I'm talking about are such things as the plumbers, as they were called; the use of IRS agents to engage in general criminal investigation, which can destroy the confidence in the integrity of the taxing power that is essential to any Government. I think the law should prohibit and punish leaks of information from Government investigations which can either damage reputations, or prejudice fair trials, and I think we need to be rigorous about that. I guess I need only note some of the revelations regarding Martin Luther King to suggest to the Department what I'm talking about.

We need far more effective Freedom of Information Acts, and both Mr. Katzenbach and I were deeply involved in the formulation of the existing basic statute that exists today. I think we both had higher hopes for it. I know I did. I was deeply disappointed when I argued the first case under it in the Supreme Court to find that the exceptions which had been created by the Congress were as great as they were. I think democracy is premised upon an informed public.

Secrecy in Government is one of the great perils to the continuation of democracy and freedom in this society. I think that only rights of privacy and the integrity of ongoing criminal investigations should exempt information from disclosure. I think civilian review boards comprised of the broadest citizen representation with the power to subpoena witnesses and documents, compel testimony, should be created for all police departments and investigative agencies by the appropriate legislative bodies, Federal, State, and local. They should have the power to oversee, to check, to initiate studies, to review and determine complaints of wrongful conduct, and report regularly to legislative, the executive, the judiciary, the public, and the fourth estate.

If this sounds burdensome, it is in my judgment a small price to pay and I would like to end with the words of a great man and a uniquely free American, William O. Douglas, on the subject of discretion, because I think they tell us what we risk if we continue to permit unbridled discretion in Federal investigative agencies, or for that matter, those at State and local levels. He said:

Law has reached its finest moments when it has freed from unlimited discretion some ruler, some civil or some military official, some bureaucrat. Where discretion is absolute, man has always suffered. At times it has been his property that has been invaded, at times his privacy, at times his liberty of movement, at times his freedom of thought, at times his life. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions.

I urge you to enact laws that will inform every agent investigating or enforcing for the Federal establishment of the limits of that discretion.

Thank you.

[Prepared statement of Ramsey Clark follows:]

STATEMENT OF RAMSEY CLARK, FORMER ATTORNEY GENERAL OF THE UNITED STATES

Must we remind ourselves? This is America. Freedom is our credo. Because we overcame fear and live free, our imagination and energy burst across the continent and built this incredible place. Fulfillment is the flower of freedom, born of no other tree. Freedom is the child of Mother Courage.

What utter outrage that as we approach our two hundredth anniversary of the quest for freedom striving still to "secure the blessings of liberty to ourselves and our posterity" we should turn, frightened, careless or unscrupulous, to police state tactics. Have we forgotten who we are and what we stand for?

Recent years have seemed a constant revelation of growing abuses of freedom. Frightened, hateful, insecure, craving power, a thousand ignoble emotions have justified means to obtain ends. We have felt the hot breath of tyranny in America. Many have found it comforting.

Some seeming paralysis grips us. Raised to believe the truth will set you free, we are told the truth is too dangerous and not for the people to know. A year in the wake of Watergate, the Congress has not enacted a single law to prevent its recurrence, while Senate Bill 1 from the Committee on the Judiciary imperils freedom.

If we love freedom, we will demand a full accounting by government, federal, state and local, of past conduct threatening liberty.

Your partial disclosures about FBI efforts to destroy the desperately needed moral leadership of Martin Luther King, Jr. are an important first service. We need to know more. For years I have pleaded for full disclosure. Five years ago, writing in *Crime in America*, I observed:

"There have been repeated allegations that the FBI placed bugs in hotel rooms occupied by Dr. Martin Luther King, Jr., and subsequently played the tapes of conversations recorded in the room for various editors, Senators and opinion-makers. The course of the civil rights movement may have been altered by a prejudice caused by such a practice. The prejudice may have reached men who might otherwise have given great support—including even the President of the United States. The public has a right to know whether this is true. If it is, those responsible should be held fully accountable. A free society cannot endure where such police tactics are permitted. Today they may be used only against political enemies or unpopular persons. Tomorrow you may be the victim. Whoever the subject, the practice is intolerable."

What you have now revealed demands the creation of a national commission, empowered to investigate thoroughly all governmental activity relating to Martin Luther King, Jr., his movement, family, friends, associates, church, the Southern Christian Leadership Conference, his activities and his murder. The commission, broad based and fully financed, with the power to subpoena documents and compel testimony, should report to the Congress, the President and the People. When the evidence warrants it, a special grand jury should consider its findings. The commission should develop, draft and present legislation, regulations and review procedures to prevent recurrences of wrongful conduct it uncovers.

We must recognize the far greater danger and injury flowing from government misconduct than from any threat claimed to justify it. Government can only be effective with the support of the people. The people will only support government which earns its respect. People do not respect "a dirty business."

Law enforcement will not long respect itself when it engages in wrongdoing. Integrity will be destroyed. Good people drawn to public service will abandon it. A mystique of cunning and surreptition will drive out objective, lawful investigative priorities and practices. America, too, can be a police state. The only special immunity we have known has been our commitment to freedom.

The notion that moderate Machiavellian means are required by dangerous conditions and can prevail over a radical Machiavelli is twice wrong. An unbridled discretion in police power is the sure road to despotism. We should learn from the words of a great and uniquely free man, William O. Douglas:

"Law has reached its finest moments when it has freed from the unlimited discretion of some ruler, some civil or military official, some bureaucrat. Where discretion is absolute man has always suffered. At times it has been his property that has been invaded; at times, his privacy; at times his liberty of movement; at times his freedom of thought; at times his life. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions."

The only acceptable course is constitutional principle.

Now, as Lincoln urged at Cooper Union in the darkening year before the Civil War, "Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it."

A society aspiring to freedom, to the rule of law and democratic institutions, can prevent domestic insurrection, crime and wrongdoing within its own borders by fair, lawful, honorable means. To adopt lesser means is to kill the American Dream.

We gave some cause to the Soviet newspaper Tass to report as it did in January of this year with regard to CIA-FBI activities "And now it is obvious that fundamental rights of citizens are flouted in the leading country of the 'free world.'" It is for you and me now to redeem our pledge to freedom for humanity. And we must begin at home.

From a larger number of recommendations, I will outline nine proposals I have urged to control domestic surveillance, preserve freedom and protect society. I urge the enactment of laws implementing them.

1. Specific statutes should authorize, prohibit or regulate every investigative and enforcement practice for federal, state and local government. Obviously, disruptive government activities such as those revealed in Cointelpro or against the Ku Klux Klan should be subjected to criminal sanction. Every authorized act must be founded in law. Government agents should not have to guess what is permitted.

2. Police investigation and accumulation of data, files or dossiers should be prohibited except in criminal investigations initiated only where there is probable cause to believe a crime has been committed. Information retained by police from public sources for general informational purposes, such as newspapers, should be kept equally available in its original form to the public and the press.

3. Where techniques inherently inimical to freedom such as paid informants or electronic surveillances (I oppose both) are authorized by law, they should be stringently regulated. Court orders meeting Fourth Amendment standards should be required. Internal compliance, inspection and reporting to the highest authority should be rigorous and regular public reporting of times, numbers and duration required.

4. Every individual and organization should be entitled to notice of, and on demand to review, any information possessed by any investigative or enforcement agency concerning him, her, or it, unless that information is part of an ongoing criminal investigation where it should be subject to judicial rules of discovery and full disclosure not more than two years after receipt.

5. When government agencies act unlawfully, responsible persons should be subjected to criminal sanctions, civil damages and injunction.

6. Law should strictly prohibit unauthorized public agencies or private persons from engaging in authorized criminal investigation.

7. Law should prohibit and punish leaks of information from government investigations which can either damage reputations or prejudice fair trials.

8. Freedom of Information Acts at all levels of government should open investigative agencies to public scrutiny. Democracy is premised on an informed public. Only rights of privacy and the integrity of ongoing criminal investigations should exempt information from disclosure.

9. Civilian Review Boards comprised of the broadest citizen representation, with power to subpoena witnesses and documents and compel testimony should be created for all police departments and investigative agencies. They should oversee, check, initiate studies, review and determine complaints of wrongful conduct and report regularly to the legislature, executive, judiciary, the public and the Fourth Estate.

If this sounds burdensome, it is a small price to pay for freedom. Without such safeguards we will enter our third century with liberty exposed to clear and present danger. We must ask ourselves, in the words of Justice Hugo Black "whether we as a people will try fearfully and futilely to preserve democracy by adopting totalitarian methods, or whether in accordance with our traditions and our Constitution will have the confidence and courage to be free."

Senator TOWER. Thank you, Mr. Clark.

Before we proceed with the questions I would like to instruct the witnesses to refrain from mentioning the names of private citizens unless permission has been given in advance by that person, or unless the information is already in the public domain. This is, of course, designed to protect people who may appear in raw FBI data files and that sort of thing. We don't want ourselves unwittingly to infringe on anybody's rights here, and we are investigating the fact that it has been done by Government agencies.

The questioning of Mr. Katzenbach will be initiated by the counsel for the minority, Mr. Smothers.

Mr. SMOTHERS. Thank you, Mr. Chairman.

Mr. Katzenbach, your statement suggests that, for much of the activities we reviewed, or much of the activities of the FBI, these represented matters that started with Mr. Hoover and were pursued without opposition, certainly without opposition at the Attorney General's level. I think it would be fair to say that from some of the documents which you have been shown, there is at least a suggestion that Hoover did communicate some information regarding his activities and may have believed that there was some authority based on those communications.

What I would like to do briefly with you is to concentrate first on the area of electronic surveillance, beginning with your own attention to the area of bugs or regulation of those, and then to move briefly to the three matters we have indicating surveillance of Dr. King and then to the information regarding your knowledge on those, and then finally with regard to asking information regarding the COINTELPRO activities of the Bureau during this time. In the interest of saving time, let me just briefly indicate what our record reveals with regard to the regulation of electronic surveillance, the bugs here as distinguished from the wiretaps.

We know that wiretapping had required the prior approval of the Attorney General. Without respect to bugs, the Bureau apparently relied upon a 1954 memorandum by Brownell, when he was Attorney General, indicating either inherent or delegated authority by the Bureau to plant electronic bugging devices.

On March 30, 1965, you indicated dissatisfaction with this and established a rule essentially requiring the Bureau to conform to the wiretap procedure, that is, come to the Attorney General for permission to use any such devices.

I see an amendment to that in 1965, where you indicate in emergency situations the Bureau could indeed plant such devices, but that notice would immediately follow, notice to the Attorney General.

Is that account substantially correct?

Mr. KATZENBACH. Yes, it is, Mr. Smothers, except that I did a good deal more than just put bugs on the same basis as taps, because taps were not on a very good basis at that time either. So that my procedures did equate the two, but they in addition required formal notice to the Attorney General of any discontinuance, and they required a formal re-permission for anything that had been on 6 months.

Mr. SMOTHERS. To the best of your knowledge, did the Bureau comply with those procedures?

Mr. KATZENBACH. To the best of knowledge, it complied with those procedures. I don't recollect ever having any occasion of seeing the emergency power that you referred to used by the Bureau.

Mr. SMOTHERS. All right. In your statement you referred to three alleged incidents of after the fact advices regarding electronic bugging. I have a memorandum dated May 17, 1965, entitled "Memorandum for the Attorney General, Re: Martin Luther King, Jr." [See footnote, page 21.]

Reading from the first paragraph of that memorandum, the memorandum is signed by Mr. Hoover, Mr. Hoover reports to you that, "This Bureau's investigation of the Communist influence in racial matters has developed considerable information indicating the influence upon Martin Luther King, Jr." It then proceeds to name individuals previously discussed; individuals which the chief counsel indicated, in his discussion this morning, had been shown at least by reporting from the Bureau to not be directly under the control of the Communist Party. Further down in the memorandum, the end of the first paragraph, Mr. Hoover reports the purpose of the surveillance activity, or the purpose of the FBI in looking at King here. He indicated that, "results in obtaining evidence of influences upon King." I continued to quote, "as well as information concerning the tactics and plans of King and his organization and the civil rights movement."

Mr. Katzenbach, there are initials on this document in the upper right hand corners. Are those your initials?

Mr. KATZENBACH. Yes; those are my initials.

Mr. SMOTHERS. Do you recall this information received by Mr. Hoover?

Mr. KATZENBACH. No, I do not, and I do not know whether I wrote those initials or not.

Mr. SMOTHERS. I don't understand.

Are they your initials?

Mr. KATZENBACH. Yes; my initials are N. deB. K., and that's N. deB. K., as I customarily write, in the place where I would customarily write it.

Mr. SMOTHERS. Does that look like your handwriting?

Mr. KATZENBACH. It looks like it.

Mr. SMOTHERS. Do you believe it to be your handwriting?

Mr. KATZENBACH. I don't have any recollection of ever receiving this memorandum or the two subsequent memorandums, or the same memorandums of the same kind, Mr. Smothers. I have no recollection of that, and I very strongly believe that I would have recollected it.

Mr. SMOTHERS. Mr. Katzenbach, if we can stay with my question, please.

That is, does this look like your handwriting?

Mr. KATZENBACH. Yes; it looks like my handwriting.

Mr. SMOTHERS. Do you have any reason to believe that you did not initial this document?

Mr. KATZENBACH. Yes; because I do not recollect the document and I believe very strongly that I would recall this document.

Mr. SMOTHERS. Can we turn to the next document, please; the document dated October 19, 1965, stating substantially the same information as was in the first paragraph of the May 17 document, looking again to the upper right-hand corner.

Are those your initials?

Mr. KATZENBACH. Yes, they are, and the same situation as before.

Mr. SMOTHERS. Do they appear to be in anyone's hand other than your own?

Mr. KATZENBACH. No. That is the way I would write initials.

Mr. SMOTHERS. Will you turn to the document dated December 1, 1965.

Again, going to the upper right-hand corner, do those appear to be your initials there?

Mr. KATZENBACH. Yes, the initials appear to be mine. The handwriting immediately underneath that does not appear to be mine.

Mr. SMOTHERS. Mr. Katzenbach, in the normal course of events, would one be reasonable in assuming that these three documents, separated by some months in time from the Bureau's files, with initials that you indicated appear to be yours, reflect the fact that you had seen and initialled these documents?

Mr. KATZENBACH. In the normal course of events?

Mr. SMOTHERS. What is wrong with that assumption?

We are talking about three documents months apart that appear to be your initials, according to your testimony. Is there anything that would suggest that someone else had initialled these documents?

Mr. KATZENBACH. The only thing that would suggest that anybody else could have initialled these documents are a series of reasons that I have set forth in some length in my prepared statement that I think you are familiar with, Mr. Smothers, as to why I am confident that I would have recollected these memorandums.

It is also, to my mind, I don't understand, and I never saw any memorandums, to the best of my recollection, where the Bureau had put a microphone surveillance in anyplace and notified me afterward.

Mr. SMOTHERS. I'll come to the substance of the documents in a moment, Mr. Katzenbach, but let's be very clear on the record in this matter.

Are you suggesting that what appears to be your initials on these documents in fact represent forgeries?

Mr. KATZENBACH. Let me be just as clear about that as I can. I have no recollection of receiving these documents, and I seriously believe that I would have recollected them had I received them. If they are my initials and if I put them on, then I am clearly mistaken in that recollection.

Mr. SMOTHERS. Very well.

May we go to the substance of the documents for a moment, and we'll turn to the document of May 17. [See footnote, p. 21].

Senator MATHIAS. Mr. Chairman, if counsel would suspend for just a minute, there is no doubt in your mind that you would have remembered that document if you had seen it.

Mr. KATZENBACH. I have no doubt in my mind that I would have remembered it, Senator. On the other hand, if that in fact are my initials, then for reasons that I cannot now explain to the committee, and which I find difficult to conceive, the memorandum must have been seen by me and initialled by me.

Senator MATHIAS. But you wouldn't have considered it routine memorandum, passing over it?



Mr. KATZENBACH. I would have considered it anything but a routine memorandum.

Mr. SMOTHERS. In that connection, Mr. Katzenbach, is it your testimony then that you would not have approved of an objective of the Bureau as stated in the May 17 memorandum, to gain information concerning the tactics and plans of Dr. King and the civil rights movement? Would you have considered this an improper objective on the part of the FBI?

Mr. KATZENBACH. Yes, I would have considered that an improper objective. The Communist influence is another question, and if I might just go back to something you said a minute ago, Mr. Smothers, I think it was not my information. You said the Bureau and all of these people had said that they were not under Communist influence. If my understanding of that is correct, then I believe your statement is not correct. At least, I do not believe it ever came to my attention that one of these individuals was not still believed to be a secret and important member of the Communist Party as far as information coming to me was concerned.

Mr. SMOTHERS. That may well be. There is a matter of some dispute there. We talked about information coming from the New York office in regard to that individual. I do not wish to pursue that at the moment. I grant you that certainly information which may have been received by the Bureau would indicate there was Communist influence.

My question regarding the Communist influence, though, is rather, assuming again that you received this memorandum, it would not have raised questions in your mind as to the nature of this information, this considerable information which the Bureau had developed.

Would this have, in the ordinary course of things, sparked a request from you to Mr. Hoover about the nature of this considerable information, the same language which appears in three memoranda?

Mr. KATZENBACH. I think I can best answer that question, Mr. Smothers, to say that to gain that kind of information through a microphone surveillance, and particularly one in a hotel seems to me a crazy way to try to get that information in the first place, but to gain it in that way, I would have thought was wrong.

Now, for the Bureau or the Attorney General to be interested in information concerning the tactics and plans of Dr. King's movement in those times, I am sure would have been something that I would have been interested in. Indeed, we talked to him often about—

Mr. SMOTHERS. According to the May 17 memorandum, wouldn't the action have been in violation of your own instructions regarding the use of these devices? They are reporting to you after the fact regarding a microphone placement, and they tell you "because of the importance of the meeting," the meeting between King and these other persons, "and the urgency of the situation, a microphone surveillance was effected."

Mr. KATZENBACH. Yes, that would have been in violation. I cannot see this as an emergency. There's nothing in the memo to suggest that it's an emergency. It comes to me some days afterward. I was virtually available to the Bureau every minute prior to the time this was put in. My conclusion is that the reason they didn't ask for my authorization is that they knew they wouldn't get it.

Mr. SMOTHERS. Mr. Katzenbach, the exact same language, except for a change in date, appears in the October 19 memorandum and in the December 1 memorandum, all reporting after the fact.

Now, I am a little puzzled by the fact that none of this information, three occasions of reporting here, came to your attention, or at least no recollection came to your attention. Are we suggesting that these memoranda were not forwarded to the Office of the Attorney General?

Mr. KATZENBACH. I don't know the answer to that question, Mr. Smothers, and I assure you that I am much more puzzled than you are, and much more concerned.

Mr. SMOTHERS. Let me turn to the last document. [See footnote p. 21]. That one is also the source of some concern. This document is on stationery indicating Office of the Attorney General. The document is handwritten and reads as follows:

Mr. Hoover: Obviously these are particularly delicate surveillances and we should be very cautious in terms of the non-FBI people who may from time to time necessarily be involved in some aspect of installation.

There are initials at the bottom. Are those your initials or signatures, Mr. Katzenbach?

Mr. KATZENBACH. Yes.

Mr. SMOTHERS. Is this note in your hand?

Mr. KATZENBACH. It is in my hand and I recall writing it.

Mr. SMOTHERS. The date of the note is December 10, 1965, 9 days after the last memorandum regarding the surveillances of Dr. King. You will also note, written across and apparently not in your hand, printed, are the words Martin Luther King, Jr.

This document was found in the Bureau's King file. Do you remember writing this note? Do you remember what surveillances you were making references to, what delicate surveillances?

Mr. KATZENBACH. I don't recall, and I have nothing in my possession that has served to refresh my recollection, and nothing has been shown to me by the committee staff that serves to refresh my recollection.

Mr. SMOTHERS. In your opinion, could this note have referred to the three mentioned electronic surveillances against Dr. King?

Mr. KATZENBACH. On its face it says that it did. If I remember any recollection whatsoever of the first three documents, then it would seem to me that would be a possibility. I point out that it could refer to almost anything.

My opinion is obviously, since I don't recall getting the first three, that this was not associated with it, and I really don't have enough recollection of what was associated with it to say, I do, or I did see Mr. Helms on that date. Whether it relates to something he asked for, I don't know.

Mr. SMOTHERS. Let me raise this question, Mr. Katzenbach.

Had these memoranda come to the Office of the Attorney General, would your immediate staff or those persons in your office who would have been receiving these memoranda, without regard to whether you actually initiated them, would these persons have called these matters to your attention?

Mr. KATZENBACH. If they had seen them, yes, they would. I would certainly assume so, yes.

Mr. SMOTHERS. Was your immediate staff aware of the disagreement you alluded to earlier between Mr. Hoover and the Attorneys General, including yourself, on the question of civil rights?

Mr. KATZENBACH. Oh, yes, certainly.

Mr. SMOTHERS. Then unless we are willing to assume that these documents never reached the Office of Attorney General, we have a true puzzle.

Mr. KATZENBACH. Yes, I am very puzzled.

Mr. SMOTHERS. Let me just raise a question about one bit of information concerning Dr. King which may have come to your attention.

Do you recall in 1964 information coming to you regarding a reporter who had been offered access to certain information regarding Dr. King, certain information that would assist in the ruin of Dr. King?

Mr. KATZENBACH. Yes, I do. I covered that incident in much detail as I can presently recollect in the longer, prepared statement.

Mr. SMOTHERS. So that you did, as early as 1964, have some information to suggest that the FBI may have been interested in an attack on Dr. King?

Mr. KATZENBACH. Oh, yes.

If your question is did I know the animosity between Mr. Hoover and Dr. King, absolutely, yes, sir, and I knew that this one incident had taken place.

Mr. SMOTHERS. Would you agree then, that with this information in your mind, it would have been a clear dereliction to merely initial or approve the matters—not approve, to initial without taking further action on the matters mentioned in the memoranda that we have just been talking about?

Mr. KATZENBACH. I would certainly expect that if I read the memorandums, then I would have done something about it.

Mr. SMOTHERS. Let me move along very briefly to one matter, Mr. Katzenbach.

Mr. KATZENBACH. I would point out that the action in each case was completely finished and done, but I would have done something about it. I did do something about the other, Mr. Smothers [see p. 210.] I did. I went to the President with that.

Mr. SMOTHERS. That's correct, and the record does reflect that.

Do you recall receiving information in September of 1965 in memorandum form [exhibit 44<sup>1</sup>] from the Bureau directed to the Attorney General indicating that the Bureau was about the business of disruptive activities against the Klan?

Mr. KATZENBACH. I recall a memorandum the committee showed me which speaks for itself. I wouldn't characterize it that way Mr. Smothers.

Mr. SMOTHERS. Do you recall a memorandum [exhibit 45<sup>2</sup>] originating from you back to Mr. Hoover indicating your satisfaction with the Bureau's efforts against the Klan as reflected by that memorandum?

Mr. KATZENBACH. Yes, sir, I do, and they were magnificent.

<sup>1</sup> See p. 513.

<sup>2</sup> See p. 515.

Mr. SMOTHERS. Did you approve the Bureau's COINTELPRO effort against the Klan?

Mr. KATZENBACH. I never heard the word COINTELPRO as such. I certainly approved everything described to me in that memorandum.

Mr. SMOTHERS. You approved the disruption?

Mr. KATZENBACH. I approved—I think there's a terribly important distinction for this committee to make. There was a great deal of evidence with respect to the Klan's being investigated that they had engaged and they were the instrumentality of violence, and I would have approved of activities not only to punish that violence, but activities within the law to do everything that they could to prevent violence in those situations. The situation in 1964 in Mississippi was a desperate one. There was no law enforcement agency in Mississippi that was worth a damn, and none would protect the rights of clients. It wasn't until the Bureau went in there, and went in with a massive investigation under one of its most able inspectors, Joe Sullivan, after the Chaney, Goodman, Schwerner murders, and I think the committee basically has to understand the difference between that situation and the Communist Party or the New Left or something else.

If you can't make that distinction, then I despair. I think that is an extremely important distinction.

Senator MONDALE. In fairness to the committee, we're not arguing at all. As a matter of fact, we are fully supporting the FBI in the discharge of its essential traditional responsibilities to enforce the law. The matters you are talking about are all clearly and classically law violations, and insofar as the FBI went down there and investigated those who committed or were about to commit crimes of violence, I don't think there is a person on this committee who would not but say hurrah.

But we are talking about matters that went clearly beyond this, and that's what concerns us.

Mr. KATZENBACH. Those matters are not contained in that memorandum.

Senator MONDALE. But I thought I heard in your lecture to us that you didn't see a difference.

Mr. KATZENBACH. Because of that memorandum. That memorandum is the basis, because it uses the word "disruption." You cannot do a criminal investigation of any organization properly without having some disruptive influence, where you have reason to know that that organization and its members are engaged in acts of violence, then by George, you want to disrupt those acts of violence. And part of the disruption of those acts is to create open surveillance. We did that with the Klan, openly surveyed them, followed them around all day.

Senator MORGAN. Did you break into their headquarters in Louisiana in 1962?

Mr. KATZENBACH. Not to the best of my knowledge.

Senator MORGAN. Were you in the Department of Justice in 1962? Weren't you involved in civil rights activities in 1962?

Mr. KATZENBACH. Certainly I was, Senator.

Senator MORGAN. Well, do you recall, or did in fact the Department of Justice instruct the FBI or did they break into the Klan headquarters and steal the roster of the membership?

Mr. KATZENBACH. I don't have any recollection.

Senator MORGAN. Would that be within your definition of disruption?

Mr. KATZENBACH. Breaking and entering? No, sir.

Senator MORGAN. Did the Bureau with your knowledge do any breaking and entering in any of these matters?

Mr. KATZENBACH. No, sir.

Senator MORGAN. Are you sure?

Mr. KATZENBACH. I am sure about my knowledge, Senator.

Senator MORGAN. Are you saying that it did not happen or you just don't recall?

Mr. KATZENBACH. I am saying that I had no recollection of that event. I don't know whether it happened and I have no recollection.

Senator MORGAN. While you headed the Department of Justice were instructions given to keep under surveillance all members of the black student activist organizations regardless of whether they had been involved in disruptions or not?

Mr. KATZENBACH. Keep under surveillance all members of black—

Senator MORGAN. Student organizations, regardless of whether they had been involved in disruptions or not and surveillance should include a number of things which were enumerated, including taxes, checking audits of their taxes.

You know nothing of that?

Mr. KATZENBACH. I don't know what you're talking about, Senator.

Senator MORGAN. You have no knowledge of it?

Mr. KATZENBACH. I have no knowledge of it. Is there a document on that subject? I'd like to see it.

Senator TOWER. I wonder if we might withhold the production of that document until such time as the question evolves to the Senator.

The questioning of Mr. Clark will be initiated by the chief counsel of the committee, Mr. Schwarz.

Mr. SCHWARZ. Mr. Clark, sir, has someone put in front of you Mr. DeLoach's testimony from this morning?

Mr. CLARK. I have a page clipped on top of another page.

Mr. SCHWARZ. Well, I don't know if you were here then, but he testified as follows. He was asked did you brief Attorney General Ramsay Clark on the COINTELPRO activities? And reading his full answer:

Shortly after Mr. Clark became Attorney General, or Acting Attorney General, Mr. Clark instructed me on one occasion to brief him, to assist him in his knowledge concerning FBI activities, to brief him concerning all ongoing programs.

I do distinctly recall that on one occasion briefing Mr. Clark concerning programs of the FBI, that I did generally brief him concerning COINTELPRO or the counterintelligence program, yes, sir.

Now was that testimony of Mr. DeLoach's true and accurate to the best of your knowledge?

Mr. CLARK. No.

Mr. SCHWARZ. And in what respects is it inaccurate?

Mr. CLARK. I do not believe that he briefed me on anything, even, as he says, generally concerning COINTELPRO, whatever that means.

The next question as you see there, Senator Schweiker asked for some specification of what he was talking about and he said nothing has

been shown to me to refresh my memory. This is DeLoach talking. I briefed him concerning electronic surveillance that had been previously authorized by the Attorney General.

Well, I don't know what that is supposed to mean. It is certainly a *non sequitur* from the question.

I had been in the Department for 5½ years or longer when I became Acting Attorney General in September, roughly of 1966. I don't recall being briefed about any activity in the Department. Ordinarily, when a new Attorney General comes in, there are big books that they bring around and tell you what everything was supposed to be. But I guess the assumption was that I had been around for a while and I'd been Deputy Attorney General for a couple of years and I was supposed to know by now.

I noticed in the morning that Mr. DeLoach said that I asked him to instruct me, but I believe I saw in a document that was handed me this afternoon that he earlier said that Mr. Hoover asked him to give me those instructions.

I had difficulty with Mr. DeLoach. It finally resulted in a discontinuation of our relationship, an unhappy event, but I think they knew my disposition. When I became Acting Attorney General, I had already opposed the death penalty officially. I had already opposed wiretapping and other things, and the probability that they were going to be briefing me very much about something that had I heard of, I would have stopped, is not high.

MR. SCHWARZ. Is it your testimony then that you had no knowledge concerning COINTELPRO from Mr. DeLoach or any other source?

MR. CLARK. I never heard the word, as far as I know, until the last couple of years. It came out in the press.

MR. SCHWARZ. Apart from the word, did you have any knowledge of Bureau programs to disrupt or neutralize any of the five target groups, the Communist Party, the Socialist Workers Party, the Klan, the Black Nationalists, or the New Left?

MR. CLARK. Well, cases would arise. It's hard to think of the best illustration.

I will recall, I had been sent to Selma to enforce Johnson's court order protecting the marchers from Selma to Montgomery and that Friday night I was flying back and got a radio message that Mrs. Viola Liuzzo had been murdered. And I well remember my dismay and I believe it was Monday—perhaps Nick can recall—lo and behold the FBI had solved the case, so to speak. And it seemed like a wizardly piece of investigative work. But it turned out, from what I understand, that actually there was a paid FBI informer in the murder car. Certainly I knew about that. I remember being deeply concerned at the time. I remember discussions in the Department whether there was any possibility that that murder could have been prevented, and that is something that will always haunt me. Certainly law enforcement has as its first responsibility the prevention of crime.

MR. SCHWARZ. Did you have from the Bureau any knowledge that the Bureau had a program to disrupt the Ku Klux Klan?

MR. CLARK. I had no knowledge. You all showed me a memo of December 1967, I believe, that indicates I had a conversation with Mr. DeLoach in which I asked him apparently for a briefing on what is going on with the Klan.

When I was interviewed by your staff people I couldn't recall why I asked him about the Klan at that time because that was really well after the Department focus on the Klan as a major enforcement problem.

My assumption now is it must have been related to the Neshoba County prosecution, which was just about wrapping up at that time. This comes not from any recollection I had, but from a conversation with the subsequent Assistant Attorney General in charge of the Civil Rights Division and that perhaps John Doar or others in the prosecution in the case put the idea in my head because the Klan is not something that we were focusing on. We had bad riots that summer. We were deeply concerned about what would happen the following year. We had riots now three or four summers in a row.

Mr. SCHWARZ. Could you just look at the document and we'll go through a couple of words in it. It is a memorandum dated December 19, 1967 [exhibit 46] <sup>1</sup>

Now, let me just take you through a couple of the words in it, the language, and ask you after doing that whether you recollect receiving the information and whether you now read the document as putting in a notice of a program to disrupt the Klan?

The cover sheet describes the conversation as a request for FBI coverage and penetration of the Klan. Then in the attachment under FBI responsibility, Mr. Clark, the second page of the attachment, it talks of the objectives as including, "second, we conduct intelligence investigations with the view toward infiltrating the Ku Klux Klan with informants, neutralizing it as a terrorist organization, and deterring violence."

And then starting on the sixth page, under "Special Projects," they describe various States, and I am picking out just particular examples. And the other material in the document has no connection with CO INTELPRO type activity, so I'm just picking little excerpts and asking whether they put you on notice.

Under Florida, it states that the Bureau had made an effort to bring personal misconduct to the attention of the Klan rank and file of a certain leader. And then on the next page, also under Florida, we found that by the removal of top Klan officers and provoking scandals within the State Klan organization through informants, the Klan in a particular area can be rendered ineffective.

And then under Mississippi, a leader of the Klan has been removed and discredited. Then under Louisiana, referring to some other leader, this action contributed to the organization and disruption of the United Klans in Louisiana. And then under Virginia, an effort is described to contain the growth of the Klan.

Now in a sense what I've done is a little unfair to you, because I have taken isolated words in the document. But given those words, why didn't they put you on notice, or in fact, inform you that the Bureau was engaged, not merely in seeking to prosecute crime and not merely seeking to deter violence, but also on attempting to neutralize, disrupt, through tactics such as causing scandal?

Mr. CLARK. I don't think it's unfair. I don't know how else you would get at a document like this.

<sup>1</sup> See p. 516.

Did they put me on notice? No. Why? I either did not read them, or if I read them, didn't read them carefully.

You know I grew up in the South, and the Klan wasn't any outfit I ever cared about. I don't recall concern or focus on Klan activities.

Even things like the Neshoba case were just late coming to trial. There was something that they're as anguished as we had all been. It was 4 years before it came to trial. Or 3 years, I guess.

I had long since discovered that the Bureau's investigative capacity in many types of southern criminal activities that they had jurisdiction over were inadequate and we had, on occasion, to preempt their function often with young attorneys who had no significant investigative experience.

So I guess I think I didn't read this. I think perhaps I had asked for it for someone else, and either bucked it on to them or I never saw it.

I haven't found anybody in the Civil Rights Division who was aware, and these were people who worked in the South intimately. I had been down there virtually every year after I came into office. By that I mean as Assistant Attorney General. We were aware of programs that were disruptive and other than prevention of threat of crime, in a sense, and I guess that's all I can tell you about that.

Mr. SCHWARZ. We'll come back to some other subjects, Mr. Clark, if you want.

Senator TOWER. Senator Mondale?

Senator MONDALE. Mr. Katzenbach, I read your full statement. It was placed in the record. In the recommendations section there are many observations with which I agree. You have to understand the times during which these occurred. You have to understand some of Hoover's predispositions. You have to understand the enormous popularity he enjoyed with the American people, with the Congress, everywhere. You have to understand the risk and fears that Americans felt deeply during much of this. I buy that.

Yet my problem with your recommendations is that you indicate there isn't much we need to do about it except make certain we have good oversight and that we never again let someone stay there too long, and this recommendation seems to flow from what you say was a general awareness of what Hoover was up to and Hoover's eccentricities in later life.

I have a good deal of difficulty with that analysis. First of all, while many may have been aware of Mr. Hoover's prejudices, I think very few, apparently from your testimony even the Attorneys General, were unaware of some of the excesses that go beyond the law, beyond constitutional rights that were being practiced.

Of course the classic case is Dr. King, which occurred while you were Attorney General, while both of you served under the then Attorney General, and during which almost a classic KGB type of harassment program was going on against a major moderate civil rights leader. How then can we say that this agency was accountable in the light of this record?

Mr. KATZENBACH. I don't think that you can.

Senator MONDALE. Did I misunderstand what you were saying?

Mr. KATZENBACH. No. I think you characterized it slightly different than I would have characterized it, Senator. I believe, as I said, that



simply exposing this gets you a long way toward solving it and makes it much more difficult for it to re-occur with the gentleman serving almost half a century in that job with his own views.

If we have similar problems, the Congress ought to think of them in other agencies. I didn't mean to say that that was the end of what the Congress could do. I think you can certainly do things, tighten up the wiretapping legislation. I have no problem with doing something on surveillances. I think we have got a problem in terms of being sure that you can hold the Attorney General responsible.

I would think, for example, that an Attorney General ought to have access to Bureau files. If he wants them and wants to put people in for a particular access that I don't think even the staff of this committee has, and I don't think the Attorney General has it today.

Senator MONDALE. Well, I think many of them disappeared in smoke. The OC files just disappeared one day.

Mr. KATZENBACH. I think an attorney trying the case, the principal trial attorney, ought to have full access to all Bureau files in that case. I think procedures of that kind which you could prescribe by legislation or which an Attorney General can prescribe, help to hold him responsible for what's going on.

Senator MONDALE. In order to have responsibility, you have to have standards to judge them by.

Mr. KATZENBACH. Yes.

Senator MONDALE. One of the problems here is to define what are those standards. But our failure to have them specifically defined has brought us to a point where these agencies have been in disgrace and where even the spokesman for the FBI yesterday was pleading for a definition of their authority so they wouldn't continue to be kicked around the way they are.

Your second point was that a good deal of this was simply traceable to Mr. Hoover. But how do you explain that while this was going on, we had Operation CHAOS in the CIA, which was just about as bad, maybe just as bad. You had the IRS freely participating in CO INTELPRO using the IRS, in my opinion illegally, for general investigative and surveillance purposes. You had another agency of Government freely tapping the international lines of communications. You had the postal department opening up thousands of letters illegally. You had all of these agencies participating directly and indirectly, not only on illegal intelligence gathering, but harassment, neutralization, and all of the rest.

Then, of course, you had the creation of such things as the plumbers, and the infamous Huston plan, about which, for, I think, irrelevant reasons, Mr. Hoover was the only one to say no. Everyone else said yes, including the former Attorney General and the generals in the services, everybody liked it except Mr. Hoover. He didn't like it.

So how can we be content with the notion that we've solved this problem when we've carefully analyzed Hoover's historic role in the FBI and we never should let anybody get in that position again?

Mr. KATZENBACH. I don't think we can, Senator.

Senator MONDALE. Then you've written inartfully.

Mr. KATZENBACH. Can I urge you to think of two buckets. One is what kind of rules ought to be legislated, what kinds of rules, what

can you do, things, what procedures you're going to set up by legislation. Go to it. Make them as clear as they can be made. Fine.

The other side of the problem is administration, and that is the side I was directing it to. Make that responsive not merely because you prescribe the rules, but because they're going to be carried out. Because Senator, the Bureau's rules, the Bureau's manual with respect to informants are pretty good rules. There may be areas that ought to be covered more, but they're pretty good—they weren't followed.

So you have to have the two. You have to insure that you're not going to have an administrative system—if you had an agency as not as severely controlled as the FBI by Mr. Hoover or the Attorney General, you would have heard about that because one of the agents would have told him or if they were scared to tell him, would have told the press and it would have come out in almost any agency of the Government. It seems to me those kinds of activities would have been leaked to someone.

Senator MONDALE. You talked of Hoover's popularity. There's no question about that. He also had a tremendous power of fear over everybody, including Presidents. What he knew, how he could embarrass them, gave him his chance. I think Stalin used to shoot his KGB agents every 3 years to take care of that problem. I don't think that remedy is available. But it's almost similar to trying to get civilian control of the military. You need civilian control of the investigative agencies to keep them in a place where they are responsive, accountable and must comply with the law.

Mr. KATZENBACH. I agree with that and I don't think—it's the sort of thing that Mr. Clark is talking about the committee ought to seriously consider. I think they ought to be looked at and examined to see what you can do by legislation. I don't have any problems with that.

Senator MONDALE. Then I misread your statement. I thought you were saying we just made a mistake in letting one man stay on too long. I remember you said, "I believe in a strong executive." Do you see anything inconsistent in believing in a strong executive and insisting that the executive restrain its activities to those permitted by the law?

Mr. KATZENBACH. Absolutely not and I think that the major function the Congress can perform and perform well is to lay down the rules and then see, through the kind of investigation that you're doing now, whether they are being complied with.

Senator MONDALE. Well, I am past my time. I'll ask one question and I'll ask both of you to respond to it.

The history of the FBI is that it was created under the leadership of Mr. Justice Stone for the precise purpose of getting it out of politics and restraining it to the role of law enforcement to enforce crimes, to enforce the civil laws of the land.

Then as the years went on and the fears of the Nazis developed and of the Communists in the 1930's, World War II, the cold war, civil strife here at home, they forgot that charter and increasingly went beyond the law into a new role of one imposing political and moral orthodoxy upon the American people. I don't know how else you could describe it. It was this crucial and fateful step beyond the law enforcement role that in my opinion turned the FBI to the same kind of posture of embarrassment that finally led to the termination of its predecessor, the Bureau of Investigation.

Would you agree with me that one of the essential and crucial steps to be taken if we're going to prevent the recurrence of this problem is to somehow very carefully and effectively restrain all of these organizations from ever again getting into the so-called political ideological roles that we have seen?

Mr. KATZENBACH. Yes; I do agree with that, Senator. I think you'll have to face the problem in the future that will not be the problem of the Communist Party. I will make it somewhat simpler. You will have to face the problem of political ideological groups who are going to be engaged in acts of violence. Violence is getting easier and easier, and you're going to have to face the problem and set up procedures to determine not on the political beliefs, but that will permit an investigation where there is some reason to believe the group might actually be engaged in violence. And I think it's important to concentrate on that.

Senator MONDALE. That could be defined, couldn't it?

Mr. KATZENBACH. At least you could define the procedure and you could define some standard. You cannot get rid of all discretion.

Senator MONDALE. You could make it subject to a warrant, couldn't you?

Mr. KATZENBACH. No, I don't think so.

Senator MONDALE. Why not?

Mr. KATZENBACH. Well, you could. Obviously you could. Congress can legislate anything that's not unconstitutional. I don't think a warrant would be the proper way to go about it. It might be for what—depending upon what technique you're talking about.

I would concentrate on the question of who is going to be investigating as a more important question than the means of investigation. If you're talking in the political area, the standards are the who, not the how.

Mr. CLARK. Senator, I agree with your statement of the historical development. It is as perceptive and brief a statement as could have been made on the situation as I see it. I agree that the failure was that the Bureau became ideological and that is the antithesis of the uninhibited investigator who has to follow any fact, any place it leads him.

I think the solution is to limit investigations to criminal matters defined by statute. I believe it is improper to use public funds to gather information about people we don't like or we are afraid of. I think if we continue to permit that, not only will we inhibit the discovery of truth and the testing of unpopular ideas and personalities in the marketplace of public opinion, but that we will risk a police state because we have seen pervasive police activities and we shouldn't blink at it. I think the investigator must not be a know-nothing, but that the information that he has generally about activities and people and ideas should come from public sources and be publically available when you get to the place of assembly, and if you do that, then I don't think that we need to fear, except by violation of the law, abuse of investigative power that can get us back into the situation we've just been through.

Senator MONDALE. I just want to conclude that I talked to an old high-level, retired FBI agent and he put it simply. He said we were a great organization until we got into politics and politics ruined us.

Senator TOWER. Senator Mathias?

Senator MATHIAS. Thank you, Mr. Chairman.

I basically have one comprehensive question which I would address first to Mr. Katzenbach. The committee's investigation of the domestic intelligence function, in a very real sense, is a historical study. And history can be nothing more than an afternoon's amusement, if you can call it that, unless we make some use of it. And it is in that spirit that I would like to explore what I think is one of the fundamental issues now on the record: first, that everything we've talked about, mail openings, COINTELPRO, informants, bugs, wiretaps, whatever the technique may be, is always preceded by one conscious, deliberate human act, and that is the decision to undertake domestic intelligence investigation of a group or of any individual. Some human being has to make that decision, or some group of human beings.

In the past that decision has been primarily within the sole discretion, or largely in the sole discretion of the Bureau, and I think it is fair to the Bureau to say that in the overwhelming number of cases it has been a discretion that has been exercised soundly and properly.

But the Constitution recognizes that whether it's the Congress that's involved, or whether it's the Presidency that's involved, or whether it's the courts that are involved, you have to have some check and balance in the exercise of discretion.

Now, you have said in your statement that decent law enforcement is always less a matter of legislative prescription than the judgment of people. I would set up against that the man who appears to be the favorite source of quotations for this committee to date, and that's James Madison, who said that if men were angels, no government would be necessary, and although a dependence on the people is no doubt the primary control on the government, experience has taught mankind the necessity of auxiliary precaution. So I suppose, to use that phrase from Madison, what kind of auxiliary precautions do you, and, I hope, that Mr. Clark would address himself to the same question, what kind of precautions would you suggest to us in the light of your experience as Attorney General?

Mr. KATZENBACH. I think you're quite right in saying that in the sort of a political area, it spilled over when the Communist Party, perhaps the Nazi party a little bit, but primarily the Communist Party and into the cold war period and so forth, it just spilled over into other radical groups. That's an awful standard. The Communist Party itself, I still don't know if faced with that situation really how to deal with—if you assume the Communist Party is a disciplined organization operating under the control of a foreign power, that is a very difficult problem to know how you deal with it. It shouldn't spill over into other ideological groups.

I think today the point I was trying to make, in a way, with Senator Mondale, you can proscribe certain techniques, but I think the problem of who is investigated is a difficult one. I agree with Mr. Clark, it should be today, when you have reason to believe that crimes are committed or are about to be committed, then investigate. I think when you're talking about political groups—and some political groups will resort to violent activities—an open investigation into that group to determine which members are spawning violence—I think that procedures should be set up which puts that decision squarely in the hands

of the Attorney General with a written memorandum which he preserves as to what facts were presented to him.

Senator MATHIAS. Could you analogize what you are suggesting to the Attorney General's fourth amendment role, in wiretaps, for example, under the present practice?

Mr. KATZENBACH. Well, I wouldn't want to because I think the present statute goes further and probably requires less because it uses national security, a term I think virtually is undefined, and is virtually undefinable. I think I would limit it to today. I would limit it to reason to believe that crimes have been committed or are going to be committed.

But, because it's a political organization, I think particular care should be taken in terms of opening up an investigation for the reason that I think any investigation is obviously an invasion of privacy otherwise enjoyed, obviously can have some disruptive effects. And then I think I would concentrate some on the techniques that ought to be permitted and the procedures there.

Senator MATHIAS. Mr. Clark, would you like to comment on that?

Mr. CLARK. I think you have asked the most critical question, and I guess I think this is the question that my paper basically addressed, certainly the nine points that I made.

You have an assumption, however, that I have to disagree with. I don't believe that ordinarily these things begin with a conscious, deliberate decision that there's nothing that's gone before, and suddenly there's a decision and everything flows after it. I think when I try to analyze my experience with different investigations, what I see is a long preliminary period where there are beginnings and there's information coming in.

Senator MATHIAS. You find a bottlecap manufacturer who hasn't paid his sales tax, and it leads you to a bootlegger sooner or later.

Mr. CLARK. Well, you take the slow development of the FBI's addressing the phenomenon of organized crime. I think as late as the mid-1950s Mr. Hoover was saying organized crime or the Mafia didn't exist, but finally there was an accumulation of both FBI cases and investigations and a bunch of little statutes that gave them very little reach into it, of knowledge that—to challenge that assumption.

The very thing with wiretaps. Mr. Hoover opposed the use of wiretaps late into the 1930's, 1937, 1938 as I recall. So I think those things go slowly.

I believe if we are going to be a Government of laws, that we have to have regular procedures, that we have to inform agents of activities that are permitted. I really do not believe that group investigations unrelated to facts and acts pertain to every member of the group. In other words, I don't think the group can be larger than the number of people that you have probable cause are acting or are about to act. In other words, inevitably you're getting into the Boy Scouts and everybody in the Boy Scouts is going to be involved. In the Ku Klux Klan, everybody in the Ku Klux Klan was suddenly involved. That's a dangerous way to address the problems of crime and antisocial conduct by people who want to live in freedom. They ought to be based on acts and individuals, and not organizations or beliefs.

Senator MATHIAS. Thank you very much, Mr. Chairman.

Senator TOWER. Senator Morgan?

Senator MORGAN. Mr. Clark, would you go a little further?

Did I understand from your last statement that you thought the investigation should be based on acts of individuals rather than necessarily their views?

Am I following you correctly?

Mr. CLARK. Yes.

I even believe that—and I have for many years, Senator—our conspiracy law, I think the body of conspiracy law, so to speak, has developed to such a state that it is inherently unfair. We ought to get away from it and address acts. The law should address acts individually.

Senator MORGAN. Mr. Clark, I certainly agree with you that the conspiracy law constitutes one of the greatest threats to our freedom of any law that I know of.

Now, Mr. Katzenbach, am I correct in my recollection that somewhere along the way you did know that bugs were being placed in Dr. Martin Luther King's offices or hotel rooms or someplace that he was?

Mr. KATZENBACH. I have no recollection of that. I do have a recollection of a wiretap in the SCLC office. I do have a recollection of the wiretap that I took off from Dr. King's home phone.

Senator MORGAN. I think I remember some other document that we had.

Mr. KATZENBACH. There were three documents, and we discussed them earlier, Senator, where I said I had no recollection, and I strongly believed I would have a recollection of them if I had seen them. They do bear my initials in what appears to be my handwriting, and that is a problem for me because clearly if I did initial them, I did see them. And they did constitute notice after the fact of installation for less than 24 hours on three separate occasions, installation without my prior authorization, and installation not in accordance, in my judgment, with the practices that I had laid down. And I believe if they had been presented to me in advance, and I assume in fact, they occurred from these documents.

Senator MORGAN. Well, one of the things I find in your statement and I heard that interests me—on page 42,<sup>1</sup> you state that you were informed by a reporter that the reporter had been offered a tape by a member of the FBI which contained derogatory materials concerning Dr. Martin Luther King, which I believe he said—I can't find the exact statement—"that came from bugs or tapes," and you went to the President, but you never at any time asked Mr. Hoover where the tape was, whether there was such a tape in existence.

Did you pursue that in any way?

Mr. KATZENBACH. I did not pursue that with Mr. Hoover myself. I did pursue it with the Bureau agent involved. The reporter, in my recollection, Senator, the reporter identified the Bureau agent involved and identified that tape as a Georgia Bureau of Investigation tape, not as a Bureau tape.

Senator MORGAN. Mr. Katzenbach, I don't quite understand, unless I take your statement on the whole that you frankly were afraid to deal with Mr. Hoover.

Mr. KATZENBACH. No, sir, frankly I felt that the President would deal with Mr. Hoover, and I believed that he did.

<sup>1</sup> See p. 210.

Senator MORGAN. But you went to the President. You didn't go to Mr. Hoover about this tape, and I assume that's why the President had appointed you as Attorney General.

Mr. KATZENBACH. I wasn't at that time Attorney General. I was acting.

Senator MORGAN. You were Acting Attorney General?

Mr. KATZENBACH. I was acting.

Senator MORGAN. But you still had the responsibility for the direction of the Federal Bureau of Investigation, didn't you?

Mr. KATZENBACH. Yes, sir, I certainly did.

Senator MORGAN. And you did not inquire of Mr. Hoover or any other high official if such a tape existed in the Georgia office or anywhere else?

Mr. KATZENBACH. It was denied to me, Senator.

Senator MORGAN. By whom?

Mr. KATZENBACH. By the agent who did it.

Senator MORGAN. You didn't pursue it any further than that?

Mr. KATZENBACH. I certainly did. I went to the President.

Senator MORGAN. You're implying, Mr. Katzenbach, in your statement, that you resigned over a disagreement, or because of the bitterness that had grown up between you and Mr. Hoover.

Mr. KATZENBACH. That was certainly a factor, Senator.

Senator MORGAN. Was any such reference made to that point when you resigned, and did you warn the public about what you conceived to be a threat from the Federal Bureau of Investigation?

Mr. KATZENBACH. No, I certainly didn't, Senator. I didn't conceive it to be that threat at that time.

Senator MORGAN. Well, did you not conceive the situation in which the Attorney General, who had responsibility over the conduct of the Bureau, the Federal Bureau of Investigation—you didn't conceive of that relationship as being a threat to the orderly operation of the Department of Justice over the Bureau?

Mr. KATZENBACH. Oh, I felt that it was. I didn't think that fact was secret, Senator. I think Mr. Hoover's reputation and knowledge and power were known to the public, on the Hill, everywhere. I don't think anybody in either House of Congress thought that any Attorney General could exercise the theoretical power he had in firing Mr. Hoover.

Senator MORGAN. Did you ever ask Mr. Hoover for any information that he refused to furnish you?

Mr. KATZENBACH. I don't recall ever asking for any information that he refused to furnish to me. Whether the information I got was accurate or not, I don't know, or whether it was all the information in the files, but I don't recall him ever saying "you have asked me for this and I will not give you that information."

Senator MORGAN. Well, did he ever fail to satisfy you with regard to any requests to the extent that you went back and asked for more information?

Mr. KATZENBACH. Well, there were a number of occasions where I wanted the Bureau to get into something and they didn't want to get into it. I guess that's really what you're talking about.

Senator MORGAN. Did he ever fail to carry out any instructions or orders that you gave him?

Mr. KATZENBACH. It seems clear to me that if he installed these three bugs, he failed to carry out the orders and instructions that I gave him, but I did not know that, or I have no recollection of knowing that at the time.

Senator MORGAN. Now, earlier you made the statement that in light of the horrible experiences and crimes that were committed, you thought that anything you could do to disrupt the Klan was justifiable. Do you place all Klan members all across the country in that category?

Mr. KATZENBACH. Senator, I never said that or even made a statement like that, and I don't think that kind of characterization of my testimony is a worthy one.

Senator MORGAN. Well, Mr. Katzenbach, you did make it a little earlier. You even said, "not like the Communist Party." We'll ask the reporter to read it back.

Mr. KATZENBACH. All right, sir. On what I said about the Klan on disruption, if I said anything at all, which is what you just now said, of course I didn't say that, Senator.

Senator MORGAN. Well, if you did not, I misunderstood you. But you said that—you cited a number of crimes that had been committed which we all applauded. You said, as I understood you to say, "we're not dealing with anything like the Communist Party," and you named some other organizations, the Southern Christian Leadership Conference, but you're dealing with—I forgot exactly how you characterized it, but would you now subscribe to Mr. Clark's theory that you must deal with individuals and investigate individuals and not characterize a whole group?

Mr. KATZENBACH. I don't think that I would, Senator, because if we'd have been dealing with individuals, we would have been dealing with the members of that group.

Senator MORGAN. All of them?

Mr. KATZENBACH. Well, you'd want to find out which ones, and the way you would find out would be through informants within the group, and indeed, that is what happened; in the case of the White Knights, that's exactly what happened. I think you have justice—I don't see the distinction. I hate to disagree with Ramsey, because he's often right, and I'm wrong, but I don't see any distinction to go after the six top members of the group, that it's any different from going after the group.

Senator MORGAN. Well, because there were some in the group, do you justify discrediting all of the members of the group?

Mr. KATZENBACH. We were not talking about all Klans, Senator, but we were talking about certain segments of the Klan in certain places. We were talking primarily about the White Knights. I believe that all of the members of that group were dedicated to and preached violence and other unlawful deprivations of the rights of individuals.

Now, members went to different extremes as to what they did, but I believe that they were all dedicated to an unlawful purpose, to be carried out by unlawful means.

Senator MORGAN. So, by your belief that they were all—then you were willing to disrupt their activities whether you had evidence on those individuals or not.

Mr. KATZENBACH. Senator, I described this in my opening statement. I say that I was not, to the best of my recollection, aware of any activities that I regarded as improper, and then I name them.



Now, even in that context—

Senator MORGAN. I'm sorry. I can't hear you, Mr. Katzenbach.

Mr. KATZENBACH. I'm sorry. Previously, I described what I regarded as the Klan investigation,<sup>1</sup> an investigation of their violent acts to be, and I don't see anyplace on there where I say what you characterize as my testimony.

Senator MORGAN. Well, didn't you just say a moment ago that all members of the White Knights were dedicated to violence? You said that just a moment ago.

Mr. KATZENBACH. Yes, sir, I said criminal deprivations, and I think that they were. And if saying all is too broad a statement, let's take 98 percent. They talked at their meetings, they took credit at their meetings for the murders of Chaney and Schwerner and Goodman, open, at their meetings.

Senator TOWER. All right. Now you've made a broad statement. Document it. When?

Mr. KATZENBACH. Yes, sir, I will. I would be happy to supply documentation. [See Appendix A, page 841].

Senator MORGAN. All right. Would you please supply it, and let's go on to something else.

We talked about Mr. Hoover. I want to ask you if you didn't testify informally yesterday afternoon before some staff members that you personally asked Hoover to float a false rumor that James Meredith was going to register at the University of Mississippi and that Mr. Hoover refused, because you wanted to see what the KKK's reaction was.

Mr. KATZENBACH. That is substantially correct, sir.

Senator MORGAN. So you did?

Mr. KATZENBACH. I didn't say the KKK part of it was not correct. We had information at the time of the integration of the University of Mississippi that there were many persons who were going to come to that campus, and come with guns and prepared to commit violence. We got information—it was Bureau intelligence—they expected people from as far as Texas and Florida and other States. I suggested at that time, and I suggested it to the Assistant Director, Al Rosen, I said, "since Meredith is going to go on Sunday, why don't we float the rumor that the university will be integrated on Wednesday, and see what happens. See where there is a lot of convergence of traffic, the preceding Wednesday, to see what would happen." And Mr. Rosen talked to Mr. Hoover and said Mr. Hoover declined to do it because the Bureau would not be involved in the spreading of any false information. So I dropped it.

To this day I think that would have been a useful thing, and a lot of people who got hurt would not have been hurt if we had had that much intelligence in advance. Maybe I was wrong or unethical, but I'd do it again.

Senator MORGAN. In other words, in your mind, the ends justify the means?

Mr. KATZENBACH. Well, I think there are times when the ends justify the means, and it depends on what the means are and the ends are.

Senator MORGAN. Well, you were Attorney General in September 1964.

<sup>1</sup> See p. 207.

Mr. KATZENBACH. Yes, sir, I was Attorney General, Acting Attorney General, from September 4, 1964 on.

Senator MORGAN. And Mr. Clark, you were Attorney General in August of 1967?

Mr. CLARK. Yes, sir.

Senator MORGAN. I want to read to both of you a comparison of two memorandums that went out from the Federal Bureau of Investigation while both of you—while both of you were Attorney General. It was under your direction, even though you may not have exercised that direction.

One was a letter dated September 2, 1964, to the Georgia office concerning White Hate groups, under your administration.

Mr. KATZENBACH. Not technically, it wasn't under mine.

Senator MORGAN. Why wasn't it under your administration?

Mr. KATZENBACH. Because Mr. Kennedy resigned September 3—

Senator TOWER. Would the Senator suspend for a moment? These gentlemen appear to be coaching the witness. If they are acting as counsel, they are acting *pro bono*. Would you please identify yourselves?

Mr. CUTLER. My name is Lloyd Cutler, Senator. I'm a friend of Mr. Katzenbach.

Mr. BARR. My name is Thomas Barr, Senator, and I'm also a friend of Mr. Katzenbach.

Senator MORGAN. Were these gentlemen associated with you in the Department of Justice?

Mr. KATZENBACH. No, sir.

Senator MORGAN. Do they have any personal knowledge of the matters that we're talking about?

Mr. KATZENBACH. No, sir.

Senator MORGAN. I believe you said Mr. Kennedy resigned 1 day later.

Mr. KATZENBACH. Yes.

Senator MORGAN. The letter to the—

Mr. KATZENBACH. I don't mean to make a point of that, though.

Senator MORGAN. Well, at this point what I'm trying to do is to show that the tactics used by the Bureau went from one side of the spectrum to the other. One went to Atlanta with regard to White Hate groups under your administration or Mr. Kennedy's. The other went to Albany, N.Y., to the Black Nationalist under Mr. Clark, and I don't mean to say that either one of you had personal knowledge of it.

The first one on the White Hate groups, the purpose, to "expose, disrupt, and otherwise neutralize." With regard to the Black Nationalists, the purpose, "to expose, disrupt, misdirect, discredit, or otherwise neutralize." No distinction made as to what activities, just Black Nationalists.

The second, No. 2, with White Hate groups, there were no individuals targeted. With the Black Nationalists, they were instructed to target Stokely Carmichael, H. Rap Brown, Elijah Muhammad, Maxwell Stanford.

Three, the White Hate group was instructed to concentrate; that is, "subject to continuing counterintelligence" on "action groups", "the

relatively few individuals in each organizations who use strong-arm tactics to achieve their ends. Often these groups act without the approval of the Klan organization or membership." With regard to the Black Nationalists, no similar distinction was made between violent and nonviolent. Instructions to "counter their propensity for violence and civil disorder."

With the White Hate, No. 4 target was "various Klans and hate organizations, their leadership and adherents." With Black Nationalists, target "black nationalist, hate-type organizations and groupings, their leadership, spokesmen, membership, and supporters."

Five, with the White Hate, the "devious maneuvers and duplicity of these groups must be exposed to public scrutiny." Black Nationalists, the "pernicious background of such groups, their duplicity, and devious maneuvers must be exposed to public scrutiny."

Six, with regard to both groups, we must frustrate any effort of the groups to consolidate their forces or to recruit new and youthful adherents."

Seven, with White Hate, "capitalize upon organizational and personal conflicts of their leadership." Seven, with Black Nationalist, "exploit organizational and personal conflicts of the leaderships, and where possible, capitalize upon existing conflicts between competing black nationalist organizations."

With the White Hate, when using media, "furnish assurances the source will not reveal the Bureau's interest or betray our confidence." With the Blacks, "insure the targeted group is disrupted, ridiculed, or discredited through the publicity and not merely publicized."

I think both of you all have already heard testimony or read documents where false press releases were used.

With White Hate groups, list of targets, 17 Klan organizations, 9 hate organizations: Alabama States' Right Party, American Nazi Party, Council for Statehood (also known as Freeman), Fighting American Nationalists, National States' Rights Party, National Renaissance Party, United Freeman, Viking Youth of America, White Youth Corps. Black targets—Student Nonviolent Coordinating Committee, Southern Christian Leadership Conference, Revolutionary Action Movement, Deacons for Defense and Justice, Congress of Racial Equality, and Nation of Islam.

Ten, on both sides, "The agent must be alert for information which has a disruptive potential. The information will not come to him, he must look for it."

With regard to the Black Nationalists [reading] :

Many individuals currently active in black nationalist organizations have backgrounds of immorality, subversive activity, and criminal records. Through your investigation of key agitators, you should endeavor to establish their unsavory backgrounds. Be alert to determine evidence of misappropriation of funds or other types of personal misconduct on the part of militant nationalist leaders so any practical or warranted counterintelligence may be instituted.

With regard to the Black Nationalists [reading] :

Consideration is to be given to techniques to preclude violence prone or rabble rousing leaders of hate groups from spreading their philosophy publicly or for various mass media.

You are urged to take an enthusiastic and imaginative approach to this new counterintelligence endeavor and the Bureau will be pleased to entertain any suggestions or techniques you may recommend.

I think it's true that the Bureau is interested in whole groups and not just individuals who were subject to this kind of harrassment.

I'm sorry, Mr. Chairman. I went over my time.

Senator TOWER. That's quite all right. You can thank your colleague from Colorado, Mr. Hart.

Senator HART of Colorado. Gentlemen, as with our investigation of the subject of assassination attempts on foreign leaders, in this whole area there is a constant tension between the theory—the runaway agency, in this case the Federal Bureau of Investigation—versus the theory all the Bureau was doing in any of these periods was what they thought the political leadership of the country wanted them to do. This was, as I'm sure you are aware, a very difficult problem for this committee to try to pin down, not only responsibility, but also to identify how these institutions can prevent some of these abuses in the future, and I think that second goal is more the purpose of this committee than to try to pin blame for the past.

And in that connection, I would specifically like to ask Mr. Clark a question or two about a specific case in point that I think he was involved in in the fall of 1967. And that was the establishment of something called the Interdivision Information Unit within the Department of Justice. And there are several documents in the period from September to December 1967 that I think came from the Attorney General himself with regard to the establishment of this unit.

I'd like to quote you some very brief portions from these documents and then ask a couple of questions along with the institutional lines that I started out with.

In a memorandum dated September 14, 1967, signed by you, Mr. Clark [exhibit 47 <sup>1</sup>]:

"In view of the seriousness"—all of these relate to riot activities and I'm sure you can recall some of this:

In view of the seriousness of the riot activity across the country, it is most important that you use the maximum available resources, investigative and intelligence, to collect and report all facts bearing upon the question as to whether there has been or is a scheme or conspiracy by any group of whatever size, effectiveness or affiliation, to plan, promote or aggravate riot activity.

In the last paragraph of that same memo:

Moreover, sources or informants in black nationalist organizations, SNCC and other less publicized groups, should be developed and expanded to determine the size and purpose of these groups and their relationship to other groups and also to determine the whereabouts of persons who might be involved in instigating riot activity in violation of federal law.

And then in the confidential memorandum that follows, it is dated November 9, 1967—relating to the establishment of this unit [exhibit 48 <sup>2</sup>]:

To carry out these responsibilities we must make full use of and constantly endeavor to increase and refine, the intelligence available to us, both from internal and external sources concerning organizations and individuals throughout the country who may play a role either in instigating or spreading disorder or in preventing or checking them.

The last paragraph of the memo: "You are free to talk with the FBI and other intelligence agencies"—this is the establishment of a

<sup>1</sup> See p. 528.

<sup>2</sup> See p. 531.

special unit inside Justice—"in the Government to draw on their experience in maintaining similar units, in exploring possibilities of obtaining information we do not now receive, and to carry out other purposes relative to this assignment."

And then, finally, in a memo from the Attorney General to several other people involved on December 18, 1967 [exhibit 49<sup>1</sup>]:

It shall be the responsibility of this unit for reviewing and reducing to quickly retrievable form all information that may come to this Department relating to organizations and individuals throughout the country who may play a role, whether purposefully or not, either in instigating or spreading civil disorders, or in preventing or checking them.

Well, I think that nobody, including the members of this committee, are in favor of riots or civil disorders, and I don't think the line of questioning should suggest that anybody condones that. The questioning, I think, as to Mr. Clark should be obvious; how do you carry out your functions as the principal law enforcement officer, using the devices at hand, and at the same time do so without establishing or suggesting a mandate to agencies like the FBI that can be used to infringe upon people's constitutional rights?

So is it more caution in use of language? What is it? What is it that can be done to prevent this intelligence unit from, as apparently it did, being the focal point of the computer list that made its way to the IRS, and became their special list of people in the tens of thousands to watch?

What can we do in retrospect, in your experience, to prevent riots, to prevent the breaking of law, but not to give institutions like the FBI the kind of running room that apparently they used to violate people's constitutional rights?

MR. CLARK. Well, I think the best answer that I can give is contained in Nos. 1 and 2 of the nine recommendations that I have made, and what they basically do is to divide your knowledge into that accumulated in the course of the criminal investigation, based upon probable cause, to believe that a crime has been or is about to be committed, based upon, obviously, statutory authorization, and hopefully, very soon based upon a legislative prescription prohibited, prohibitive and regulated investigative techniques, and a method of publicly accumulating knowledge that is essential to be aware, simply be aware of what's going on in your own country and your own town and your own part of town where there may be trouble.

What we found—I should say something about IDIU. Of course, I was deeply involved in its creation, and it began shortly, the ideas that led to it, began shortly after the Detroit riots where we found an unacceptable ignorance of basic data.

The Army, for instance, having to stop at filling stations to get roadmaps to know which way town was and things like that, not knowing who the Attorney General or the mayor's assistant was. Public information. It's a big country, and it wasn't accumulated. Also, not knowing what was going on locally, even though it's public information reported on the radio there, reported in the press. You didn't know where there was a raid on cars that led to the riot. Now, I think you cannot function with a know-nothing philosophy in our complex society, and you have to be able to accumulate knowledge

<sup>1</sup> See p. 533.

that you need to know. You have to have quick call on that knowledge. We found many Federal agencies with knowledge. We found three divisions of the Department of Justice with knowledge that other divisions didn't have what they needed to know to enforce the statutes that they had responsibility over. The IDIU was initially an effort to bring together, to coordinate, to analyze, the data that was available and to hopefully stimulate more information. And the three divisions were the Criminal Division, the Civil Rights Division, and the Internal Security Division, which had responsibility primarily because they have all the manpower and nothing to do, which should have been abolished, and I recommended that, a couple of years ago, but they were still there, and we needed the help and we called on them.

We started out with one young woman, a very able young woman, but that was the dimension. She couldn't even keep up with the memos that were coming in from all these agencies. I couldn't keep up with the ones that were coming in to me alone. Of course, there were many more going to the Assistant Attorneys General than I ever saw. A total of 700,000 investigations, FBI investigations. You heard about that time. What we were trying to do was get our knowledge together where we could use it. I believe in a bureaucracy. I think it's essential in mass society. But I find it frequently a very unresponsive phenomenon. You have to prod. And I think that language was using some of their terms to get them to move.

Senator HART of Colorado. You think that language was too broad, in retrospect?

Mr. CLARK. I don't like the language, and I think it should be, you know, a much—in the best of all worlds it would be much cooler language, if you will, but we would be way beyond where we are now. We would have not just a law and a guidance, but a practice and procedure that would tell us, you know, what is permissible and what is impermissible in that area.

I don't think the unit ever had investigative capacity. It had no manpower to investigate. It never had the capacity to even organize the information it got by the time we left, as far as I know; and what happened later, I can't say for sure. I think the idea was right. It does not always help to recall the past, but in August of that year, or perhaps early September, there was, for instance, an article in *Life* magazine with pictures of people with rifles on tops of buildings saying that the same groups are causing riots throughout the cities. The then Governor of Maryland was quoted on the front page of the *Washington Post* one morning saying that he had information that the same people—it was Mr. Agnew—had caused the riot in Newark and Detroit, and we tried to find out how come he knew so much more about it than we did.

That was the temper of the country. There was a real belief, as there always is when you're afraid, that there were some evil conspirators out there that are causing all of your problems. And I think that needed to be addressed. And the idea that this was done secretly is wrong. The information, you know, was publicly announced. The White House referred to it on a number of occasions. It was something that we felt essential and was not a secret operation at all.

Senator HART of Colorado. Well, I don't believe I suggested it was.

MR. CLARK. Well, you said a confidential document, and it may have been a confidential document in the formulative stage, but we announced it.

Senator HART of Colorado. Well, the November document says that, "Planning and creation of the unit must be kept in strictest confidence."

But I think you said in a passing phrase—it was quite a comment, that you said, "I don't know what happened to it after I left." That is part of the problem. People with good intentions often leave, and they are replaced with people whose intentions are not the same as theirs.

It is the capability of computer lists and enemies of the state that bothers all, and I think any help that you can give us on the guidelines, however beneficial and helpful and necessary such an operation may have been at that time, what can be done to head it about so that it isn't used by someone who doesn't have the same constitutional ideals as someone who put it together.

MR. CLARK. Well, we never know what happens when we leave. We have to operate on faith, finally, don't we, the assumption that our successors will act in as good faith as we do.

Senator HART of Colorado. No.

MR. CLARK. Well, above all, you can't refuse to do anything out of fear that someone won't later fulfill their responsibility, and the idea that I could bind some subsequent Attorney General—see, I didn't know that Mr. Mitchell was going to replace me at the time. In fact, I didn't know who he was until several years after he was Attorney General.

MR. KATZENBACH. Well you did know he wasn't going to use you.

Senator HART of Colorado. Well, I would quarrel with you. I think that is why we have laws. I think we can use the laws and the regulations that spring from it to prevent the kind of abuses that we've had in the last few years. But I do think that you have to take the worst case assumption about human nature sometimes, particularly with the kind of power that we're talking about here, to see what can be done to regulate and control them, and not just say that I hope the fellow that follows me is as good as I am.

MR. CLARK. Well, I hoped that he was better, but I am not sure that we really disagree. I believe the checks are central. I have gone beyond what I have ever believed the Congress would do in checks. It's all there. But with all those, the idea that you can proceed finally other than with faith, with cautions and prudence but faith, is wrong. You have to believe finally in the good will of the people and the good will of future administrations, and the idea that you can bind them now and watch the night watchman is wrong. There are 7,700 FBI agents, and how I could ever hope to know of their individual activities is beyond, I think, the capacity of technology or humanity. You have to believe that they care. You have to believe that they know what their duty is, and you have to believe that in the main they will do their duty, and then you have to have systems that will hopefully reveal their failure.

Senator HART of Colorado. Well, I share your faith in the people of this country, perhaps less in future administrations. Thank you.

Senator TOWER. Mr. Clark, in your printed statement that you submitted for the record, you said where techniques inherently limited

freedom, "such as paid informants or electronic surveillance—I oppose both—are authorized by law, they should be stringently regulated." I believe that in your oral statement you did say you felt they should be outlawed.

Mr. CLARK. That is correct.

Senator TOWER. Or that electronic surveillance should be outlawed?

Mr. CLARK. I would outlaw both.

Senator TOWER. You'd outlaw both?

Mr. CLARK. Yes; I think that paid informants finally destroy the faith I was talking about earlier, and when you meet some of the paid informants on the other side of the counsel table in cases that I've met in the last 5 years, you don't like what our Government has been doing. It is an inherently corrupting phenomenon, and it is not necessary to effective investigation, and the sooner we break away from that, the sooner we will be more effective and freer.

Senator TOWER. According to documents in the possession of the committee, and according to the testimony of Mr. DeLoach this morning, you, on October 29, 1966, ordered the physical surveillance of Mrs. Anna Chennault which included electronic surveillance, is that correct?

Mr. CLARK. That's ridiculous, Senator. I don't think I ever heard anything like that before in my life. Absolutely false. I don't know what you're reading from—that I ordered it?

Senator TOWER. Let me read Mr. DeLoach's testimony.

To the best of my recollection on that specific case, the Executive Director, I believe, the Executive Secretary of the National Security Council, Mr. J. Bromley Smith, called me on one occasion and indicated the President of the United States wanted this done. I told Mr. Smith that I thought what he should do is call the Attorney General concerning this matter, and I believe either Mr. Hoover or I later received a call from the Attorney General indicating that this should be done.

Mr. CLARK. I never heard of it.

Senator TOWER. We have in hand an FBI document, a memorandum from Mr. Sullivan to Mr. John Dean in the White House dated February 1, 1975. It's—

Mr. CLARK. 1975?

Senator TOWER. Yes. This is a recent investigation. It says, on October 29, 1968, Mr. J. Bromley Smith on the White House staff, the Executive Secretary of the National Security Council, was in telephone contact with Cartha D. DeLoach, former assistant to the Director of the Federal Bureau of Investigation. Smith advised that he was speaking on behalf of President Lyndon B. Johnson, requested a telephone surveillance be installed on the Embassy of South Vietnam. He stated there was urgent need for the White House to know the identity of every individual going into the South Vietnamese Embassy for a 3-day period. Physical surveillance of the embassy was instituted immediately. Director Hoover sent in a written request to then Attorney General Ramsey Clark on October 29, 1968. The Attorney General authorized the installation.

Another reference to the South Vietnamese Embassy installation, and then, on October 30, 1968, Smith advised that President Johnson desired immediate physical surveillance of Mrs. Anna Chennault, the widow of Gen. Claire Chennault of Flying Tiger fame. Physical surveillance was instituted on Mrs. Chennault to cover her activities in Washington, D.C.



So you had no knowledge of that?

Mr. CLARK. Senator, you didn't ask me about the Vietnamese Embassy, did you?

Senator TOWER. No; I did not. That was just included in here.

Mr. CLARK. I authorized electronic surveillance on a good many embassies in the national security field.

Senator TOWER. I understand that. That's not part of my reasons.

Mr. CLARK. But the rest I never heard of.

Senator TOWER. You did not authorize electronic surveillance on Mrs. Chennault?

Mr. CLARK. Or physical surveillance.

Senator TOWER. DeLoach testified to our committee earlier, "The usual physical surveillance, as I recall, Senator, following her to places where she went in the city of Washington, and as I recall a statement made this morning, also a trip that she made to New York."

I then asked DeLoach, "Did it involve the constant monitoring of any and all of her incoming and outgoing telephone calls?"

Mr. DeLoach replied, "I believe the instructions of the President and at the instruction and approval of the Attorney General, that a wiretap was placed on her telephone, sir."

Mr. CLARK. Well, he believed wrong.

Senator TOWER. So you never authorized that?

Mr. CLARK. Never authorized it, never heard of it until this moment.

Senator TOWER. Do you think Mr. DeLoach perjured himself before this committee?

Mr. CLARK. Well, I can't read his mind. You'll have to examine him to determine that.

Senator TOWER. Well, apparently the FBI did do it. You will not state that the FBI did not do it?

Mr. CLARK. I don't know whether the FBI did it. I know that I had never heard of it until this moment.

Senator TOWER. Well, there were a lot of reports on Mrs. Chennault's comings and goings also included here in memorandums that were sent to the White House on the surveillance of Mrs. Chennault.

Mr. CLARK. Do any of them show a copy going to the Attorney General?

Senator TOWER. No. This is directly from the FBI to the White House. These reports of Mrs. Chennault's movements, they do not indicate anything to the Attorney General.

Mr. CLARK. I never heard of them.

Senator TOWER. You were not aware this was going on?

Mr. CLARK. I never heard of them. I turned down scores of requests.

Senator TOWER. If you had been aware of it, would you have ordered it stopped or suggested to the White House?

Mr. CLARK. Well, I would have to know what the grounds for it were.

Senator TOWER. But you were not aware that it was occurring?

Mr. CLARK. I never heard of it. I never heard anything about it. I didn't know what the grounds were. How could I—

Senator TOWER. The FBI resisted it originally on the grounds that, according to the testimony and according to this document, the FBI

insisted that the order come from the Attorney General because the FBI apparently reasoned that this was a political surveillance.

Mr. CLARK. Well, the President's Executive order. Perhaps it wasn't done on Executive order, at least a memo from the President instructed to all agencies that there be no electronic surveillance without the approval of the Attorney General, so it would—I guess he could countermand his own order, but it would be required by his own order. But there is no—I never heard of it.

Senator TOWER. Well, in the absence of any grounds of suspected criminal activity, would you suspect that that would be a violation of Mrs. Chennault's rights?

Mr. CLARK. Certainly.

Senator TOWER. Thank you.

Mr. Katzenbach, you've indicated that if the documents mentioned by Mr. Smothers were in fact initialed by you, that they would constitute some evidence of dereliction of your duty as Attorney General. Now, you've further indicated that although the initials on these documents appear to be in your hand, you would remember these documents if you had seen them. Is there any plausible reason or any rationale which comes to your mind which should lead the committee to conclude that these documents, and your handwritten note of December 10 of the same year, are anything other than genuine?

Mr. KATZENBACH. The handwritten note is genuine. I testified to that. I think that "dereliction of duties" was Mr. Smothers words, not my own. I think I would have certainly remembered if I had seen them.

Senator TOWER. You're suggesting, then, that your initials are forged.

Mr. KATZENBACH. I suppose that has to be a possibility. The other possibility, Senator, is that for some reason on three separate occasions these documents came to my office. I saw them. I initialed them, and in some way was careless about the reading of them, because against all of the facts I put in my statement, I believe very strongly that I would have recollected it. It is hard for me to see how I could have—on one occasion, sure. I might have missed a sentence at the end and thought it was just another information memo on Martin Luther King. It's hard for me to believe that I could miss that on three. And of course, if the December 10 note in fact refers to the December 1 memorandum, then clearly I read that one.

Senator TOWER. Thank you, Mr. Katzenbach.

Mr. Schwarz?

Mr. SCHWARZ. Mr. Clark, I want to discuss a remedy problem that you haven't gotten into, and get your views on it.

Does the FBI frequently rely on local police to provide them with information?

Mr. CLARK. Yes, a great deal of information, more than that; literally, cases are turned over to the FBI by the local police.

Mr. SCHWARZ. And that's a relationship which is, of course, important for the FBI carrying out its investigative activities.

Mr. CLARK. I think it is essential to effective investigation in the Federal system.

Mr. SCHWARZ. Now, I asked one of the associate counsel to show you two documents from Director Hoover, written shortly after the Democratic Convention in 1968.

Have you got those?

Mr. CLARK. Well, it looks like I'm about to have them.

Mr. SCHWARZ. Well, before I question you about the documents, did you, in your capacity as Attorney General, look into the beating of demonstrators that occurred at that convention?

Mr. CLARK. Oh, yeah; you see, I had sent Roger Wilkins, who was head of the Community Relations Service, out there a month before. I sent out Wes Pomeroy, who was special assistant for the law enforcement experience. The Deputy Attorney General went out at the time. Bob Owen, from the Civil Rights Division, was out there. We had urged the city to give permits to demonstrate, to give a permit to take the stadium over where Lakeshore Drive is. We had an investigation underway—I think by the Saturday, a formal investigation. I was working with the principal people involved by that weekend.

Mr. SCHWARZ. The weekend after the convention?

Mr. CLARK. At the end of the convention.

Mr. SCHWARZ. And did you involve the Bureau in the events which had taken place in Chicago?

Mr. CLARK. Well, I'm sure we did.

Mr. SCHWARZ. There's no evidence you ever got these documents, and I'm not in any way suggesting that you did, but I'd like to read into the record what Director Hoover instructed his Bureau chiefs to do in connection with that investigation. First, from the document of August 28, 1968. [Exhibit 50]<sup>1</sup> He refers in the first paragraph to the fact that the police had been criticized for using undue force, and then in the next paragraph instructs the agent in charge in Chicago as follows: "The Bureau should be alert to the situation and be in a position to refute unfounded allegations whenever possible."

And then in the telegram of September 3 to about 14 Bureau offices, he instructed them as follows: [exhibit 51]<sup>2</sup>

In view of recent accusations against Chicago authorities relating to their handling of demonstrators at the Democratic National Convention, the Bureau desires to collect all possible information regarding provocations of police by demonstrators, and the reactions of the police thereto.

Those excerpts indicate that what Director Hoover was interested in, was refuting the charge that the local police had beaten the demonstrators, and the question first, did you know that Director Hoover had issued those instructions?

Mr. CLARK. No. That's contrary to anything I ever heard.

Mr. SCHWARZ. Would you regard those instructions as proper?

Mr. CLARK. No, they are highly improper.

Mr. SCHWARZ. Now the problem or remedy I'd like you to focus on is, given the fact that the Bureau must necessarily depend upon good, close relationships with local police, and given this instance of attempting to disprove allegations against local police, what if anything should the committee focus on as far as that relationship and that problem?

Mr. CLARK. Well, the question raises all the issues that cause me to place as the number one civil rights enforcement priority official misconduct. In the Orangeburg massacre, for instance, we finally had to

<sup>1</sup> See p. 535.

<sup>2</sup> See p. 537.

take the investigation essentially away from the FBI. In this Chicago situation I sent two teams out, one from the Civil Rights Division with its statutes to enforce, and one from the Criminal Division with its statutes to enforce, and eight police officers had true bills returned against them while I was Attorney General, had true bills voted against them. They were not formally returned until later.

This is the problem that we had throughout the South, particularly while the so-called resident agent policy was in operation, where an agent could opt out of promotion or opt out of promotion possibilities and remain as a resident agent, and soon came to identify more closely with the local sheriff's office and the local police department than he did with his own superiors because that's where he lived and that's where he operated every day. And I guess the operational solution that we found was the general intercession in these critically important cases, because they really test the integrity of governments, and they will act to redress wrongful conduct by their own at some other level, or other levels of government.

I guess we found it necessary to use the Civil Rights Division, and that is basically what we did.

Now, what can be done better than that? I hope we can find something better than that to do. That is awfully hard. I think rotation of personnel. I think interchange of personnel, for instance, I think you could enact into law, or you can see that the offices of investigation have a policy, if there are charges of police misconduct against the sheriff's office in Los Angeles, for instance, that agents will be used for investigation from Chicago or someplace else. But there's that sort of problem, or that sort of possible technique.

I would be inclined against the establishment of an investigative agency exclusively for this purpose. Those, too, get out of hand. You need to have an institution with overall integrity that can function that way, but I think there are techniques that can reduce the problem.

At Orangeburg it took us weeks to discover that the Special Agent in Charge was sharing a hotel room with the head of the State police who had been at the scene of the killings, and those are hard lessons to learn. We just pre-empted the FBI in those cases. I guess I think that's something that really requires some legislative evaluation and perhaps resource because it is imperative that official misconduct be the highest priority in Federal enforcement.

Senator TOWER. Senator Morgan, do you have any more questions?

Senator MORGAN. No.

Senator TOWER. Gentlemen, thank you for appearing today and thank you for your cooperation with the committee.

Tomorrow afternoon the committee will reassemble at 2 o'clock. The witnesses will be Mr. Corey and Mr. Dungan, former Ambassadors to Chile, preceded by a staff briefing.

The committee will stand in recess until 2 p.m. tomorrow afternoon.

[Whereupon, at 4:40 p.m., the committee recessed, to reconvene at 2 p.m., Thursday, December 4, 1975.]

